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

**LABOUR REVISION NO. 94 OF 2009**

**BETWEEN**

**CABLE TELEVISION NETWORK (CTV).LTD. - APPLICANT**

**AND**

**ATHUMANI KUWINGA & 3 OTHERS - RESPONDENT**

*(ORIGINAL CMA/DSM/KIN-ILA/2337)*

16/4/2010 & 16/4/2010

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

**RULING**

The applicant seeks Revision of Commission for Mediation and Arbitration (C.M.A.) Award dated 1/4/2009. The C.M.A awarded the respondents 12 months' salary compensation at the tune of T.Shs. 1,302,000/= each for unfair termination. The grounds for the application were advanced in the affidavit as well as submitted orally on the hearing date.

The matter proceeded Ex-parte following respondents non-appearance despite the fact that he was aware of the hearing date i.e he was in Court when the matter was set for hearing.

I have taken into consideration grounds advanced by the applicant; however upon perusing through the C.M.A. record I have observed some irregularities; which I thought it is worthy to invoke Rule 28 (1) of the Labour Court Rules, G.N. No.106/2007.

(i) The Referral Forms filed by the applicants are in contravention of S.86(1) of the Employment and Labour Relations Act, Act No.6/2004. S.86(1) requires all disputes referred to be in the prescribed form. The prescribed form is C.M.A form No.1. The applicant is required to fill in the date on which the dispute arose. However in the present case none of the applicant filled in the date on which the dispute arose. Also, the referral dates differs; Obed Hosea, Abubakar and Athuman Kuwinga referred the dispute to the C.M.A on 4/1/2008 where as Hassan Akbar referred the dispute to the C.M.A on 31/1/2008. The date of the dispute is an important element for the C.M.A to determine whether the matter has been referred in time, hence to determine its jurisdiction to arbitrate the matter.

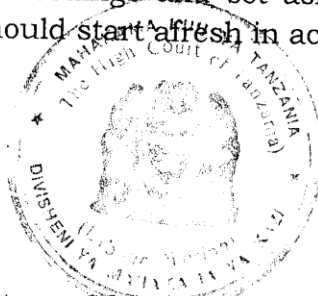
(ii) There is no evidence that mediation was conducted. Section 86(3) of Act No.6/2004, Mandatorily requires that all matters referred to the C.M.A should start with Mediation; and R.12 of the Labour Institutions (Mediation and Arbitration) G.N. No.64/2007 sets the method's and provides for Rules which guide the Mediation process. Under R.16(1) of the cited G.N. No.64/2007 the mediator has to issues certificate of settlement on non settlement; under the same Rule i.e R.16 (2) (3) and (4). The Mediator has to identify the nature of a dispute and issue certificate within 30 days.

The C.M.A. record shows that the case was set for Mediation on 6/2/2008. However the same wasn't conducted. The matter came again before the same person on 22/2/2008, however, there's no evidence of mediation on this date too. On this date the person presiding over the matter recorded that the parties had agreed to go for Mediation and Arbitration. The coram does not indicate whether he was acting as a Mediator or Arbitrator. Evidence was adduced; the award followed.

It's my view that the arbitrator erred by failing to mediate the parties. Mediation is a mandatory requirement put by law; as shown above.

- (iii) The record is not clear on what capacity was the presiding person was acting; it is silent.

In view of all the irregularities as indicated above all what was done was illegal; hence there's no need to consider the grounds for the application for the foregoing reasons, I quash the C.M.A. proceedings and set aside the award accordingly. The matter should start afresh in accordance with the Law. It is so ordered.



S.C. Moshi

**JUDGE**

16/4/2010

Date: 16/4/2010

Coram: Hon. S.C. Moshi

Applicant: Absent

For “: Mr. Nzowa holding brief for Arbogast for

Respondent: Abubakar Said

For “: Absent

CC: Joyce Kalolo

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



S.C. Moshi

**JUDGE**

16/4/2010

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