

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

**REVISION NO. 292 OF 2019**

**STANBIC BANK.....APPLICANT  
VERSUS  
MARTIN KAHIMBA & 2 OTHERS .....RESPONDENT**

**AND  
REVISION NO. 362 OF 2019**

**BETWEEN  
MARTIN KAHIMBA.....APPLICANT  
VERSUS  
STANBIC BANK .....RESPONDENTS**

**JUDGMENT**

*Date of Last Order: 04/09/2020*

*Date of Judgment: 10/11/2020*

**Z.G.Muruke,J.**

These are consolidated revision application filed by both parties after being dissatisfied with the decision of the Commission of Mediation and Arbitration (CMA), in labour dispute No. CMA/DSM/KIN/R.207/2016 which was delivered on 11<sup>st</sup> September, 2017 by Hon. Urassa E.F- Arbitrator.

Application No. 292/2019 was supported by the affidavit of Erick Rwelamira the applicant head of legal department, same was challenged by the joint counter affidavits sworn by the respondents. While in application No. 362/2019 was supported by the joint affidavit of the applicants, and countered by the affidavit of Erick Rwelamira, respondent head of legal department.

By leave of the court hearing was conducted by way of written submissions. Arbogast Mseke, Neema Ndossi and Robert Kumwembe was for Stanbic Bank and Advocate Elisaria Jastiel Mosha was for Martin Kahimba & 2 others.

Before hearing parties, with the assistance of the court agreed on the following issues to be determined;

- (i) Whether Hon. Arbitrator properly analyzed evidence on record to arrive at the conclusion that the gross misconduct against the applicants were proved to warrant nonpayment to other reliefs mentioned in the applicants CMA F 1 in respect of Revision No. 362 of 2019.
- (ii) Whether Hon. Arbitrator properly analyzed evidence on record to come to the conclusion that termination procedure in respect of respondents namely Martin Kahimba, Desmond Justine and Gloria Mneney.
- (iii) To what relief are the parties entitled.

Submitting in regard to the first issue, the applicant counsel in application No. 262/2019 submitted that the arbitrator was correct to hold that the applicant has justifiable reason in terminating the respondent. Respondents were charged with various offences and all were proved before CMA. PW1 was charged with 4 offences which falls under negligence and gross dishonesty and all were proved by Exhibit D2 (**Computer Generating Print Out**) and exhibit D3 (**Bank Statements**) showing list of payment made to other Bank customer's accounts by PW1 without any supporting documents contrary to his job description (**Exhibit D16**). Mr. Mseke further submitted that PW1 never disputed the contents of all exhibits which were tendered to prove the fairness of the reason for

termination as it can be noted in **exhibit D11 (The disciplinary hearing minutes)**.

Regarding PW2 applicant counsel further contended that, he was charged with gross dishonesty and negligence as he verified and cleared all transaction from Martin to be correct while they were not, as evidenced by **Exhibit D13 (Document of incorrect matching proposal)**. Concerning PW3 learned counsel submitted that she was charged with two types of unlawful transaction one being withdrawing money from one customers account and credited the same to the other Bank customers account without permission and supporting documents as evidenced by Exhibit D8 and D9 (Customer's account statement).

On the 2<sup>nd</sup> issue concerning the procedure for terminating the respondents, it was the applicant's counsel submission that the arbitration erred in law in holding that it was against the procedure for the applicant to terminate the respondents while the matter was under police investigation. That the presence of a police case does not bar employee to take a disciplinary action as provided under Rule 9(5) of the Guidelines in the Employment and Labour Relations (Code of Good Practice) GN. 42/2007. Therefore there was no unfair termination on such aspect.

Regarding the formal charge, learned counsel submitted that there was formalities in charging all the respondents Disciplinary hearing and were given time to prepare for hearing, as evidenced by exhibit D 20 (suspension letter) D 21 (allegation letter) and D 11 minutes of disciplinary) and D 22 (termination letter). He stated that all the exhibits

justify that the respondents were afforded with a right to be heard and defended themselves.

In Revision No.362/2019 the applicant counsel Mr. Mosha submitted that the arbitrator was not right in his award from page 2-13 documenting numerous legal prepositions, observations and citations instead of concentrating on relevance of material facts, evidence, and law, so as to establish whether there was valid reason for terminating the respondents. The arbitrator erred in law by not awarding the applicants reliefs sought in the CMA F1. The arbitrator based on ground that the applicants were guilty of misconducts while he has failed to analyze the evidence and law in establishing whether there was gross misconduct or not for the existence of the valid reason for termination.

