

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)**

AT DODOMA

REVISION APPLICATION NO. 25 OF 2020

BETWEEN

FARASHA CO. LTD

(NASHERA HOTELS DODOMA)..... APPLICANT

VERSUS

JOHN BROWN MAGODO & 5 OTHERS RESPONDENT

25/10/2022 & 2/11/2022

RULING

MASAJU, J

The Applicant, Farasha Company Limited, has filed in the Court a Chamber Summons Application made under section 91(1) (a), 91(2) (c) and 94 (i) of Employment and Labour Relations Act [Cap 366 RE 2019] and Rule 24 (1) (2)(a) (b) (c) (d) (e) (f) (3) (a) (b) (c) (d) 28 (1) (b) (c) (d) (e) of the Labour Court Rules, 2007 GN No. 106 of 2007 for revision of the Arbitral Award given in favour of the Respondents John Brown Magodi and 5 others by the Commission for Mediation and Arbitration (CMA), Dodoma Chambers, in Labour Dispute No. CMA/DOM/83/2007. The said Chamber Summons

Application is supported by the Affidavit sworn by Benson Nabora, the Applicant's Principal Officer.

The Respondents contest the application, hence the Counter Affidavit sworn by Mr. Brown B. Magodi to that effect.

The appeal was heard in the court on the 28th day of September, 2022 where the Applicant was represented by Mr. Baraka Lweeka and Ms. Susan Mafwere the learned counsels, while the Respondents were represented by Mr. Charles Magai from TUICO.

In the course of composing the judgment the Court has noted some procedural irregularities in the trial tribunal, hence the Court will not attempt the appeal on merit since the procedural irregularity is worthy of disposing the Revision.

The trial tribunal's original record of proceedings reveals that the evidence of all the witnesses who testified before the CMA was taken contrary to Rule 19(2) (a) read together with Rule 25 (1) of the Labour Institutions (Mediation and Arbitration Guidnes) Rules, Government Notice No. 67 of 2007 (GN No. 67 of 2007 which requires a witness to give evidence on oath or affirmation.

Rule 19 (2) (a) of the GN No. 67 of 2007 provides, thus;

"19(2) The powers of the Arbitration include:

(a) Administer oath or accept affirmation from any person called to give evidence"

The provision is read together with Rule 25 (1) GN No. 67 of 2007 which states:

"The parties shall attempt to prove their respective cases through evidence and witnesses shall testify under oath through the following process..."

The Court of Appeal of the United Republic of Tanzania in National Microfinance Bank PLC V. Alice Mwamsojo (CAT) Civil Appeal No. 235 of 2021, Dodoma Registry held thus;

"It is therefore, a mandatory requirement that before giving evidence the witness has to take oath or affirmation accepted from the witness, this includes witnesses before the CMA. At the CMA the Arbitrator has a duty of making sure the provisions of Rule 19(2) (a) which has to be read together with Rule 25(1) for the GN No. 67 of 2007, have been complied with."

In the instant case the Arbitrator did not exercise his powers and administer oaths or accept affirmation thus the evidence of all witnesses

was taken without compliance with the provisions of the law, hence vitiating the proceedings.

By virtue of the Revisionary powers of the Court under section 91(2) (c) of the Employment and Labour Relations Act [Cap 366 RE 2019] the trial record of proceedings, the award and orders of the Commission for Mediation and Arbitration (CMA), Dodoma Chambers, are hereby severally and together nullified, quashed and set aside respectively. Unless the parties reach amicable settlement of the labour dispute there shall be trial "*de novo*" before another Arbitrator.

The parties shall bear their own costs accordingly.



GEORGE M. MASAJU

JUDGE

2/11/2022