

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

**TANGA DISTRICT REGISTRY**

**AT TANGA**

**LABOUR REVISION NO. 1 OF 2021  
(ORIGINAL CMA/TAN/61/2020/18)**

**ISDORY RAINALD MELLE.....APPLICANT**

***VERSUS***

**CRDB BANK PLC.....RESPONDENT**

**JUDGEMENT**

**Date of Judgement: 30<sup>TH</sup> MAY 2022**

**L. MANSOOR, J**

The Applicant, Isidory Rainald Mbelle was employed by CRDB Bank PLC, the respondent herein, as a Bank Teller, his workstation at the time of termination of his employment was Handeni- Tanga. The Applicant was employed on 5/5/2008, and was stationed at Korogwe, and he was transferred to Handeni as a Senior Bank Teller in 2017.



On 23<sup>rd</sup> November 2019, the Applicant, while on duty made some transactions on M-PESA, that he had transferred an amount of Tshs 2,500,000 to the M-PESA account of a client. He received an email from the employer on 11/12/2019 from the Bank's headquarters requiring him to explain the loss of money amounting to Tshs 2,500,000, and on 24<sup>th</sup> February 2020, there was an internal disciplinary hearing. After the hearing, a decision to terminate him was made, and he was required to appeal within 14 days from the date of the decision. He appealed to the Board on 06<sup>th</sup> March 2020, and on 22<sup>nd</sup> April 2020, the board confirmed the termination.

The Applicant filed a claim at the CMA claiming that he was unfairly terminated as he was not given the right to be heard, he also claimed for payments of Tshs 2,180,769.61 as compensation and other reliefs. The Applicant through Advocate Nkingwa alleges that the Applicant was denied a chance to be heard by the Board of Directors when he lodged his appeal, and he was never served with the notice of hearing by the respondent for disciplinary hearing.

Hearing in this court was by way of written submissions. I read the written submissions filed by the parties, and I read very carefully the Award issued by the Arbitrator, and the records.

From the records, the Applicant admitted in writing to have misconducted himself while at work, he said he was conned, and he lodged a police complaint, and the issue was under investigations. The issue whether he committed the act is not disputed. It is true he transferred Tshs 2,500,000, which was the money entrusted to him as the bank teller and transferred the money to the client without any justification, and without seeking for any approval from his immediate supervisor. After the incident, the Bank decided to charge him, he was served with the charge sheet, and was given time to respond. This was said by the Applicant himself when he was giving his evidence. He was given time to make a written defense and to have representation, and the hearing was conducted, and he was dismissed for misconduct. He was also paid all his

benefits after termination. He acknowledged to have received an amount of Tshs 6,900,000 as terminal benefits.

Aggrieved, the applicant filed a claim at CMA. After thorough scrutiny of the evidence presented before it, CMA decided that the reasons for the dismissal was fair, and the procedure for dismissal was also fair. The Applicant was dissatisfied and filed an application for revision praying that the Orders and Award passed by the CMA be quashed and revised as there were irregularities in its decision for failure to evaluate the evidence.

The commission of the offence charged was not even an issue, as the Applicant had admitted in writing and never disputed it even during the hearing at CMA.

The applicant also alleges in his submissions that he was not afforded a chance to fair hearing and the procedure undertaken by the Bank violated the provisions of Rule 13 of the Employment and Labor Relations (Code of Good Practice)



Rules, 2007 GN No. 42. If this is true, and as held in the case of **Tarcis Kakwsigaho vs North Mara Gold Mine Limited, HC Labour Division at Musoma, Labor Revision No. 6 of 2014**, Hon Mashaka J held that *"failure to give a chance to the employee to cross examine the employee's witnesses amounted to unfair procedure."*

In a way, the applicant seems to argue that he agreed to have committed the mistake, but he was also conned and had already reported to police. And he thought by agreeing and having refunded the money he would have been forgiven.

The respondent opposed the application and made an extensive and detailed submission.

It is on record that there was an incident which occurred on 23<sup>rd</sup> November 2019 in which the Applicant sent Tshs 2,500,000 to an unknown person. The charge was framed against the applicant, the charge was tendered in court as Exhibit. The Applicant was in violation of Rules and Guidelines of the Bank.

