

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**REVISION APPLICATION NO. 37 OF 2021**

(Arising from Labour Dispute No. CMA/ MA/NYAM/282 – 108/2020 decision and award of Esther Kimaro, Arbitrator dated 22<sup>nd</sup> July, 2021)

**LIDYA KASONGO .....APPLICANT**

versus

**ASA MICROFINCE (T) LTD .....RESPONDENT**

**RULING**

**6<sup>th</sup> Dec, 2021 & 17<sup>th</sup> January, 2022.**

**RUMANYIKA, J;**

As, with respect to award dated 22/07/2021 of the Commission for Mediation and Arbitration for Mwanza at Mwanza (the CMA) the application for revision was called on 06/12/2021 for hearing, but, by way of a notice objected, but for some reserved reasons I overruled the enabling provisions of the law cited based preliminary point of objection, also down the road one having had dropped the timing based preliminary point of objection (the p.o), by way of audio teleconference through mobile numbers 075471465 and 0766437660 I heard Messrs U. Kabisa and

Zephania learned counsel for Lydia Kasongo and ASA Microfinance (T) Limited (the applicant and respondent) respectively.

Here are reasons reserved for the 06/12/2021 decision. I would agree with Mr. Zephania, this time around not advocate but, as he himself introduced the respondent's Legal and Compliance Manager that according to Order XIX Rule 3 (1) of the Civil Procedure Code Cap 33 RE. 2019 an affidavit was a set of facts only deposed as of right. That citation by the applicant of Section 91 (3) of the Employment and Labour Relations Act (the ELRA) as enabling provisions of the law it was both improper and uncalled for. That for the reason of accompanying the defective affidavit the incompetent application should be struck out. Whereas, this court cannot, contrary to the law condone parties bringing in extras, citation by the applicant of Section 91 (3) of the ELRA was improper and uncalled for yes, but Mr. Zephania Paulo did not tell the court how was the respondent harmed and or prejudiced by the citation. It is only substantive justice not procedural legal technicalities that counted that one was what the principles of overriding objectives was all about (case of **Daniel Rogati Hema v Said Harid Lwanda & 11 Others**, Civil Review No 7 of 2019 Hc at Dar es Salaam (unreported). It is for that reason that I dismissed the p.o.

Now on the merit part of the application with respect to the remaining point Mr. U. Kabisa learned counsel faulted the CMA and submitted; **(1)** that with regard to the relief sought, cause of action being unfair termination or something, with respect to the uncertainty the Arbitrator had powers to correct the errors committed by the applicant on Form No. 1 (case of **Orea Deto v. Ally Musa Yusufu**, Revision no 733 of 733 of 2018 Hc at Dar es salaam, unreported. The Arbitrator having had raised and determined the issue suo motu **(2)** that the impugned award was tainted with illegality namely by that time Mr. Zephania Paulo had no valid practicing certificate therefore according to TAMS he was not permitted to date but throughout the latter paused and he was recorded as advocate / manager of the respondent. Everything done therefore it was a nullity (he cited the case of **Edson Mbogoro v. Dr Emmanuel J. Nchimbi & Another**, Civil Appeal No. 140 of 2006 (CA) at Dar es salaam unreported.

In reply, Mr. Zephania Paulo submitted that the Arbitrator properly exercised her powers because; **(a)** the applicant had ample time and reasons to rectify form No. 1 but he didn't do the needful such that with regard to the dispute and reliefs sought by the applicant the Arbitrator had no alternative under the circumstances **(b)** that according to copy of the

notice of representation dated and filed in the CMA on 30/09/2020 Mr. Zephania only appeared as the respondent's manager (not advocate) save for being wrongly introduced by the Arbitrator. That is all.

The central issues is whether, with regard to nature of the dispute and reliefs sought by the applicant the Arbitrator wrongly exercised his powers. The answer is no much as I would agree with Mr. U. Kabisa learned counsel that under Section 25 (3) of GN No. 64 of 2007 the Arbitrator had powers to correct errors but, unless the applicant had sought and was granted leave to correct the errors made by him at the earliest, Arbitrators' powers were sparingly limited to errors only made by the CMA not substantively but arithmetic, typographical, clerical/errors and the like. However broad the arbitrator's powers and judicial activism might be, nature/type of dispute or relief sought by the applicant was not one of the CMA's domain unless contrary to the rules of judicial ignorance and impartiality the CMA chose to take a part to the case. It means therefore, where, for instance in Form No. 1 without striking/deleting whichever item wasn't applicable thereby the applicant leaving a wide range of reliefs sought, the court had two options; from the outset to reject the application for the duplicity or, like in the present case the Arbitrator did to

**Date:** 17/01/2022

**Coram:** A.W. Mmbando – DR

**Appellant:** Absent

**Respondent:** Zephania Paulo (legal & compliance manager)

**B/C:** Martina R. Nelei – RMA

**Court:** Ruling delivered this 17<sup>th</sup> January, 2022 in the presence of Zephania Paulo Legal and Compliance Manager of Respondent and the absence of the applicant.



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

**A.W. MMBANDO**  
**DEPUTY REGISTRAR**

**17/01/2022**