IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

CONSOLIDATED REVISION NO. 707 OF 2018 AND 120 OF 2020

BETWEEN

DAR ES SALAAM INSTITUTE OF TECHNOLOGY..... APPLICANT

AND

SAMSON M. MAKOMBA..... RESPONDENT

JUDGMENT

Date of Last Order: 25/11/2020

Date of Judgment: 18/12/2020

A. E MWIPOPO,J

This consolidated Revision application arise from the decision of Hon. Igogo, M., Arbitrator, dated 18th day of September, 2018 in Labour Dispute No. CMA/DSM/ILA/R.170/15/650 at the Commission for Mediation and Arbitration (CMA) at Dar Es Salaam. The dispute was referred to the Commission by the employee namely Samson Makomba against his employer Dar Es Salaam Institute of Technology (DIT) following employer's decision to terminate his employment.

The historical background of the dispute in brief is as follows: Samson Makomba was employed by the DIT as Principal Procurement Officer on 2nd May, 2006, and was terminated on 8th December, 2014, for

misconduct. Before the termination, Mr. Samson Makomba was the head of Procurement Management Unit. Following the termination, the employee referred the dispute to the Commission for Mediation and Arbitration which delivered the award in his favour and order the employer to pay the sum of 48,864,000/= shillings to the employee as compensation for unfair termination. Both parties were not satisfied with the Commission Award and they filed revision applications in this Court. The employee filed Revision No. 707 of 2018 while the employer (DIT) filed Revision No. 120 of 2020. The two Revision Applications were consolidated by this court on 29th September, 2020 following parties' prayer that the two Revisions be consolidated.

The employee had a total of 2 legal issues arising from material facts in Revision No. 707 of 2018. The legal issues are as follows:-

1. Whether the Employer failed to prove that the termination of the employee's employment was both substantively and procedurally fair.
2. Whether the termination of the Applicant's employment is unlawful.

The Revision No. 120 of 2020 filed by the employer contains six legal issues arising from material facts. The legal issues are as follows hereunder:-

1. Whether the employee committed misconduct in procurement management to wit the employer (DIT) suffered pecuniary and materials losses as well as disrepute to the institute.

2. Whether the employee admitted the fact that the procurement was mishandled and mismanaged.

3. Whether there was good reasons to warrant the Commission for Mediation and Arbitration to grant condonation after the employee filed the dispute late for six months'.

4. Whether the Arbitrator misdirected herself or acted properly to order the employer to compensate the employee after agreeing with the evidence on record that the employee breached rules of conduct and discipline in service.

5. Whether the removal of the employee from managerial position as head of Procurement Unit with the view to allow investigation was a form of punishment under employment disciplinary action.

6. Whether the late issuing of the disciplinary decision by the disciplinary authority has caused any miscarriage of justice or unfair treatment to the employee.

Both parties to this application were represented. Mr. Gaudine R. Mlugaluga, Personal Representative appeared for the employee, whereas the employer was represented by Ms. Joyce S. Yonazi, State Attorney from Solicitor's General Office. The hearing of the application proceeded by way of written submission following the Court order.

Mr. Gaudin Mlugaluga, Personal Representative for the employee submitted first for the two grounds in support of Revision No. 707 of 2018.

He argued all the two legal issues together. He submitted that the composition of Probe Committee was illegal for two reasons, the first reason is that the said Committee was composed of five members contrary to Regulation 46(3) of the Public Services Regulations, 2003. The Regulation provides that the said committee shall consist of not more than four and not less than two members. The second reason is that the Chairman of the Committee was from the same office (DIT) and not from another organization which may result biasness which is contrary to Item 4(2) of Guidelines for Disciplinary Procedures of Good Practice Rules, G.N No. 42 of 2007.

