

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**LABOUR DIVISION**

**AT ARUSHA**

**REVISION APPLICATION NO. 96 OF 2021**

(Arising from Commission for Mediation and Arbitration of Babati in Reference No.

CMA/AMNR/BBTI/03/2019)

**PETRO MAGESA..... FIRST APPLICANT**

**PAUL MAKOYE.....SECOND APPLICANT**

**VERSUS**

**RIFT VALLEY CO-OPERATIVE UNION**

**(RIVACU LTD) ..... RESPONDENT**

04/10/2022 & 11/10/2022

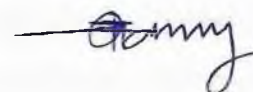
**BARTHY, J**

**JUDGMENT**

This is an application for Revision by Petro Magesa and Paul Makoye ensued from Labour Dispute No. CMA/AMNR/BBTI/03/2019 decided on 27/08/2021 by the Commission for Mediation and Arbitration of Babati. Aggrieved by the award of the Arbitrator Hon. M.S. Mbeni, the applicants are now seeking for Revision of the award.

The orders sought by the Applicant from this court are;

- 1. That, the award of the Commission for Mediation and Arbitration be revised, quashed and set aside.*
- 2. That, the Hon. Court to order for any relief that it deem fit and just to grant.*



Briefly the relevant facts leading to this application are such that; the applicants were employed by the RIVACU now the respondent and their employment contract came to an end on 30/04/2018 (see exhibit D1). Their termination followed an investigation conducted on 18/10/2018 regarding due to the loss of money of the respondent by the applicants.

The applicants were suspended in order to investigate the allegation as per exhibit D3. Disciplinary hearing was conducted on 14/12/2018 and the second applicant admitted on misappropriation of money and stated he had given the other money to the Manager of Manyara Region as per Exhibit D4 and Exhibit D5. The first respondent also appeared on the said disciplinary hearing.

The board decided to terminate their employment as evidenced by Exhibit D6. The applicants were also charged with the offence of stealing by servant as per exhibit D7. Aggrieved with the termination, the applicants referred the matter to CMA.

After the hearing the dispute, the CMA had decided the applicants were fairly terminated. They were awarded with the compensation of two months salaries. The decision which aggrieved the applicants who are now before this court challenging its decision as depicted in their application and the affidavit supporting the application based on the following legal issues;

- 1. That, the CMA erred materially by relying on the purported confession document to deny the applicant declaration that their termination was unfair and unlawfully.*
- 2. That, the CMA erred on declaring that the reason given by the respondent to terminate employment of the applicant was affair reason despite it being inconsistent & unproved accusations against the applicant.*

*3. That, the CMA failed to observe that the procedures on termination of Employment of the applicant by the respondent was improper as Respondent did not follow the procedures stipulated by the Labour Laws when terminating Employment of the Applicants.*

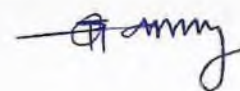
The hearing of the application proceeded orally, the applicants appeared in unrepresented whereas Mr. Donald Deogratus, represented the respondent.

In support of the application, the first applicant made the submission for both. He went on to argue that, they were not afforded the right to be heard. They were suspended on 17/10/2018 and on 14/12/2018 they were called on disciplinary hearing for the allegation of loss of income of Tsh. 13,300,000/=

During the disciplinary proceedings, the first applicant as a Project manager he admitted to have failed to supervise the cashier who was using the money without reporting anywhere. But again, on 27/1/2019 they were arraigned at Manyara Resident Court for stealing from the employer.

It was their further submission that, they were not involved in the investigation nor being warned prior the termination of their employment and more to that, they were terminated before the offence of stealing was proved by the court.

Responding to what was submitted by the applicants, Mr Deogratus contended that, the proceedings of the CMA and the minutes of the disciplinary proceeding clearly show that the applicants were afforded the right to be heard and they defended themselves. They also admitted to the allegation. He therefore saw the claim as an afterthought.



Mr. Deogratious submitted further that, the criminal charge was initiated after they admitted to the allegation. He added that, their benefits were to be paid after termination. To conclude, the counsel for the respondent prayed this application ought to be dismissed as the CMA award was justifiable.

In their brief rejoinder, the first applicants maintained that they were aggrieved with the award of CMA therefore, they prayed to this court to revise the same.

