

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MOROGORO SUB-REGISTRY)
AT MOROGORO

REVISION APPLICATION NO. 20 OF 2022

*(Arising from Complaint No. CMA/MOR/51/2020, Decision and Award of Hon. A.
Mwalongo, Arbitrator, dated on 1st Day of October, 2021)*

BETWEEN

M. A. CARGO TRUCKERS & FOWARDERS CO. LTD APPLICANT
VERSUS
BAHATI JAPHET LECHIPYA RESPONDENT

RULING

9th Aug, & 26th Oct, 2022

CHABA, J.

The Applicant, M. A. CARGO TRUCKERS & FOWARDERS CO. LTD filed this Revision Application calling upon this Court to call for the records of proceedings and revise the award of the Commission for Mediation and Arbitration (the CMA) in Labour Dispute No. CMA/MOR/51/2020 delivered at Morogoro on 1/10/2021 and set aside the respondent's award of TZS. 4,176,000/= . The application is made under section 91 (1) (a) and (2) (a), (b) & section 94 (1) (b) (i) of the Employment and Labour Relation Act, No. 6 of 2014, (the ELRA), Rules 24 (1), (2), (a - f), (3) (a - d), 28 (1) (a - e) and 28 (2) of the Labour Court Rules, GN. No. 106 of 2007 (the LCR).



In summary, the matter arose in this way: The applicant which is an incorporated Company in Tanzania dealing with transportation business, employed the respondent as a driver. The respondent signed a contract with the applicant on 1/08/2018 and on 18/08/2018, he carried a fuel truck from Tanzania to The Democratic Republic of Congo (DRC Congo). On his way, the respondent abandoned a fuel truck at Kasumbalesa and disappeared to unknown and caused a loss of 820 liters of fuel. Eventually, the respondent appeared at the applicant's office on 26/11/2018. Without hesitation the applicant, immediately dismissed the respondent from employment.


Aggrieved, the respondent complained to the Regional Commissioner's Office over that injustice, and on 14/03/2020 the Regional Commissioner convened a meeting and the attendees were the parties, the Labour Commissioner, Labour Officer from RC's Office and officer in-charge from the Morogoro-CMA. In resolving the dispute, it was concluded and agreed that the applicant should refund the respondent a total amount of Tanzanian Shillings; TZS 3,690,000/= being unpaid salaries from October, 2018 to March, 2020. Thereafter, the Regional Commissioner's labour office proceeded to issue a statutorily Compliance Order to effect the meeting's resolution via letter MOR/137/VOL1/95.

The records show that on 22/05/2020 one Lena Nkaya an authorized labour officer from Regional Labour Office of Morogoro acted as a Decree Holder instituted in the High Court of Tanzania a Labour *Execution Case No.*

24 of 2020 against the applicant as Judgment Debtor. The prayers thereto were to seek an order of the Court ordering the applicant to comply with the Compliance Order issued by the Labour office on 14/03/2020. The applicant also sought for attachment and sell of the Judgment Debtor's properties to wit; motor vehicles make scania with registration numbers, No. T. 990 CAP, T. 574 CCS and T. 192 CLP in lieu of default of payment of the sum of TZS. 3,690,000/= as previously agreed.

The above execution proceedings of the High Court did not proceed to the finality before the Court as Lena Nkaya and the applicant on 19/06/2020 amicably settled. The Deed of Settlement was dully filed in Court on 9/07/2020, registered and indorsed effectively. Therefore, Execution Case No. 24 of 2020 while pending at the High Court was abandoned. It was mutually agreed in the settlement order that neither party was supposed to re-file or re-institute or cause to be filed any proceedings whatsoever in the same cause of action. It was settled further that the Decree Holder shall not have any further claims whatsoever against the Judgment Debtor related to their previous employment.

On 21/12/2020, the respondent Bahati Japhet Lechipya filed a labour dispute at CMA for unlawful termination of his employment. Successfully on 1/10/2021 it was ordered that the applicant should pay the respondent Tanzanian shillings; TZS.4,176,000/= being a compensation for unlawful termination of the respondent's employment.



Based on the above historical background, the applicant is before this court challenging the award of the CMA on revision based on grounds of illegality and the jurisdiction of the CMA in dealing with the labour matter that was already settled by the parties and finally executed in the High Court of Tanzania.

