

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF BUKOBA  
AT BUKOBA**

**LABOUR REVISION No. 01 OF 2022**

*(Originating from CMA/BMC/48/2020/ARB of the Commissioner for Mediation and Arbitration at Bukoba)*

**BATUL ISSACK.....APPLICANT**

***VERSUS***

**MASTEMIND TOBACCO T. LTD.....RESPONDENT**

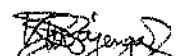
**RULING**

*29<sup>th</sup> July & 05<sup>th</sup> August 2022*

***Kilekamajenga, J.***

The applicant preferred the instant application by way of application made under **Section 91 (1) (a), 91 (2) (b), 94 (1) (6) (i) of the Employment and Labour Relations Act, No. 06 of 2004, Rule 24 (1) 24 (2) (a) (b) (c) (d) (e) and (f), and Rule 24 (3) (a) (b) (c) and (d) and 28 (1) (c) (d) (e) of the Labour Rules of 2007**. The major prayer in the application is the power of this Honourable Court to revise the arbitration award of the Commission for Mediation and Arbitration dated 10<sup>th</sup> December 2021. The applicant supported the application with his affidavit.

The facts leading to this application are as follows: On 1<sup>st</sup> July, 2017 the applicant was officially employed by the respondent as a Salesman and driver. The applicant accepted the appointment and immediately took his duties and responsibilities. On 1<sup>st</sup> September 2020, the respondent terminated the



applicant's employment due to gross dishonesty, gross insubordination and absconding from place of work. The applicant was unhappy with the termination of his employment and filed a complaint in the Commission for Mediation and Arbitration at Bukoba (the Commission). The commission finally came to the conclusion that the reasons for the termination were genuine and the procedure was properly followed by the respondent in terminating the applicant's employment.

The applicant, therefore, filed the instant application challenging the award of the commission. Before this Court, the respondent did not respond the summons prompting an ex parte hearing. The applicant who was unrepresented appeared in person to fend his application, albeit, with a brief oral submission. He argued that, his employment was terminated on 1<sup>st</sup> September 2020 and that he was not informed about the said termination. Furthermore, his salary was stopped in March 2022 without any notice. He insisted that his termination from employment was unfair and the reason for the termination was not genuine. He urged the Court to order reinstatement to the employment and payment of benefits due to him.

In this application, upon the perusal of the record from the commission and the Court file in general. There are two pertinent issues for determination. The first issue is whether the respondent had genuine reasons for the applicant's termination from employment. The second issue is whether the procedures for

termination of employment were properly followed. In addressing the first issue, before the applicant's termination from employment, the applicant was being accused of causing loss to the respondent. The exhibit B.9 details all the accusations against the applicant. Just to point a few of them; the applicant created a fake list of debtors; the applicant was responsible for the missing stock of 39.34 million Shillings. On 9<sup>th</sup> March 2020, the applicant deposited in the respondent's account an amount of Tshs. 200,000/= instead of Tshs. 1,594,000/=. On 16<sup>th</sup> March 2020, the applicant left the respondent's motorcycle in the hands of the security officer and left the place of work and there was no further reason for his absence. It is alleged that, the applicant disappeared from work from 16<sup>th</sup> March 2020, until on 09<sup>th</sup> July 2020. Also, the applicant sold on credit items of the value of Tshs. 10,274,140/= but he never collected such debts.

In his oral evidence before the commission, the applicant did not dispute the above allegations rather than alleging that he was not afforded fair hearing before the disciplinary committee. On the other hand, the respondent's evidence demonstrated how the applicant misbehaved and therefore caused a huge loss to the respondent. Furthermore, the evidence further shows that, the applicant disappeared from work for some months and he gave no reason for his absence. He was entrusted with the employer's motorcycle which he left it in the hands of a security guard and left the place of work. Based on the reasons stated above,

in my view, the respondent had good reasons for taking actions against the applicant.

Then, the next issue is whether the procedure for termination was followed. In answering this issue, the record shows that when the respondent noted the applicant's misbehaviour, the applicant was served a letter to show cause. The letter is dated 09<sup>th</sup> July 2020. On 25<sup>th</sup> July 2020, the applicant was summoned to appear before the disciplinary committee and, in fact, he appeared and signed the hearing form. The hearing of the applicant's case before the disciplinary committee gave recommendation for termination of the applicant's employment. Immediately, thereafter, the applicant appealed against the recommendation made by the Disciplinary committee. Again, the appeal was dismissed on 24<sup>th</sup> August 2020. On 1<sup>st</sup> September, 2020 the applicant was served with the letter of termination.

In my view, the applicant was given the right to a fair hearing. He appeared before the Disciplinary Committee. Even after the decision to terminate his employment, he had another avenue of appeal to the higher authority within the respondent's organisation structure. I have no doubt, the procedures for termination were followed and in general, the applicant's employment was fairly terminated as the respondent has good reasons to terminate the applicant's employment and the procedures for termination were followed. In the case of **Lucy Kessy v. National Microfinance Bank PLC LTD, Revision No. 123 of**

**2015**, this Court was confronted with a case similar to this and had the following to say:

*"It is an established principle that, if the termination of employment is not based on valid reason and fair procedure in law, is unfair...the intention of the legislature is to require employer to terminate employees only with valid reasons and not their own will or whims. It is very fortunate that the provision of our law took cognizance of the International Instrument to wit International Labour Organisation Convention (ILO) 158 of 1982, Article 4."*

The Court went on stating that:

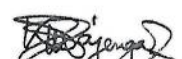
*"Basing on what I have gathered in the records I am of the view that the law is clear that absent from work without permission for more than five days is gross misconduct which amount to termination."*

Based on the above law, the respondent had good reasons to terminate the applicant's employment and the procedures were properly followed. I find no merit in the application and it is hereby dismissed. No order as to costs. It is so ordered.

Dated at Bukoba this 05<sup>th</sup> August 2022.



  
**Ntemi N. Kilekamajenga**  
**JUDGE**  
**05/08/2020**



**Court:**

Ruling delivered this 05<sup>th</sup> August 2022 in the presence of the applicant but in absence of the respondent. Right of appeal explained.



  
**Ntemi N. Kilekamajenga**  
**JUDGE**  
**05/08/2020**