On the 2<sup>nd</sup> issue, Mr. Mosha averred that, the respondent's disciplinary hearing was suspended pending the investigation as testified by DW1, DW2 and DW3 as per **exhibit D 20(suspension letter)**. The purpose of investigation was to establish whether there was a case to answer. However, the same was violated as the Bank decided to conduct disciplinary hearing while investigation was incomplete, referring the case of **Knight Support Tanzania Ltd v Chrispinus S. Kakoli**, Rev. No.35/2009

On formalities of charging the applicants, Mr. Mosha Learned counsel submitted that since the respondent violated rule 13(2) by not tendering investigation report in disciplinary hearing, therefore the arbitrator was right in his decision being guided by the case of **Ottu on behalf of P.L.Assenga & 106 Others v Ami Tanzania Ltd**, Civil

Appeal No. 96/1998 (unreported). Mr. Mosha further submitted that since the issue of gross misconduct was never proved then, it will be right for this court to grant the reliefs claimed in the CMA F1. In their closing submissions both counsels reiterated their submissions in chief and prayed for the revision of the CMA award.

Having gone through the parties long submissions, records and the relevant laws, first issue for determination; is "Whether the award was properly procured"? In determining the said issue, I will refer Rule 27(3) of the Labour Institutions (Mediation and Arbitration Guidelines) GN. 67/2007 (herein GN.67/2007) which provides for the content of an award.

Rule 27(3) An award shall contain the following-

- a. **Details of the parties**
- b. **The issue or issue in dispute**
- c. **Background information (information admitted between the parties)**
- d. **Summary of the parties evidence and arguments;**
- e. **Reasons for decision, and the order (the precise outcome of the arbitration.)**

From the wording of the provision above, the arbitrator in procuring award must comply with the content stated there in. This was insisted in the case of **Bidco Oil Soap v Abdu Said and 3 Others**, Rev. No 11/2008, where it was held that;

"The functions of arbitration are quasi-judicial, so arbitrators should insist on basic characteristics **of orderliness and regularity** in execution of their duties. Luckily the Commission has made elaborate

rules (published as GN 64/2007 and GN 67/2007). **These rules of procedure are subsidiary legislation and arbitrators are bound to follow rules set therein."**

From records both parties' complained on failure by the arbitrator to evaluate the evidence adduced by parties during arbitration hearing and arrived to such a dissatisfactory award.

I have carefully gone through the impugned award, the same lacks summary of the evidence and arguments adduced by both parties, as required under Rule 27 (d) (supra). The arbitrator has not included the summary of what transpired during hearing, when each party was defending their case. He has just produced the summary of other legal principles including right to work without connecting them to the facts in issue.

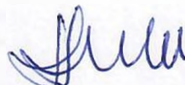
Again the arbitrator in his award, came to a conclusion that the procedure for termination was not fair, without justifying why the same is not fair. Arbitrator just mentioned about investigation and he did not relate the same to facts and evidence adduced by the parties, yet he arrived to a conclusion that the Stanbic Bank failed to comply with the procedure for termination.

It is also the finding of this court that, the arbitrator in his award stated that the reason for termination was valid as the respondent proved that there was gross misconduct. However in the impugned award, I cannot find how the arbitrator arrived to such a decision without even

showing the evidence, arguments, and his reasoning to his findings. Thus, the arbitrator acted contrary to Rule 27 (e) of GN.67/2007(supra)

In view of the above findings, this court believes that the arbitrator has failed to compile the award as required by the law for failure to discuss the evidence and arguments of the parties, hence failed to determine the raised issues and also failed to show reasoning of decision. Consequently the award is tainted with the material irregularity hence it was improperly procured. Thus quash and set aside the same. For the interest of justice, I remit the records to CMA for the award to be written afresh by another arbitrator in accordance with the law, basing on the evidence and arguments of the parties in CMA record presented.

Thus, file to be remitted to CMA within 30 days from today. Equally, CMA to compose award within 90 days from the date of assignment of new arbitrator. Ordered accordingly.




Z.G.Muruke

**JUDGE**

06/11/2020

Judgment delivered in the presence of Rozi Shamba for Stanbic Bank and Martin Kahimba and Desmond Justine applicants/respondent.



Z.G.Muruke

**JUDGE**

10/11/2020