

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT MWANZA

LABOUR REVISION NO. 50 OF 2022

*(Arising from the decision of the Commission for Mediation and Arbitration in Labour Dispute
No. CMA/MZ/NYAM/198/2021/99/2021)*

BETWEEN

SAYONA DRINKS LIMITED-----APPLICANT

VERSUS

ALBERT LUTH NORLINDILWA-----RESPONDENT

RULING

Last Order: 22.05.2023

Judgment: 23. 05.2023

M.MNYUKWA, J.

In the present Revision Application, the applicant challenged the Award of the Commission of Mediation and Arbitration (CMA) issued by the Hon. Arbitrator in Labour Dispute No. MA/MZ/NYAM/198/2021/99/2021, dated 21st January 2022 as he was not satisfied with the Award entered in favour of the respondent whereby the CMA ruled out that, the respondent's termination was unfair.

The brief background leading to the present Revision goes thus; the applicant and the respondent were the employer and the employee



respectively. It is on record that the respondent was employed in the fixed term contract for a period of 12 months starting from 19th November 2020, ending on 18th November 2021 and that the respondent worked with the respondent up to 28th April 2021 when his contract of employment was terminated. It is further on record that before termination, the respondent's contract of employment was suspended from 23rd April 2021 until 27th April 2021 following the outcome of the disciplinary hearing on the allegation of the loss of stock valued Tsh. 54,000,000. As the suspension ended on 27th April 2021, on 28th April 2021, the respondent's contract of employment was terminated due to gross misconduct.

At the trial before the CMA, three issues were framed which were, **one**, whether there was a fixed term contract between the applicant and the respondent, **two**, if the respondent's contract of employment was unfairly terminated and **three**, if there is any relief(s) towards the respondent.

After hearing both parties, the CMA ruled out that there was a valid employment contract of a specific term between the applicant and the respondent, and that the procedures for terminating the respondent's contract of employment were not followed. Therefore, the CMA adjudged that the respondent's termination was unfair and proceeded to award



payments of the remaining salaries of the contractual term of seven (7) months and 16 days which is equivalent to the tune of Tsh 6,814,285.

The applicant was aggrieved by the Award of the CMA and filed the present Revision Application and raised three legal issues for consideration and determination by this Court which are

- i. Whether the arbitrator properly applied the law to conclude that the applicant did not comply with the procedure for the termination of the respondent's employment*
- ii. Whether the arbitrator failed to correctly apply the law, as far as the reliefs and/or remedy for unfair procedure for breach of contract is concerned*
- iii. Whether the CMA Award is valid and enforceable for the Arbitrator having exercised execution powers in it and containing contradictory facts.*

On the date when the matter was scheduled for hearing, both parties enjoyed the legal representation. The applicant engaged Mr. Andrew Luhigo, the learned counsel while the respondent enjoyed the legal services of Mr. Yuda Kavugushi, the learned counsel too.

Before the hearing of the Revision Application on merits kicked off, Mr. Andrew Luhigo quickly prayed for leave to the Court to present and argue the legal issue alleged to be found in the CMA Proceedings for he



noticed that, the Arbitrator did not append signature immediately after the completion of taking witnesses' evidence. The prayer which was not objected by the counsel for the respondent and also granted by the Court.

Arguing on the anomaly found in the CMA Proceedings, the counsel for the applicant was very brief and straight to the point. He submitted on the failure of the Arbitrator to append a signature after he had completed recording the witnesses' statement. He referred the decision of the Court of Appeal in the case of **Greenwaste Pro Limited v Mwajabu Ally**, Civil Appeal No. 370 of 2020 as he remarked that, the Court of Appeal nullified the Proceedings and the Award of the CMA after satisfying that the Arbitrator did not append signature after completion of taking witnesses' which is contrary to the requirement of the law.

Going to the CMA Proceedings, he was of the view that, since the Arbitrator did not append a signature in the entire Proceedings when taking witnesses' evidence, he prayed this Court to quash and set aside the Proceedings and the Award of the CMA and to proceed to order trial de-novo if the parties are still interested to pursue their rights.

On his part, the counsel for the respondent's conceded to the legal anomaly observed by the applicant's counsel as he submitted that, it is true that the Arbitrator did not append a signature at the end of each



witness's evidence and that the law is clear that the said anomaly vitiates the entire Proceedings. He, therefore, agrees with the remedy suggested by the applicant's counsel for this Court to nullify the entire CMA Proceedings and Award and order trial de-novo. He added that, the Court should also direct the Arbitrator to take the Proceedings in accordance to the law.

From the parties' submissions, it is clear that, both are in agreement that the Hon. Arbitrator did not append his signature after completion of recording the witnesses' evidence.

In order to satisfy myself with the anomaly pointed out by the learned counsel of the applicant, I revisited both the typed and the handwritten proceedings of the CMA only to find out that the arbitrator did not append a signature after the completion of each witnesses' testimony. The record bears testimony that, after the closure of the respondent's case (who was the then applicant before the CMA) the Arbitrator did not append his signature as he invited the respondent (who is now the applicant in the present Revision) to adduce his evidence. And instead, the arbitrator appended his signature after recording the final Order on that date when informing the parties on the date of the decision.



As it was rightly submitted by the counsel for both parties, failure to append a signature vitiates the entire proceedings as it questions the authenticity of such evidence and it is fatal in the proceedings. In the cited case of **Greenwaste Pro Limited** (supra), it was observed that:

"... We are alive of the fact that there was nowhere in the Rules guiding the conduct of proceedings at the CMA addressing this requirement. Nevertheless, we are of the firm view that the requirement is important for the purpose of ensuring the authenticity and correctness of the record".

Taking the stance of the Court of Appeal which I am bound to follow, it is a trite position of the law that failure to append a signature at the end of each witness's evidence vitiates the authenticity of the evidence taken. This position is reiterated by the Court of Appeal in the plethora of authorities including the case of **Geoffrey Raymond Kasambula v Total Tanzania Limited**, Civil Appeal No 320 of 2019 (unreported), where the Court of Appeal held that, soon after taking witness oath, the arbitrator is required to append his signature and that at the end of each witness's testimony, the arbitrator is required too to append his signature so as to authenticate the evidence recorded.



In **Geoffrey Raymond Kasambula** (supra) the Court of Appeal quoted its earlier decision in **Chacha s/o Ghati @ Magige v Republic**, Criminal Appeal No 406 of 2017 (unreported) where it was stated that;

"... We entertain no doubt that since the proceedings of the trial court were not signed by the trial judge after recording evidence of witnesses for both sides, they are not authentic. As a result, they are not material proceedings in the determination of the current appeal."

Thus, my mind is settled that, failure of the arbitrator to append a signature after the completion of taking the witness's evidence is fatal and incurable which vitiates the proceedings of the CMA. I, therefore, invoke the revisional power and nullify the proceedings and set aside the award of the CMA delivered on 21st January 2022 in the Labour Dispute No CMA/MZ/NYAM/198/2021/99/2021.

As to the way forward, I further order the matter to be remitted back to the CMA for a dispute to be heard de-novo by another arbitrator. The arbitrator should expedite the matter and record the Proceedings in accordance to the law and the practice. Since this is a labour dispute, I make no order as to costs.

It is so ordered.



Dated at Mwanza this 23rd day of May 2023




M.MNYUKWA
JUDGE
23/05/2023

Court: Ruling delivered on 23rd May 2023 in the presence of the applicant's counsel.


M.MNYUKWA
JUDGE
23/05/2023