

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY)**

**AT MWANZA**

**LABOUR REVIEW APPLICATION No. 01 OF 2022**

*(Arising from Misc. Labour Application No. 51 of 2021 originating from Labour Revision No. 60 of 2016 emanating from Labour Dispute No. MA/MZ/NYAM/265/2016)*

**JOANITHA JOHN.....APPLICANT**

**VERSUS**

**CMG INVESTMENT LIMITED.....RESPONDENT**

**RULING**

*Last Order date: 22.09.2022*

*Ruling Date: 20.10.2022*

**M. MNYUKWA, J.**

This application is brought by way of Memorandum of Review. The Memorandum of Review is preferred under Rule 27 (1)(2)(a) and Rule 27 (7) of the Labour Court Rules, GN No. 106 of 2007. The Applicant brought the present Review Application, after being partly dissatisfied with the Judgement of this court in Revision Application No. 60 of 2016. The applicant is now seeking to Review the decision of this Court on the following grounds;



- 1. The decision in revision application No. 60 of 2016 contains an apparent error on the face of it, as the same does not state what the applicant should be awarded as an employee after the decision to terminate her was declared unfair termination by this court.*
- 2. That decision in Revision Application No. 60 of 2016 contains an apparent error on the face of it as the same decision does not direct the employer (respondent herein) to pay compensation to the applicant herein as per section 40 of the Employment and Labour Relation Act Cap 366 after the termination was declared unfair both in substance and procedure.*
- 3. The decision in Revision Application No. 60 of 2016 contains an apparent error on the face of it as the same decision does not direct the employer (respondent herein) to pay the applicant herein her Tsh 300,000/= monthly salaries from the date of unfair termination 30<sup>th</sup> May 2015 to the date of final payment. .*

The applicant prays this Court to allow the Memorandum of Review and the Court proceed to correct the errors in line with the above grounds and the law.

When served with the Memorandum of Review, the respondent filed a statement of response in respect of Memorandum of Review that;

- 1. The Judge in the revision proceedings did not have jurisdiction to award what is complained of under paragraphs 1, 2 and 3 of the Memorandum of Review.*

*2. The Judge in the revision proceedings could not grant what is sought for under paragraphs 1, 2 and 3 of the Memorandum of Review as they did not feature as reliefs prayed during revision proceedings. **Attached is the copy of the application for revision.***

In brief, the applicant instituted labour dispute at the Commission for Mediation and Arbitration (CMA) through the CMA Form No. 1 in which one among her prayer, she prayed for reinstatement as there was unfair termination on the ground of absenteeism by the respondent. After hearing both parties to the dispute, the CMA decided in favour of the respondent on the reason that, the termination was fair in reason and procedure. Aggrieved by the decision of the CMA, she made an Application for Revision before this Court where by the Application for Revision was allowed and it was held that, the termination was unfair substantially and procedurally. Upon allowing the Revision Application, this Court did not grant any relief(s) to the applicant. She is now applying for Review to this Court so as to review its decision for the grounds advanced in his Memorandum of Review.

By the order of the Court dated 22<sup>nd</sup> September 2022, the Review was argued orally. During the hearing of the Review, the applicant enjoyed the legal services of Mr. Egbert Mujungu, learned advocate and



the respondent afforded the legal service of Mr. Andrew Luhigo, learned advocate.

Arguing in support of the Memorandum of Review, Mr. Egbert Mujungu submitted that, the decision of this Court did not give relief entitled to the applicant. He went on that, it is a settled position of law that, after this Court has ruled out that the applicant is unfairly terminated, this Court had to state the relief(s) entitled to be granted to the winner. The counsel for the applicant support his argument by referring to section 40(1) of the Employment and Labour Relations Act, Cap 366 R.E 2019 and prayed the first ground of Review to be allowed. He also supported the application for Review, by referring to the decision of this Court in Misc. Labour Application No. 51 of 2021 that, the applicant got an empty relief. He therefore, prays this Court to order appropriate relief.

On the 2<sup>nd</sup> and 3<sup>rd</sup> grounds of Review, it is the applicant's counsel submission that, the respondent did not reinstate the applicant in this case and he therefore prayed section 40 of the Employment and Labour Relations Act, Cap 366 R.E 2019, to come into play and the respondent be ordered to pay the applicant compensation and his arrears of salary from 30<sup>th</sup> May 2015 up to the date of final payment. He retires his submission in chief by praying the Review to be allowed.



In rebuttal, the respondent's counsel averred that, the present application is not maintainable as the decision of this Court in Labour Revision No. 60 of 2016 is not reviewable as the Court is not vested with the power to grant relief that was not prayed for. He further submitted that, if the Court was of the view that the sought relief was supposed to be granted, it could have ordered the matter to be remitted to the CMA to establish reliefs and quantified them or in the alternative, the applicant be required to submit application to the CMA based on the decision of the Revision Application of this Court and prays before the CMA to establish and quantify the relief(s).

He further submitted that, even if this Court had power to grant relief, it was not in a position to do so because, the applicant did not ask for any relief before this Court in the Revision Application, as it is required under Rule 24(3)(d) of the Labour Court Rules, GN No, 106 of 2007, which requires the affidavit filed in the Labour Court to contain reliefs prayed by the applicant. He went on that as per respondent's attachment, that is the Labour Revision No. 60 of 2016 did not ask for any relief to be granted by this Court. He finalized his submission by saying that, this application is not reviewable, as the applicant was supposed to file an appeal.

