

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
(LABOUR DIVISION)  
AT MBEYA  
LABOUR REVISION NO. 07 OF 2021  
(Originate from CMA/MBY/27/2015)**

**BETWEEN**

**BONIFACE MWAKAPASA.....APPLICANT**

**VERSUS**

**BOARD OF TRUSTEES OF THE PUBLIC**

**SERVICE SOCIAL SECURITY FUND.....RESPONDENT**

**JUDGMENT**

*Dated: 26<sup>th</sup> January & 9<sup>th</sup> March, 2022*

**KARAYEMAHA, J**

This Court is tasked by the applicant in this application to call, inspect the records and revise the award of the Commission for Mediation and Arbitration, hereinafter referred to by its acronym, the CMA in Dispute No. **CMA/MBY/27/2013** delivered on 29<sup>th</sup> May, 2017 by Hon. Boniface L. Nyambo, the Arbitrator and make appropriate orders.

The application was made under Rules 24 (1), 24 (2) (a), (b), (c), (d), (e) and (f) and 24 (3) (a), (b), (c), (d) and 28 (1) (b) (c), (d) and (e) of the Labour Court Rules G.N. No. 106 of 2007 (herein the Rules) and



section 91 (1) (a), (b) and 91 (2) (b), (c) and 94 (1)(b)(i) of the Employment and Labour Relation Act, Cap 366 of the Revised Edition 2019 (herein the Act).

The applicant's application is supported by the affidavit deposed by Boniface Mwakapasa. On the other hand, Kamru Habibu, the respondent's advocate duly authorized to affirm the counter affidavit filed the same putting the applicants' deeds on spotlight.

Briefly, facts of this case as discerned from the CMA record can be stated as follows. The applicant, Boniface Mwakapasa, was in 2009 employed by the respondent as an Assistant Accountant. In November, 2011, he was promoted to a Zonal Accountant position. After serving in that position for almost 1 year and 34 days, his employment was terminated on 3<sup>rd</sup> January, 2013 on disciplinary grounds. Dissatisfied, the applicant unsuccessfully sued the respondent in the CMA for discrimination and unfair termination of employment. His application thereat was strongly hit by a dismissal order. To express his disagreement with the CMA award, the applicant has preferred the instant application.

Hearing of this matter was conducted by way of written submissions. While the applicant were represented by Mr. Isaya Zebedayo Mwanri, learned Counsel, the respondent enjoyed the professional services of Mr.

Kamru Habibu, learned Counsel. I commend learned counsel for the effort and industry in arguing the parties' respective position in this matter. I wish to say, however, that I shall not address each and everything put forth by the learned counsel. I shall do so not out of disrespect or dishonesty to them but I think I can determine the application by focusing on crucial point raised by the applicant's counsel concerning the propriety or otherwise of the CMA proceedings particularly on the fact that the arbitrator did not append his signature at the end of the evidence of each witnesses.

In the course of submitting, Mr. Mwanri argued zealously that the error is apparent in the typed proceedings from page 14 to 26 and pages 1 to 16 of the handwritten proceedings of 13<sup>th</sup> August, 2013 and 28<sup>th</sup> November, 2013. He argued with force that failure to append signature is a serious irregularity whose effect is nullification of the proceedings. To buttress his view, he sought aid to the case of ***Iringa International School v Elizabeth Post***, Civil appeal No. 155 of 2019.

In response, Mr. Kamru submitted very briefly that the arbitrator signed the original proceedings. He remarked that the typed proceedings were just certified to indicate that they were true copies of the original proceedings. Distinguishing the ***Iringa International School*** case

(supra) with the present application, Mr. Kamru argued that signatures are supposed to be appended at the end of witness testimony and not at the end of examination in chief or re-examination.

Having summarized parties' submissions, the pertinent question which falls for determination and decision is whether or not the arbitrator appended signature to the proceedings. The record is clearer that the applicant gave his evidence on 26<sup>th</sup> January, 2017 as it appears at page 14 of the typed proceedings. At the end of his testimony at page 17, the arbitrator did not append his signature. I have also cursory gone through the hand written proceedings of the same date and of the applicant. The arbitrator did not append his signature either as at page "M". Similarly, the arbitrator failed to append his signature at page 21 on 13<sup>th</sup> August, 2013 at the end of Ngoma Mikida's testimony, first respondent's witness and at page 26 at the end of Adola Beatus Duwe's testimony, the respondent's second witness.

I have also painstakingly gone through the unarranged handwritten proceedings. It is clear at page 12 that after Noma Mikida had finished testifying, the arbitrator did not append his signature. Similar fate befell on the testimony of Adola Beatus Duwe at page 16.



Therefore, subjecting the proceedings to thorough examination, I am unable to agree with Kamru that proceedings were signed in as long as the proceedings are speaking for themselves. I concomitantly agree with Mr. Mwanri that the arbitrator failed to append his signature to the proceedings. I further observe that the anomaly is substantial and not a minor one.

The next issue for consideration is what the remedy is. In his submission, Mr. Mwanri cited the case of **Iringa International School** (supra) to make a point that failure to append signature to the proceeding is an incurable irregularity which results into nullifying the whole proceedings. I agree with him on that settled principle because the Court of Appeal has constantly held so. In ***Iringa International School case*** (supra), endorsing its earlier decisions in ***Yohana Mussa Makubi & another v R***, Criminal Appeal No. 556 of 2015, ***Sabasaba Enos @ Joseph v R***, Criminal Appeal No. 411 of 2017, ***Chacha s/o Ghati @ Magige v R***, Criminal Appeal No. 406 of 2017 and ***Mhajiri Uladi & another v R***, Criminal Appeal No. 234 of 2020, the Court of Appeal emphasized on the importance of the Judge or Arbitrator to append signature at the end of the witness' testimony. It was held, *inter alia*, that:

*"... in the absence of the signature of the trial [Judge] at the end of the testimony of every witness; firstly, it is impossible to authenticate who took down such evidence, secondly, if*

*the maker is unknown then, the authenticity of such evidence is put to questions as raised by the appellant's counsel, **thirdly**, if the authenticity is questionable, the genuineness of such proceedings is not established and thus; **fourthly**, such evidence does not constitute part of the record of trial and the record before us".*

In view of the above guiding position of the law, it is impossible to ascertain whether the arbitrator took witnesses' testimonies. Since the authenticity of the proceedings is questionable, it goes without saying that evidence purported to be witnesses' testimonies do not constitute part of the trial at CMA and the record before this Court. In view thereof, I find that the anomaly indicated above vitiates the proceedings of CMA. Consequently, they are hereby quashed. Furthermore, the CMA award is set aside. Finally, this Court orders that the matter be remitted to CMA for labour dispute in question to be heard *de novo* before another Arbitrator. No order to costs as the application emanates from labour dispute.

It is so ordered.

Dated at **MBEYA** this **9<sup>th</sup>** day of **March, 2021**



A handwritten signature in blue ink, appearing to be "J. M. Karayemaha", is written over a horizontal line.

**J. M. Karayemaha**  
**JUDGE**