The employee's Representative submitted further that the disciplinary authority acted out of time as the report was received on 30th March 2014 and the decision to remove the applicant from his position as the head of Procurement Management Unit was made on 31st October 2014 as they were satisfied that the applicant failed to handle the mentioned tenders. The decision of the disciplinary authority was supposed to be made within 30 days as per Regulation 48 (9) of the Guidelines for Disciplinary Procedures of the Employment and Labour Relations (Code of Good Practice) Rules, G.N No. 42 of 2007. Failure to comply with the same render the decision to be void.

It was further submitted by the employee representative regarding the right to be heard that the Board of Governors (DIT Council) did not give him the right to be heard and to mitigate as he was dismissed summarily from his employment on 11th November 2014. This is contrary to Rule 13 of G.N No. 42 of 2007 and Section 3 (a) (f) of the Employment and Labour Relations Act, 2004.

Furthermore, it was submitted that the decision made by the Board of Governors was made out of 30 days after the disciplinary hearing. The Board acted not in accordance with Rule 48(6) of the Public Services Regulations, 2003, which demand the same to be delivered within 30 days. The decision was made after 252 days from 1st April 2014 when the report of Probe Committee was submitted to Disciplinary Authority. Thus, the decision is null and void.

Lastly, the employee's Representative submitted that the employee was punished twice for the same offence by two Disciplinary Authority. At first he was subjected to the Principal of DIT who concluded his inquiry and imposed the penalty by removing him to the position of the head of Procurement Unit, and then he was subjected to the Board of Governors where he was summarily dismissed. The employee prayed for Declaratory Order for the applicant to be reinstated.

In reply, Ms. Joyce Yonazi, State Attorney for the employer (DIT) submitted that there was no irregularity which was conducted by the Probe Committee as committee was composed with four members in compliance with Regulation 46(3) of the Public Services Regulations, 2003. And regarding argument that the Chairman of the Probe Committee was from the same office (DIT) contrary to Item 4(2) of Guidelines for Disciplinary Procedures of Good Practice Rules, G.N No. 42 of 2007, Ms. Yonaz stated that the GN. No. 42 of 2007, was observed as the Chairperson in this matter was from Academic staff while the employee was Administrative staff, thus in such circumstance the Chairman was impartial.

It was further submitted by the employer's counsel that the Council is a Board of Directors established under Section 7 of the Dar Es Salaam Institute of Technology Act, No. 6 of 1997 and it conduct its business and resolve decision quarterly as per government directives. The Council may direct otherwise as per Regulation 69(8) of the DIT staff Regulations, 1999. Thus, what was conducted by the management was analysis of the report as it was directed by the Council.

Concerning the alleged delay in issuing decision, she submitted that the same did not cause any injustice as the employee enjoyed full

remuneration during the hearing of his disciplinary case, thus the allegation lacks merits.

Regarding the employee's submission that the employee's right to be heard was violated, Ms. Yonazi submitted on the ground that the punishment issued against the applicant was based on the report and findings of the Probe Committee upon which the employee was heard and he got opportunity to defend himself.

Also, regarding the allegation of double punishment, it was submitted by the employer that the employee was never removed from the position as Head of Procurement and Management Unit but rather ceased to perform the same as per Regulation 66(1) of the DIT. In such circumstances the employee's claims that he was removed from the office as punishment has no basis. The employer's counsel prayed for the Commission award to be quashed.

In rejoinder, the employee's representative retaliated his submission in chief.

Then, Ms. Joyce Yonaz, State Attorney, proceeded to submit in support of the grounds of revision found in Revision No. 120 of 2020. She submitted on the first ground that the Mediator granted condonation

without any justifiable reasons. According to Rule 10 (1) of Labour Institutions (Mediation and Arbitration) Rules, 2007, the time limit for lodging complaints or labour dispute before the CMA is 30 days, failure of which rule 11 (3) of the Rules provides for a procedure of seeking extension of time through an application for condonation. In the course of applying for condonation, the party has to show the degree of lateness, reasons for lateness, its prospects of succeeding with the dispute and obtaining the relief sought against the other party, any prejudice to the other party and any other relevant factor.

