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

**LABOUR REVISION NO. 29 OF 2009**

**BETWEEN**

**JOHN ALLEN MGANGA - APPLICANT**

**AND**

**THE HILTON APARTMENTS LTD. – RESPONDENT**

*(ORIGINAL CMA/DSM/KIN-ILA/5409/08)*

18/3/2010 & 16/4/2010

**S.C. MOSHI, J.**

**RULING**

This is an application for Revision brought by the employee (applicant) seeking a revision of an arbitration award of Commission for Mediation and Arbitration (CMA) dated 26/1/2009. The applicant had referred a dispute to C.M.A through Form No.1 claiming/seeking (i) terminal benefits (ii) reinstatement (iii) also he alleged unfair termination.

The record shows that the applicants referral was consolidated with other dispute referrals; which were against the same employer. Other applicant/complainants were (1) Michael Adede Oloo (2) Bakari Hamis Igae and (3) Mohamed Salum Mkongondage. The matter was mediated whereby, according to Form No.5 (a mediator's certificate of

settlement/non settlement). The dispute was partly resolved to the extent that the other three mentioned applicants agreed to be paid T.Shs. 115,000/= each. However the matter remained unsettled for the applicant. It was ordered that it would go to Arbitration hearing.

Form No.5 shows that the applicants dispute would be resolved through arbitration and that he claims overtime payment.

On the first day of arbitration hearing the arbitrator recorded an issue which was to be proved. The issue was thus: " iwapo Mfanyakazi anastahili kulipwa masaa ya ziada kwa kazi alizofanya kabla ya tarehe ya kuachishwa kazi." (Whether he's entitled to overtime) Hence, the witnesses were called to prove the drawn issue!

The award indicates the applicants claims as per form No.1. However the issues which were drafted were also quite different; First issue was on overtime and second issue was whether the applicant was entitled to be awarded a certificate of service. The arbitrator indicated that the applicant had dropped his claims indicated in Form No.1.

Having the facts as indicated above as I am of the considered opinion that:

- (i) The arbitrator erred by deciding and framing issues which were not pleaded in Form No.1.

(ii) Wherever a party wishes to vary his claim; it is my view that, the same has to be recorded in the proceedings and the party should be advised to make a fresh referral for the new claim.

In the presence CMA proceedings nowhere is the applicant recorded to have wished/stated that he is withdrawing the claim. For example at page 4 of the typed award, last paragraph the arbitrator wrote thus:-

"Madai yake kupitia fomu C.M.A. F.1 yalihusu haki za kuachishwa kazi na maombi ya kurudishwa kazini. Lakini madai haya aliyatengua mrufani mwenyewe baada ya kuithibitishia TUME kuwa haki za kuachishwa kazi alilipwa zote zikiwemo kiinua mgongo. Malipo ya kiinua mgongo....."

However as stated earlier nothing in the evidence adduced by the applicant supports arbitrator's comments and opinions. Nor does the arbitrator reveal at what stage did the applicant made those admissions. At page 2 of the award the arbitrator states that "kufuatia madai haya shauri hili liliposhindiakana katika usuluhishi limeletwa kwa ajili ya uamuzi." (Following failure to settle the claims (per F.1) have been referred to arbitration). However at the same pg the arbitrator states that the applicant has consented to drop his claim!

The law provides under R.27 (3) of the Labour Institutions (Mediation and Arbitration Guidelines) G.N. No.67/2007, what an award should contain:

- (a) details of the parties;
  - (b) the issue or issues in dispute
  - (c) back ground information (i.e information admitted between the parties;
  - (d) summary of the parties evidence and arguments;
  - (e) reasons for the decision; and
  - (f) the order (the precise outcome of the arbitration).
- (iii) The applicant was not given a right to present his case. It was contrary to the spirit of the Law for the arbitrator for not affording the applicant an opportunity to prove or adduce evidence on his claims which were presented in Form No.1.


For the foregoing reasons, I find that there were material irregularities in the arbitration proceedings and in the arbitrator award itself. I therefore quash the proceedings, set aside the award and order that the case should start afresh.

R/A Explained.

  
S.C. Mushi  
**JUDGE**  
18/3/2010

Date: 16/4/2010  
Coram: Hon. S.C. Moshi, J.  
Applicant: Mr. John Mganga – Present  
For " Absent  
Respondent: Absent  
For " Mr. Nzowa holding brief for Bubelwa, advocate for.  
CC: J. Kalolo

**Court:** Delivered on this 16<sup>th</sup> day of April, 2010.

  
S.C. Moshi  
**JUDGE**  
16/4/2010

**COPIES TO:**

1. JOHN ALLEN MGANGA,  
**DAR ES SALAAM.**
2. THE HILTON APARTMENT LTD.,  
C/O UPRIGHT ATTORNEYS,  
NEDCO BUILDING, 3<sup>RD</sup> FLOOR,  
UPANGA  
**DAR ES SALAAM.**