Immediately after the charge was framed. The Charge Sheet clearly gave the particulars of the charge, that is, he misappropriated funds from the Bank, and incurred cash deficit on the counter. He was dishonest and the internal disciplinary hearing held and recommended for his termination. The Applicant was served with an email to give explanation and was required to attend the hearing. The Applicant was informed of his right of representation, and he chose to appear for hearing without a representative. The Disciplinary Hearing was held, and a decision was made. The hearing was conducted, and the Applicant was given a chance to respond and to defend himself. The Disciplinary Committee found him guilty of the offences charged and recommended for his termination. The Applicant appealed to the Board, the Board determined the appeal and approved the termination after finding him guilty.

The Applicant had confessed his mistake before the Bank Manager in the Management Meeting. As held in the case of

**Rungwe District Council vs Daud F Juvenal, Labour Court Digest 2014 at page 138** in which it was held that if the employee admits the negligence there is no need to call any witnesses to prove the charge.

On 21<sup>st</sup> April 2020, the Applicant was notified of the decision of the Board. Before this, the Applicant was served with a letter notifying him of the decision of the Disciplinary Committee of his termination and advised him that he has the right to appeal. The Applicant filed an appeal to the Board, but the appeal failed.

The Arbitrator also was correct in holding that there was a fair reason for termination. It is from the applicant's own admission that there was a deficit of Tshs 2,500,000/- cash as is evident from the Vouchers and the Applicant's own confession. Here the defence has made a plea that `disclosing to the Management that he had caused the loss by negligence and this shows that the applicant was an honest person, this defence does not hold good. From series of events and by

circumstantial evidence it leads to suspicion that the Applicant did the same with fraudulent intent, and the CMA was correct to hold that the reasons for termination was fair.

The defence has also pleaded that it was a mistake without malafide - But the malafide has been proved by the series of events as substantiated by documents exhibited at CMA.

In the Inquiry an allegation need not be proved beyond doubt. (100%). The underlying principle in Inquiry is preponderance of Probability. In the present case the charge of misconduct or misappropriation of money belonging to the Bank by fraudulently issued was proved on the required standard. Hence it is PREPONDARENCE OF PROBABILITY based on documents, series of events and circumstantial evidence that Tshs 2,500,000 was fraudulently siphoned off by the applicant.

This is a worker working for the Bank, and trust is key and utmost requirement for a person working in the Bank. In the



case of **NMB Bank PLC vs Andrew Aloyce, HC, Labour Division at Musoma, LCCD**, Rweyemamu J held as follows:

*"the applicant is in the banking industry where honesty by its employees is the key stock in trade without it its business would collapse with dire consequences not only to the employer and its other employees, but also to the economy at large. It is true therefore that the nature of bank's work demands a unique degree of honesty from its employees such that, any show of dishonesty amounts to a grave misconduct and may be sanctioned more severely than if it is committed in any less honest sensitive industry."*

The charge-sheet was served on the employee. Enquiry into the charge-sheet was conducted, the documents relied upon by the management were produced and the Minutes of the Meeting held by the Management was also produced. Certain witnesses were examined. During the inquiry employee was asked to defend, and he did. Hearing was fair and by the

order of the Disciplinary Authority held the employee guilty and imposed punishment of dismissal from service. As submitted by the respondent's counsel, Regulation 13 of the GN No. 42 of 2007 has not been violated. The Employee was afforded the right of hearing by the disciplinary Committee, and he exhausted the remedy by preferring an appeal to the Disciplinary Appeals Board. As no prejudice was caused to the employee by the action taken by the Management, and there was full compliance with the principles of audi alteram partem. Even if it is conceded for the sake of argument that there was any deficiency in the order passed by the Disciplinary Authority, or by the Board, same was abundantly made good by the Disciplinary Committee which granted personal hearing to the employee. The Appellant was provided with sufficient chance of hearing and no prejudice has been shown.

As correctly held by the CMA that there was no denial of opportunity of hearing and there was no violation of

Regulation 13 of GN No. 42 of 2007 as well as there was no violation of the principles of natural justice.

It is further to be noted that case of the parties on merits was considered by the Learned Arbitrator. There was consideration of the respective consideration of the facts and the documents tendered by both parties, and the Arbitrator rightly held that the dismissal was fair, and the procedure for dismissal was also fair.

The inevitable result is that the Award passed by the CMA must be upheld. The Award is confirmed, and this Revision is dismissed as it lacks merits.

**DATED AND DELIVERED AT TANGA THIS 30<sup>TH</sup> DAY OF MAY 2022**



A handwritten signature in blue ink, appearing to read "Latifa Mansoor".

**LATIFA MANSOOR**

**JUDGE**

**30<sup>TH</sup> MAY 2022**