

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**(LABOUR DIVISION)**

**AT ARUSHA**

**APPLICATION FOR REVISION NO. 52 OF 2022**

(Original Dispute No. CMA/ARS/ARS/201/21/156/21)

**BETWEEN**

**BONA CHRISTOPHER SHAYO.....APPLICANT**

**VERSUS**

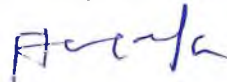
**NATIONAL MICROFINANCE BANK LTD.....RESPONDENT**

**JUDGMENT**

26/07/2023 & 16/08/2023

**MWASEBA, J.**

The applicant, Bona Christopher Shayo filed a complaint at the Commission for Mediation and Arbitration (CMA) at Arusha against her employer, National Microfinance Bank Ltd claiming for severance pay, pending salaries during sick leave, certificate of service and accumulated staff loan interest to be waived from the date of unpaid sick leave and other benefits. The CMA made the finding that the respondent had to pay the applicant half of the salary during the unpaid sick leave and



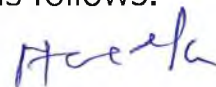
dismissed the other claim. Aggrieved, the applicant filed this revision inviting the court to revise the proceedings and award of the CMA.

The application is supported with an affidavit of the applicant, and it was opposed by a counter affidavit of Mr. David Aggrey Mwampanga, principal officer of the respondent.

Briefly, the applicant while working with the respondent herein, felt sick on 26<sup>th</sup> March, 2017, and she was paid sick leave up to 29<sup>th</sup> June, 2017 where paid leave ended. Unfortunately, she felt sick again and the respondent informed her that she would not be paid until when she would go back to work. On 15<sup>th</sup> September, 2020 she was called back to work and reallocated to the region of her choice, but she did not report until 15<sup>th</sup> October, 2020 when she was terminated from work for non-appearance misconduct.

During the hearing of the application, Mr. Herode Bilyamtwe, Personal Representative (PR) represented the applicant whilst Mr. Moses Z. Mbanda, learned Advocate represented the respondent. The application was heard by way of written submission.

Having gone through the records and the submissions by both parties, I find three issues to be determined by this court as follows:



1. Whether the applicant entitled to be paid her salaries during sick leave from July 2017.
2. Whether the Commission has jurisdiction to prevent the respondent to deductions.
3. What relief to both parties.

The submissions of the parties will be considered during the determination of the raised issues.

Starting with the 1<sup>st</sup> issue of whether the applicant is entitled to be paid unpaid salaries during sick leave from July, 2017 Mr. Herode submitted that the applicant was entitled to be paid her salaries from July 2017 to September, 2020 and not March 2020 as indicated by the CMA. He submitted further that the law prohibits an employee to be terminated during sick leave without being guided with medical opinion. Thus, sending the applicant to sick leave without payment is discrimination as per the labour laws.

On other hand, Mr. Mmbando while supporting the award of the commission submitted that it was her doctor's recommendation that she was not yet recovered after the lapse of 126 days and recommended unpaid leave to her as per Exhibit P1 Collectively. Therefore, adhering to the recommendation of the doctor the respondent wrote a letter (Exhibit



D2) to the applicant informing her that after the lapse of three months, she would fall under unpaid leave and when she became fit again, she was called back to work. It was his further submission that **Section 32 (1) and (2) of the Employment and Labour Relations, Cap 366 R.E 2019** and **Rule 19 (6) (f) of the Employment and Labour Relation (Code of Good Conduct) Rules GN 42 of 2007** were complied with.

Regarding the sick leave of an employee, **Section 32 (1) and (2)** of Cap 366 R.E 2019 provides that:

*"1) An employee shall be entitled to sick leave for at least 126 days in any leave cycle.*

*(2) The sick leave referred to in subsection (1) shall be calculated as follows-*

*(a) the first 63 days shall be paid full wages;*

*(b) the second 63 days shall be paid half wages.*

Having revisited the records of the trial Commission, this court noted that the applicant was paid her salaries on the 1<sup>st</sup> three months of her sickness which is 90 days only. Thereafter her doctor made a recommendation via Exhibit D1 (Medical Report for Bona Shayo) that she is not fit to proceed with her work and the respondent decided to give her unpaid sick leave as evidenced by exhibit D2 (Unpaid Sick



leave). At the Commission, the Hon. Arbitrator ruled out that as the respondent opted to prolong sick leave with an employee contrary to the law then he was supposed to pay her half of the salaries as per the law. This court do support the findings of the Commission and the amount awarded of Tshs. 31, 927,500/= to be reasonably fair as the respondent opted to accommodate the applicant despite of the statutory sick leave time had elapsed. Thus, the 1<sup>st</sup> issue is found with no merit.