Rejoining, the applicant's counsel hold the view that, so long as this Court ruled out that the termination was unfair, section 40 of the



Employment and Labour Relations Act, Cap 366 R.E 2019 applies. He added that, the respondent's counsel did not submit if that section is not applicable in the circumstances of our case at hand. He emphasized that, the argument of the learned counsel for the applicant that, the matter be remitted to the CMA for necessary order on relief sought was not backed up by any authority either of the relevant legislation or case law and therefore he concluded that, the said argument was his own view.

Insisting, he stated that, so long as this Court held that the termination was unfair substantially and procedurally, it was duty bound to give reliefs as per section 40 of the Employment and Labour Relations Act, Cap 366 R.E 2019. He therefore prayed the Review to be allowed.

After hearing the competing submissions of both parties, this court has one issue to decide as to whether Memorandum of Review has merit. In answering the above issue, I will determine all the three grounds of Review as they are intertwined.

Before I determine the merit of the application for review, it is better to remark here that, the present Application for Review originated from the Court's Order on Revision No. 60 of 2021 which reads as here under quoted:

*"In the circumstances, I agree with the counsel of the applicant that termination of the applicant was substantially*



*and procedurally unfair. In the result, this application is accordingly allowed. Each party to bear own costs."*

Reverting to our case at hand, it is the applicant's submission that, upon this Court held the view that, the application is allowed as the procedure for termination was substantially and procedurally unfair, the Court was required to grant the relief as it is provided for under section 40 of the Employment and Labour Relations Act, Cap 366 R.E 2019. The respondent strongly submitted that, the Court can not grant the relief that was not sought for.

Ahead of dealing in the present Review, I find it convenient to firstly state that, the power of review can be exercised for correction of a mistake apparent on the face of the record and not to substitute a view that may result into a different interpretation. This means that, court has power to review its decision, when there is an apparent error on the face of the record that does not need reasoning. In the case of **Chandrankat Joshubhai Patel v Republic** [2004] TLR 218. The Court of Appeal of Tanzania among other things explained what does the apparent error on the face of the record mean, as it stated that:

*"An error apparent on the face of the record must be such as can be seen by one who runs and reads, that is, an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which they may be conceivably be two opinions.*



*But it is no ground for review that the judgement proceeds on an incorrect exposition of the law.... A mere error of law is not a ground for review .... That a decision is erroneous in law is no ground for ordering review."*

Furthermore, in the case of **Elia Kasalile and others v Institute of Social Work**, Civil Application No. 187 of 2018, it was held that:

*" A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self evident and should not require an elaborate argument be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter . Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law."*

I have given carefully consideration to the grounds of review and the competing submissions of the parties, I find the main contention on the part of the respondent to be, the application for Review is unmaintainable as the relief was not prayed for, in the Application for Revision filed in this Court and that's why this Court did not grant the relief as it was not prayed for.

I have gone through the said Application for Revision filed in this Court as attached by the respondent, the applicant in his application intended to apply for the following Orders, as I quote from her application;



- 1. That this Honourable Court be pleased to call for records, revise and set aside the whole award of the CMA on dispute No. CMA/MZ/255/2015 by Hon. Ester Kimaro, Arbitrator issued to Applicant on 20<sup>th</sup> May, 2016 on the grounds set fourth on the attached affidavit in support of this Application.*
- 2. That this Honourable Court be pleased to determine the dispute in the manner it considers appropriate.*
- 3. That this Honourable Court be pleased to give any other relief it deem fit and just to grant.*

Without going into further discussion, to my understanding the above Orders sought by the applicant in her Revision Application were very clear and they don't need interpretation as this Court was called to revise the CMA award and determine the dispute in the manner it considers appropriate and grant any other relief it deem fit and just to grant. At any rate, I can not agree with the counsel for the respondent that, this court did not grant the relief because it was not prayed for, while the orders sought in the Application for Revision as quoted above were very clear.

For that reason, it is my considered view that, this application for Review has merit. In my opinion there is an apparent error on the face of the record that need to be corrected. Upon going through the Order of this Court, it is clear that this Court allowed the Revision Application without ordering what the applicant was entitled, after holding that the

termination was unfair in terms of reason and procedure. Therefore, this Court has to apply the provision of section 40 of the Employment and Labour Relations Act, Cap 366 R.E 2019 to grant the relief as it considers appropriate as prayed by the applicant.

As it is rightly submitted by the applicant's counsel, having this Court found that, the reason and the procedure for termination was unfair, the relief provided under section 40 of the Employment and Labour Relations Act, Cap 366 R.E 2019 was mistakenly not awarded to the applicant. The said section provides that:

*"Section 40 (1) If an arbitrator of Labour Court finds a termination is unfair, the arbitrator or Court may Order the employer-*

- (a) To reinstate the employee from the date the employee was terminated without loss of remuneration during the period that the employee was absent from work due to the unfair termination; or*
- (b) To re-engage the employee on any terms that the arbitrator or Court may decide; or*
- (c) To pay compensation to the employee of not less than twelve months' remuneration.*

Thus having found that there was a mistake apparently on the face of the record, the same is corrected and consequently I Order the applicant to be reinstated without loss of remuneration as it is provided



for under section 40(1)(a) of the of the Employment and Labour Relations Act, Cap 366 R.E 2019. No order as to costs.

It is so ordered



  
**M.MNYUKWA**  
**JUDGE**  
**20/10/2022**

**Court:** Ruling delivered on 20/10/2022 in the presence of the Applicant's advocate and in the absence of the respondent.

  
**M.MNYUKWA**  
**JUDGE**  
**20/10/2022**