Having gone through the records and the submissions for both parties two issues needs to be determined by this court as follows;

- I. Whether the termination was substantively and procedurally fair and justifiable.
- II. Whether the relief was justifiable.

To start with the first issue, the applicants are faulting the disciplinary proceeding and the award of CMA in determining that the termination was unfair. The applicants claimed they were not afforded the right to be heard.

The claim that was rebutted by Mr. Deogratious the counsel for the respondent that the records of the CMA and that of disciplinary proceedings shows that the applicants were afforded the right to be heard and they defended themselves with admission to the allegation.

Termination will only be considered to be justified if it followed all the procedures, as decided in the case of the **Institute of Accountancy Arusha v. Gideon Ngoro Kivuyo**, Revision No. 47 of 2015.



The applicants have also faulted their termination to have not been acted without any warning prior to their termination. Mr. Deogratiou did not address this point.

It is the requirement of the law that the employer has to prove, on the balance of probabilities, that the employment was terminated in accordance with a fair procedure - see section 37 (2) (a), (b) and (c) of the Employment and Labour Relation Act, 2004 which provides;

*"A termination of employment by an employer is to terminate an unfair if the employer fails to prove-*

*(a) that the reason for termination is valid;*

*(b) that the reason is fair reasoned*


*(i) related to the employee's conduct, capacity and compatibility; or*

*(ii) based on the employment requirement of the employer; and*

*(c) that the employment was terminated in accordance with fair procedure."*

In the present matter, the records reveal that, investigation was conducted and during the disciplinary hearing both the applicant appeared and admitted to commit the alleged offence. The applicant faulting those records to have been prepared with the respondent only leaves a lot to be desired.

On the records of the disciplinary hearing particularly exhibit D5, it is clear that the applicants were afforded the right to be heard and a right to defend themselves. The applicant did not fault their signatures appended

A handwritten signature in blue ink, appearing to read "A. Ammy".



in the minutes of the disciplinary proceeding to have been forged and they had not complained anywhere.

On the other hand, the applicant had faulted criminal proceedings initiated against them parallel with the disciplinary proceedings. Also claiming they were terminated before the offence of stealing was proved beyond reasonable.

Their admission was the proof to the allegation that they had contravened with the standard regulating conduct relating to employment and the same is a good reason for termination.

I am aware the allegation that led to the termination of employment of the applicants involves criminal nature which requires higher degree of proof when the same is raised in case of civil nature. A similar position was held in the case of **Said Mohamed Abdallah (Administrator of the Estate) vs. Stanbic Bank (T) and 4 others**, Misc. Commercial Application No. 267 of 2018, High Court of Tanzania, at Dar es salaam. However, in the present matter, the respondent did not have to prove in the highest degree since the applicants admitted the allegation.

The applicants had also claimed the procedures for termination was not followed simply because they were not involved during the investigation process.

Guided with Rule 13 of **the Employment and labour Relations (Code of Good Practice)** GN. No. 42/2007 it requires the investigation to be conducted before terminating the employee. Relating to this application the investigation was conducted by the respondent and the same was tendered and admitted at CMA as exhibit D2.



The law only requires the employee to be supplied with the investigation report to enable him know his case and prepare his defence. The fact that the investigation report was tendered before CMA and the applicants were able to make their defence, therefore the requirement of Rule 13 (1) was complied with by the respondent.

On the first issue the court therefore finds that the termination of the applicants was fair and justified as the applicant themselves admitted to have occasioned loss of money to the respondent.

The second issue relates to the relief issued by CMA which the applicants fault to be unjust and unfair with their termination. The applicants were awarded two months' salary for the period of the suspension.

The provision of section 40 (1)(a) – (c) of ELRA provides for various reliefs to be awarded but only when it has been established that the termination was unfair. In this matter the court has affirmed the decision of the CMA to have arrived to the just decision that the termination was fair. In this matter the court was of the same view with the decision of the CMA that termination was fair and just.

In the final analysis, I find no need to disturb the award of the CMA as the provision of the law is clear, the relief is for unfair termination. Thus, the application is dismissed for want of merit. I make no order as to costs.

Order accordingly.

**DATED** at **ARUSHA** this date 11<sup>th</sup> day of October 2022.

  
**G.N. BARTHY**  
**JUDGE**  
**11/10/2022**