She argued that in the present matter the employee was terminated from his employment on 8" December, 2014 and filed the application for condonation on 10th March, 2015, which was late for 92 days. The Mediator held that the employee presented a good cause for delay as provided by the law as he was diligent in making follow-up by exhausting local remedies before referring the dispute to CMA. The employee counsel is of opinion that the Mediator misdirected herself as the Respondent's act of making follow up doesn't amount to sufficient reason for extension of time. Rule 31 of The Labour Institutions (Mediation and Arbitration) Rules 2007, GN.No.64/2007 requires a party to furnish good cause as per Rule 11(3) of Labour

Court Rules. To support her submission she cited the case of **Felix Tumbo Kisima vs. TTC LTD** and Another, (1997), TLR, 57; and the case of **Dr. Ally Sabha vs. Tanga Bohora Jamaat**, (1997), TLR. 305.

Ms. Yonazi submitted on the second legal issue that the employee omitted or neglected his duty and consequently caused loss to the employer by accepting a void bank security guarantee. At page 17 of the award the Arbitrator declared that the respondent acted negligently by failure to abide to rules 244 and 245 of GN.446/2013, and that the Procurement Unit was the one which was responsible to form a team for inspection that ought to have inspected the goods before the goods reaches the reception committee. By this act the Arbitrator stated that the Respondent failed to advice the Principal on this technical issue which should have been in his knowledge as per his position and working experience. In such circumstance the Arbitrator was not right by holding that there was unfair termination.

Regarding Arbitrator's holding that the employee was punished twice for the same disciplinary charges, the employer's Counsel argued that the Arbitrator erred to hold that there was double punishment since the act of removing the Respondent from the position of Head of Procurement

and Management was a normal procedure in public service allowing investigation in respect of the misconducts against him. The procedures provided in Regulation 66 (1) of the Dar es Salaam Institute of Technology (Terms and Conditions of Service and Disciplinary Proceedings) Regulations, 1999, (DIT Regulations). The Principal did not punish the Respondent but rather he interdicted the same. This is amongst the process towards disciplinary procedures. The Respondent was removed from the position of head of Procurement Management Unit, but he continued to enjoy all other rights and benefits and his salary was not reduced at all.

Lastly, it was submitted by the employer's Counsel that the Arbitrator ordered the employer to pay the employee compensation for 16 months' salaries while the Arbitrator had already declared that the employee was negligent in performing his duties and had committed misconduct in public service. The employee did not deserve any compensation out of his own wrongs/misconduct which resulted to a great loss to the employer.

The employee's representative replied to the employer's submission regarding employer's grounds for revision in respect of Revision No. 120 of 2020. He argued regarding the first issue that the employee who was the

head of Procurement Unit was indicted for disciplinary charges which were drawn and served by the Principal of the DIT who was the disciplinary authority in accordance with Public Service Regulations, 2003. The disciplinary authority appointed inquiry committee under regulation 45 of the Public Service Regulations and upon receiving the inquiry report the disciplinary authority made a findings that the employee was guilty of the disciplinary offences charged and on 31st October, 2014, he decided to remove him from the duty post of head of Procurement Management Unit with immediate effects. However, the employee was later on subjected to further disciplinary proceedings before the DIT Council which decided summarily to terminate him from the employment.

The employee's representative is of the opinion that the matter was lawfully decided by the disciplinary authority on 31st October, 2014, where the employee was demoted. What followed thereby was not lawful including the dispute which was before the CMA. For that reason he prays for the Court to find that the CMA award was unlawful and set aside the same. He also prays for the Court to substitute the CMA award by a declaratory order that the decision on 11th November, 2014 by the 70th Meeting of the DIT Council that the employee Samson Makomba was summarily dismissed is null and void and that the employee is still

employee of the DIT in the capacity of the Principal Supplies Officer Grade 1 entitled to full remuneration from the date of purported termination to the date of the decision of the Court.

