

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

**DODOMA DISTRICT REGISTRY**

**AT DODOMA**

**LABOUR REVISION NO.02 OF 2022**

**FUTURE COLOURFUL LIMITED.....APPLICANT**

**VERSUS**

- 1. RHODA ERNEST MIGUMA.....1<sup>ST</sup> RESPONDENT**
- 2. SUZANA JOHN.....2<sup>ND</sup> RESPONDENT**
- 3. PENDO MANYEMBA.....3<sup>RD</sup> RESPONDENT**
- 4. OLIVER SIWANDO.....4<sup>TH</sup> RESPONDENT**
- 5. FESTO MAHITE.....5<sup>TH</sup> RESPONDENT**
- 6. SANTINA JOSEPH.....6<sup>TH</sup> RESPONDENT**
- 7. HELINA JOSEPH.....7<sup>TH</sup> RESPONDENT**
- 8. CHRISTINA YOHANA.....8<sup>TH</sup> RESPONDENT**
- 9. MILKA EZEKIEL.....9<sup>TH</sup> RESPONDENT**
- 10. STELLA JOSEPH.....10<sup>TH</sup> RESPONDENT**
- 11. VERONICA LAURENT.....11<sup>TH</sup> RESPONDENT**
- 12. JUMA YOHANA.....12<sup>TH</sup> RESPONDENT**
- 13. NAOMI ELIAS.....13<sup>TH</sup> RESPONDENT**
- 14. RICHARD CHARLES.....14<sup>TH</sup> RESPONDENT**
- 15. EMMY ROJAS.....15<sup>TH</sup> RESPONDENT**

**(Application from the decision of CMA DODOMA)**

**Dated 05<sup>th</sup> day of September 2019**

**In**

**(CMA/DOM/54/2019)**

**.....**

**RULING**

Date of last Order: 30<sup>th</sup> October, 2023

Date of Ruling: 15<sup>th</sup> November, 2023

**SARWATT, J.;**

This application has been filed by way of chamber summons and notice of application, in terms of the provisions of sections 91(1)(a)(b),(2)(a)(b) of the Employment and Labor Relations Act, 2004 (Act No. 6 of 2004) and Rules 24(1),(2),(a),(b),(c),(d),(e)and (f), (3),(a),(b),(c)(d) and 28(1)(c)(d) and (e) of the Labor Court Rules,2007, G.N. No. 106 of 2007.

In a nutshell, the Respondents were employees of the Applicant, **FUTURE COLOURFUL LIMITED**, as raw materials analysts (*wachambua malighafi*) from 04<sup>th</sup> November 2018 up to 18<sup>th</sup> April 2019, when their employment was terminated. The Respondents referred the dispute to the Commission for Mediation and Arbitration (CMA) for unfair termination. The decision from CMA was made in favor of the respondents. Dissatisfied with the decision of the Arbitrator, the Applicant referred this application for revision and prays for the following orders:

- 1. That, the honorable Court be pleased to call for and examine the records of the proceedings of the Arbitration before the Commission for Mediation and Arbitration (CMA) Dodoma in labor Dispute No. CMA/DO/54/2019 Dated 05/09/2019.*

2. *That, the honorable court be pleased to revise, set aside, and quash the arbitration award made by CMA Doodma in CMAA/DOM/54/2019 Dated 05/09/2019.*
3. *That, this honorable court be pleased to grant any other relief 9s0 as it deems fit to grant.*

The application is supported by an affidavit affirmed on 15<sup>th</sup> May 2023 by LEI YANG, The General Manager of the Applicant.

On 30<sup>th</sup> October 2023 when this application called for a hearing, the Applicant was represented by Mr. Fred Kalonga, Learned Advocate, whereas the Respondents enjoyed the service of Mr. Lucas Komba, Learned Advocate as well.

Upon perusal of the record of CMA, I noticed that **one**, the witnesses for both sides did not take oath before the Arbitrator, **two**, recorded their testimonies, and the Arbitrator did not append a signature at the end of each witness's evidence.

To start with the issue of the oath, **Rule 19 (2)(a) of the Labor Institutions (Mediation and Arbitration Guidelines) Rules, Government Notice No. 67 of 2007**, provides that:

*"19(2) The powers of the Arbitrator include to-*

- (a) Administer an oath or accept an affirmation  
from any person called to give evidence."*

In this case at hand, the Arbitrator failed to exercise its power and did not administer the oath to the witnesses. The record on page 3 of the typed proceedings reads as follows:

*"USHAHIDI WA MLAAMIKAJI*

*JINA LA SHAHIDI: RHODA ERNEST MIGUMA*

*UMRI: MIAKA 37*

*DINI: MKRISTO*

*KAZI: MCHAMBUA MALIGHAFI*

*MAKAZI: NKUHUNGU-DODOMA*

*MAHOJIANO YA MWANZO*

*(EXAMINATION IN CHIEF)*

*Ulikua unafanya kazi wapi?.....*

Furthermore, page 6 of the typed proceeding reads as follows:

*""USHAHIDI WA MLALAMIKIWA*

*JINA LA SHAHIDI: LEI YANG*

*UMRI: MIAKA 50*

*DINI: MPAGANI*

*KAZI: MENEJA MKUU*

*MAKAZI: KIZOTA-DODOMA*

*Nini kilitokea tarehe 18/4/2019?..”*

The law also is clear under **Rule 25(1) of the Labor Institutions (Mediation and Arbitration Guidelines) Rules, Government Notice No. 67 of 2007** that:

*“The parties shall attempt to prove their respective cases through evidence and witnesses shall testify under oath through the following process.”*

Regarding the provisions cited above, I am of the view that taking the oath is mandatory, and noncompliance with the requirement to take oath before CMA is not curable.

However, section 88 of the Employment and Labor Relations Act gives room to the Arbitrator to conduct arbitration in a manner that will ensure substantial merits of the dispute with minimum legal technicalities. The section reads as follows;

*“88 (4) The Arbitrator-*

*(a) may conduct the arbitration in a manner that the Arbitrator considers appropriate to determine the dispute fairly and quickly;*

*(b) shall deal with the substantial merits of the dispute with the minimum of legal formalities.*

In the case of **The Copycat Tanzania Limited v Mariam Chamba, Civil Appeal No. 404 of 2020**, (unreported) the Court of Appeal also was observed that:

*"Where the law makes it mandatory for a person who is a competent witness to testify on oath, the omission to do so vitiates the proceedings because it prejudices the parties' case. "*

However, in the case of **National Microfinance Bank Plc v Alice Mwamsojo, Civil Appeal No. 235 of 2021**, the Court of Appeal was stated that:

*"It is, therefore a mandatory requirement that before giving evidence the witness has to take an oath or affirmation accepted from the witness, this includes witnesses before the CMA."*

See also the case of the **Catholic University of Health and Allied Sciences (CUHAS) v Epiphania Mkunde Athanase, Civil Appeal No. 256 of 2020, Tanzania Portland Cement Co. Ltd v Ekwasi Majigo, Civil Appeal No. 173 of 2019**, Court of Appeal (all unreported).

Upon reproducing the case cited above and the provisions of the law, it is clear that the failure of witnesses to take oath before they gave evidence vitiated the whole proceedings of the CMA.

The second issue is the failure of the Arbitrator to append a signature at the end of each witness's evidence, after perusal, I also found that the Arbitrator did not sign the evidence of all witnesses from both parties when they testified on pages 5,6 and 9 of the typed proceedings.

The Rules governing the proceedings at CMA do not contain provisions regarding the signing of the witness's testimony by the Arbitrator. However, the Civil Procedure Code Cap 33 can come into practice on labor matters if there is a lacuna in labor laws. Order XVIII Rule 5 of Code provides that:

*"The evidence of each witness shall be taken down in writing, in the language of the court, by or in the presence and under the personal direction and*

*superintendence of the judge or magistrate, not ordinarily in the form of question and answer, but in that of a narrative and the judge or magistrate shall sign the same."*

However, in the case of **Mhajiri Uladi and Another v Republic, Criminal Appeal No. 234 of 2020**, (unreported) the Court of Appeal was held that:

*"As demonstrated in this appeal, the testimonies of all witnesses were not signed by the learned trial judge not only the authenticity of the testimonies of the witnesses but also the veracity of the trial court record itself is questionable. In the absence of the signature of the person who recorded the evidence, it cannot be said with certainty that what is contained in the record is the true account of the evidence of the witness since the recorder of such evidence is unknown. On account of such omission, the entire trial court proceedings recorded after the conduct of the preliminary hearing are vitiated because they are not authentic."*



Based on the case cited above and the provision of the law, I am of the view that the failure of the Arbitrator at CMA to append a signature to the evidence of a witness jeopardizes the authenticity of such evidence.

Therefore, I hereby quash the proceedings of the CMA and set aside the award. I remit the record to the CMA for the dispute to be heard afresh by another arbitrator. Since the matter arose from a labor dispute, I make no order regarding costs.

It is so ordered.



**S.S. SARWATT**  
**JUDGE**  
**15/11/2023**

A handwritten signature in blue ink, appearing to read "S.S. Sarwatt", written over the typed name and date.

**DATED** at **DODOMA** this 15<sup>th</sup> day of November, 2023.



**S. S. SARWATT**  
**JUDGE**  
**15/11/2023**

A handwritten signature in blue ink, identical to the one above, written over the typed name and date.