When the application for revision was called on for hearing, the applicant enjoyed the legal services from Mr. Juma Ahmed Mwakimatu and the respondent was represented by Mr. Boniface E. Basesa, a Secretary from a Trade Union known as DOSHITWU. With the leave of the Court, the application was disposed of by way of written submissions and both parties complied with the scheduled order. The applicant prayed the court to adopt the affidavit sworn by Mr. Sylvester Mateso, who was a Human Resources Officer of the applicant to support the application, so as to form part and parcel of the applicant's submission in chief.


Submitting in support of the application Mr. Juma Mwakimatu highlighted that since the employer and employee (applicant and respondent) decided to sign a deed of settlement that binds themselves, then the dispute between the parties was put to its end. He was of the strong view that by settling, *Execution Case No. 24 of 2020* of which its status was pending before the High Court that means that the matter or dispute between parties was settled or resolved. It was his argument that by filing the deed of settlement in the



court, the same became a Consent Judgment of the Court and therefore binding both parties.

The learned counsel went on arguing that the Hon. Arbitrator had nothing to decide in Labour Dispute No. CMA/MOR/51/2020, because parties already had executed their settlement at the High Court, hence it was *res judicata* and the CMA had no jurisdiction to try and determine the matter involving same parties. The documentary evidence or exhibits tendered and relied on by the applicant in support of this application includes the following: Copy of Employment of Contract dated 1/08/2018 (Exhibit MA-1); Copy of Deed of Settlement signed and filed in Court on 9/07/2020 (Exhibit MA-20) and Copy of the Decree of an Arbitral Award from the CMA, herein Morogoro dated on 1/10/2021 (Exhibit MA-3). Also, a copy of Application for Execution Case No. 24 of 2020 was annexed though unnamed.

In reply to the applicant's submission, the Mr. Basesa submitted that the dispute between the parties is not a matter of *res judicata* because it had never been dealt and determined by the CMA for Morogoro. He submitted further that the deed of settlement signed by the parties on 19/06/2020 concerned with the payment of TZS. 3,690,000/= being salaries for the respondent for the period of 18 months (from October, 2018 to March, 2020). He insisted that the respondent's employment was unlawfully terminated on 31/08/2020 (five months later).



He continued to argue that the decision of the CMA in Labour Dispute No. CMA/MOR/51/2020 purely based on unfair termination of the respondent's employment and not merely on payments of salaries as exhibited in the compliance order. He concluded that the CMA decreed the applicant to pay TZS. 200,000/= as cost for breach of a statutory contract, the requirement of issuing a Notice prior to termination, TZS. 200,000/= was awarded as money for unpaid statutory vacation, TZS. 1,000,000/= was decreed as unpaid salaries from March, 2020 to August, 2020; also, TZS. 376,000/= was decreed as a payable pension from 2013 to 2020 and TZS. 2,400,000/= as terminal benefit (compensation for unlawful termination), hence in total the sum of TZS. 4,176,000/=.

Based on the above submission, Mr. Basesa prayed this court to dismiss the application for lacking merits with costs. Having summarized and considered the rival submissions advanced by both parties and the prayers sought by the applicant in light of the evidence on record, the issues for consideration, determination and decision thereon are the following: -

- 1. Whether the Deed of Settlement filed in this Court via Execution Case No. 24 of 2020 was binding between the applicant and respondent,*
- 2. Whether the termination of employment of the respondent was fair.*

Having set the issues for determination, I am endorsed to proceed with the determination of these two issues as follows.



Starting with the first issue, I have carefully gone through the copy of the Deed of Settlement dated on 19/06/2020. According to the records, the same was filed in the High Court, Labour Division on 9/07/2020. Reading keenly, this document (Exhibit MA-2) shows that indeed there was an Execution No. 24 of 2020 before this Court which was filed on 22/05/2020. The Deed of Settlement bears the stamp and Seal of this Court together with the signature of the registry office who received it on 9/07/2020. The Deed of Settlement bears also the stamp and full address of the Commissioner for Oath who witnessed the agreement. However, two important issues can be pointed out from this Deed of Settlement.

One, the Decree Holder/Applicant and Judgment Debtor/Respondent appearing in the Deed of Settlement are quite different with the parties in the current application. That means, **Lena Nkaya-Labour Officer** was a Decree Holder/Applicant and M.A. Cargo Truckers & Forwarders Co. LTD was a Judgment Debtor. Hence, in my understanding, the Deed of Settlement was concluded between the Labour Officer and the Applicant herein. It thus, binds the two parties upon compliance orders dated 14/03/2020.

It is evident from the record that, the respondent, **Bahati Japhet Lechipya** did not sign that Deed of Settlement because it is the Labour Commissioner or Labour Officer who is vested with the powers to execute or enforce such compliance order in the Labour Court.