Coming to the 2<sup>nd</sup> issue of whether the commission has jurisdiction to prevent the respondent to deductions, Mr. Herode complained that the trial Commission failed to see that no document was submitted by the respondent to justify the agreed amount for deduction from the complainant's salary and when it was made. Further to that no proof of loan agreement between the applicant and the respondent was submitted to prove the deduction from the applicant's monthly salary. Mr. Herode argued further that the deduction was made contrary to **Section 8 (2)** of Cap 366 R.E 2019. Thus, they prayed for the salary arrears from the date the respondent was sent to sick leave without payment and to prevent any deductions as no loss caused by the applicant during her employment. To bolster his arguments, he cited **Section 28 (1) (a) (b) (2) (a) (b) and (e)** of Cap 366 R.E 2019.




Replying to the 2<sup>nd</sup> issue, Mr. Mmbando submitted that he agrees with the Commission that the law permits deduction of debts. He submitted further that even the applicant in CMA F1 she prayed for the interest of the loan to be suspended during the time of her unpaid leave. Thus, there is no dispute that the applicant had secured a loan with the respondent and if she disputes, she could have done the same at the proper forum. Further to that a loan agreement should be done at the proper forum and not CMA and for the issue of deduction, the same was rightful interpreted by the Arbitrator as per **Section 28 (a) and (b)** of Cap 366 R.E 2019.

Mr. Mmbando argued further that as for the issue of unfair termination the same was not raised at the Commission hence it cannot be discussed at this stage as parties are bound by their submissions. He cited the case of **Salim Said Mtomekela vs Mohamed Abdalah Mohamed**, Civil Appeal No. 149 of 2019 (CAT at Dar es Salam, unreported) to buttress his argument.

**Section 28 (1) (a) and (b)** of Cap 366 R.E 2002 provides that:

*"1) An employer shall not make any deduction from an employee's remuneration unless-*

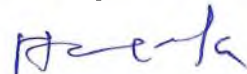


*(a) the deduction is required or permitted under a written law, collective agreement, wage determination, court order or arbitration award; or*

*(b) subject to subsection (2), the employee in writing agrees to the deduction in respect of a debt.*

Going through the records of the trial Commission in her Form No. 1, one of her prayers was to waive the interest accrued from the staff loan during unpaid sick leave. At the Commission, Hon. Arbitrator decided that the law allows the employer to make deductions from amount of money owes to the employee if the loan does exist. However, the same should not exceed three quarter of the complainant's salary. Hon. Arbitrator ordered further for the respondent to observe the same as per law. This court is of the firm view that the applicant only prayed for the interest of the staff loan to be waived and as it was well decided by Hon. Arbitrator that the issue of waiving an interest or not remains to the respondent who is supposed to act as per the law. I fully subscribe myself to the said observation. For those reasons, the 2<sup>nd</sup> issue has no merit too.

Coming to the 3<sup>rd</sup> issue of what relief are the parties entitled to. Mr. Bilyamtwe submitted that since the respondent failed to comply with the labour Laws the applicant was entitled to the followings: Pending salary



during sick leave from July 2017 to September 2020 Tshs. 84,000,000/=, leave not taken during sick leave Tshs. 2,100,000/=, Severance pay Tshs. 5, 653,846/= and certificate of service which amount to Tshs. 93,853,846/=.

Responding to this issue it was Mr. Mmbando's submission that they only agree for the applicant to be given a certificate of service but the other claims were not backup with any provision of the law. As for the issue of severance pay the same was already rejected by the commission for want of proof. Thus, he prayed for the application to be dismissed with costs.

Regarding the issue of relief as claimed by the respondent this court is of the firm view that the applicant is entitled to the amount awarded at CMA only. The applicant cannot be awarded full salary during the sick leave from July 2017 to September 2020 as she was not working and even the law does not allow payment of full salary apart from the 63 days when the sickness started. As for the leave payment since she was not present at work, she is not entitled to leave payment. Concerning the issue of severance pay the same is not paid for the reasons that she was not at work during the time she was on sick leave. In the end the





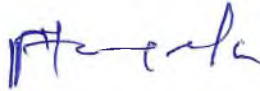
respondent is ordered to give the applicant a certificate of service as prayed.

In the upshot, the application has no merit. The decision of the CMA remains undisturbed save for issuance of certificate of service. Considering the fact that this is a labour matter, I give no order as to costs.

It is so ordered.

**DATED** and **DELIVERED** at **ARUSHA** this 16<sup>th</sup> day of August 2023.



  
**N.R. MWASEBA**  
**JUDGE**

