

**IN THE HIGH COURT OF TANZANIA  
LABOUR DIVISION  
AT DAR ES SALAAM**

**REVISION APPLICATION NO. 65 OF 2023**

(Arising from an Award dated 15/2/2023 by Hon. Mikidadi, A, Arbitrator in Labour dispute No.  
CMA/DSM/TMK/18/2022/26/2022 at Temeke)

**ZAMBIA CARGO & LOGISTICS LIMITED ..... APPLICANT**

**VERSUS**

**EMMANUEL WILBARD ..... RESPONDENT**

**RULING**

*Date of last Order: 25/04/2023  
Date of Ruling: 28/4/2023*

**B. E. K. Mganga, J.**

Brief facts of this application are that, on 21<sup>st</sup> September 2020 applicant employed the respondent as Human Resources Manager. On 22<sup>nd</sup> December 2021, applicant terminated employment of the respondent allegedly due to absenteeism. Respondent was unhappy with termination of his employment as a result he filed Labour dispute No. CMA/DSM/TMK/18/2022/26/2022 before the Commission of Mediation and Arbitration (CMA) at Temeke. On 15<sup>th</sup> February 2022, Hon. Mikidadi, A, Arbitrator having heard evidence and submissions of the parties issued an

award in favour of the respondent that termination was unfair and awarded respondent to be paid TZS 27,000,000/=.

Applicant was aggrieved with the said award hence this application for revision. Applicant filed the affidavit of Rachel Madumba containing four grounds. On the other hand, respondent filed his Counter affidavit.

When the application was called on for hearing, Ms. Irene Mchau Advocate appeared for and on behalf of the applicant while Mr. John Lingopola, Advocate appeared for and on behalf of the respondent.

At the start of her submissions, counsel for the applicant referred to what she thought were exhibits in support of the applicant's application. That prompted me to carefully examine the CMA record and all exhibits tendered during hearing at CMA and asked the parties to peruse the Court record and submit whether exhibits were properly admitted into evidence and the effect thereof.

Responding to the issue raised by the court, Ms. Mchau, learned advocate for the applicant submitted that the procedures of tendering exhibits were not adhered to, because the record does not show that witnesses prayed to tender exhibit. More so, the other party was not asked whether there is objection or not for the intended exhibit to be admitted.

Counsel for the applicant prayed that all exhibits be expunged from the record. When asked by the court as whether, after expulsion of those exhibits, there will be evidence to support the case of the parties, she readily conceded that there will be none. She therefore prayed CMA proceedings be nullified, the award be quashed and set aside and order trial *de novo* before a different arbitrator. With those submissions, counsel for the applicant opted not to further argue the grounds raised by the applicant.

On his part, Mr. Lingopola, learned counsel for the respondent concurred with submissions by counsel for the applicant that CMA record does not show that witnesses prayed documents to be admitted or that the other party was asked whether there is objection or not for the intended exhibit to be admitted as evidence. Counsel for the respondent submitted that the said irregularity is fatal. He therefore also prayed that CMA proceedings be nullified, the award be quashed and order trial *de novo* before another arbitrator.

It was correctly submitted by the parties that the CMA record does not show that parties were asked whether they have objection or not before admission of exhibits into evidence. It is my view that, that was

fatal irregularity. I am of that view because applicant is challenging *inter-alia* authenticity of the exhibits that were tendered, including the contract of employment. In fact, the Court of Appeal had an advantage to discuss the effect of that omission in the case of [Mhubiri Rogega Mong'ateko vs Mak Medics Ltd](#) (Civil Appeal 106 of 2019) [2022] TZCA 452 and held *inter-alia*:-

*"It is trite law that, a document which is not admitted in evidence cannot be treated as forming part of the record even if it is found amongst the papers in the record... Therefore it is clear that the two courts below relied on the evidence which was not tendered and admitted in evidence as per the requirement of the law. This omission led to miscarriage of justice because the appellant was adjudged on the basis of the evidence which was not properly admitted in evidence..."*

See also the case of [M.S SDV Transami Limited vs M.S Ste Datco](#) (Civil Appeal 16 of 2011) [2019] TZCA 565, **Japan International Cooperation Agency vs. Khaki Complex Limited** [2006] T.L.R 343 and [Imran Murtaza Dinani vs Bollore Transport & Logistics Tanzania Ltd](#) (Rev. Appl 253 of 2022) [2023] TZHCLD 1170

For the fore going, I hereby nullify CMA record, quash, and set aside the award arising therefrom. I hereby order that the CMA record be

remitted to CMA so that the dispute can be heard *de novo* before a different arbitrator.

Dated at Dar es Salaam on this 28<sup>th</sup> April 2023.



B. E. K. Mganga  
**JUDGE**

Ruling delivered on this 28<sup>th</sup> April 2023 in chambers in the presence of Irene Mchau and Ndehorio Ndesamburo, Advocates for the Applicant and John Lingopola, Advocate for the Respondent.



B. E. K. Mganga  
**JUDGE**