Two; the Deed of Settlement only covered salaries and medical allowances that were not paid to the respondent herein for 18 months. Therefore, the compliance order dated 14/03/2020 decreed the payment of TZS. 3,690,000/= **Under Clause 1.1** of the Deed of Settlement only to cover salaries from October, 2018 to March, 2020 and medical allowances. The said Clause 1.1 reads, I quote:

PAYMENT

"1.1 The parties herein agree that the Decree Holder shall immediately after the signing of this agreement, be paid an amount of Tanzania Shilling Three million six hundred ninety thousand shillings (3,690,000/=) as salaries from October 2018 to March 2020 and medical allowance as per compliance order by the Labour officer dated 14/3/2020". [Bold is mine].

From the clear and plain evidence expounded hereinabove, common senses dictate that and if to argue extensible, one cannot hold the said Deed of Settlement meant to prevent the respondent from knocking the doors of the authorized home for legal redress. Also, payment of salaries and medical allowances were too remote and are nothing to do with unfair termination of an employee. Employer should not use employee in his company and pays him nothing for the rest of his life by Deed of Settlement.



As shown above, the respondent herein was not involved and even joined as part during negotiation of the Execution No. 24 of 2020, rather it was the Labour Officer enforcing compliance order dated 14/03/2020 against the applicant. The powers of the Legal Officer derived from the provision of section 46 (1) and (6) of The Labour Institutions Act [Cap. 300 R. E. 2019]. Under section 46 (1) the law provides that: -

"A labour officer who has reasonable grounds to believe that the employer has not complied with a provision of the labour laws may issue a compliance order in the prescribed form".

Under section 46 (6) of the same law, it gives powers to the Labour Commissioner to compel the employer before the Labour Court on failure to comply with any compliance order issued against such employer.

From the above reasons and analysis of the principles of law, it is my considered opinion that the answer to the first issue must in negative. Indeed, I agree with the Honorable Arbitrator of the CMA that the Deed of Settlement filed in this Court on 9/07/2020 did not prevent the respondent from instituting a Labour Complaint before the CMA. Having so said, the matter before CMA was not barred by the principle of res judicata.


As regards to the second issue, whether termination of employment of the respondent was fair, I wish to state onset as alluded to above that, for termination of employment to be fair it should be based on a valid reason and fair procedure. There must be substantive fairness and procedural fairness on

the termination of employment as provided under section 37 (2) of The Labour Institutions Act [Cap. 300 R. E. 2019].

On perusal of the records and proceedings of the CMA, I noted that the respondent herein was terminated from his employment on 31/08/2020 without being issued with the notice for termination, given valid reasons and without being afforded with the rights to be heard and defend himself. All these was done contrary to section 41, 42, 44 and 44 of the Employment and Labour Relations Act [Cap. 366 R. E, 2019] and contrary to Rule 8 (1), (a)–(d) of Employment and Labour Relations (Code of Good Practice) Rules, GN No. 42 of 2007.

In **National Microfinance Bank PLC v. Mica Mwakila**, (at page 58, case No. 24) of the High Court of Tanzania, Labour Court Case Digest of 2016; Lab. Div. DMS, Rev. No. 401 Of 2015, 16/11/2016, (Hon. Mashaka, J. As she then was) held among other things that: -

"It is essential for the employee to be given a proper opportunity to defend himself before employment is terminated, this is a procedural requirement which the employer must fulfill before a decision to terminate the employment of an employee. This is provided for under Rule 13 of the Employment and Labour Relations (Code of Good Practice) Rules, GN No. 42 of 2007 and section 37 (2) (c) of the Employment and Labour Relations Act No. 6 of 2004".



Applying the above principle of law and based on the above discussion, in my considered view, I believe that the termination of employment of the respondent was too harsh, uncalled for and there was no valid reason, and the fair procedure was not adhered to. On this facet, I tend to agree with the Hon. Arbitrator that the termination of employment of the respondent was substantively and procedurally unfair.

Having so found, it is my holding that the termination of employment of the respondent was both substantively and procedurally unfair. In the circumstance, I thus confirm the award in Dispute No. CMA/MOR/51/2020, delivered by Hon. A. Mwalongo Arbitrator, on 1/10/2021.

In the final event, the application is non-meritorious and accordingly, it is hereby dismissed with no order as to costs. **It is so ordered.**

DATED at MOROGORO this 26th day of October, 2022.



M. J. CHABA

JUDGE

26/10/2022