In rejoinder, the employer's counsel retaliated her submission in chief and emphasized that the removal of the employee in the position of the head of Procurement Management Unit was a normal procedure to avoid further mismanagement and mishandling of the procurement activities in the unit. The disciplinary authority of the employee was Governing Council according to regulation 67 (2) of the DIT (Terms and Conditions of Service and Disciplinary Proceedings) Regulations, 1999. The Regulation is the replica of the Public Service Regulations, 2003 and both Regulations govern the DIT disciplinary proceedings. Thus, the Governing Council of the DIT followed all the procedures in terminating the employee.

It was further argued by the employer that the employee is the one who referred the dispute to the CMA. Surprisingly, he alleges at this stage that the Commission had no jurisdiction. She agrees that the CMA award was unlawful as submitted by the personal representative for the employee on the ground that the termination was fair substantively and procedurally for misconduct.

From the submissions and the pleadings, this Court is called upon to determine the following issues;-

i. Whether the Commission for Mediation and Arbitration condoned the dispute without justifiable reasons.

ii. Whether reason for termination was valid and fair.

iii. Whether the termination was in accordance with a fair procedures.

iv. What remedies are entitled to the parties?

In determination of the first issue, I find it relevant to navigate at the provisions of law governing this issue. Rule 10 of Labour Institutions (Mediation and Arbitration) Guidelines Rules, G.N. No. 64 of 2007, provides for time limitation for referring a labour dispute to the CMA. The rule provides that the dispute about the fairness of an employee's termination of employment must be referred to the Commission within thirty days from the date of termination or the date that the employer made a decision to terminate or uphold the decision to terminate. However, the Commission for Mediation and Arbitration have discretion to condone any failure to comply with time limitation which is provided by the rules under rule 31 of G.N. 64 of 2007. The rule provides as follows, I quote;

'31. The Commission may condone any failure to comply with the time frame in these rules on good cause.

The grounds for seeking condonation includes the degree of lateness, the reason for lateness, prospect of succeeding with the dispute and obtaining the relief sought, any prejudice to other party and any other relevant factor. The grounds for condonation are provided under rule 11 (3) of the G.N. No. 64 of 2007.

The evidence available in record shows that the employee namely Samson Makomba was terminated by his employer Dar Es Salaam Institute of Technology on 11th November, 2014 as proved by termination letter – Exhibit A3. The employee appealed to the Minister on 20th January, 2015 in accordance with the regulation 68 (2) of the DIT Terms and Conditions of Service and Disciplinary Proceedings) Regulations, 1999, (herein referred as DIT Regulations). The employee filled application for condonation on 10th March, 2015. The employee's grounds for condonation was that the long appeal procedures which was followed by him while exhausting the available internal remedies was the reason for the delay. The employee submitted before the Commission that he is suffering because he have no employment and the employer's right will not be prejudiced. The Mediator found that the employee has provided good cause for condonation as he was making a follow up against his termination and the degree of lateness

is 30 days. The late referral was a result of employee to exhaust all remedies regarding his termination before referring the matter to the CMA.

The DIT Regulation 68 (7) provides that if the employee is found guilty of a breach of discipline and a penalty of dismissal is imposed there will be a right of appeal and the employee shall be so informed. The Regulations provides in regulation 72 (2) that the appeal shall be made within 30 days of the decision of disciplinary authority but the appellate authority may accept an appeal made out of time if satisfied that there was special circumstances precluding the submission of the appeal within the prescribed time. In the present case the employee who was terminated from employment for misconduct has the right of appeal according to regulation 68 (7) of the DIT Regulations. The appeal against the decision of the Council lies to the Minister. Thus, the employee was right to exhaust the external remedies by appealing to the Minister before finding referring the dispute to the Commission.

The DIT Regulations provides that the appeal has to be filled within 30 days from the date of the decision. The employee filled an appeal to the minister on 20th January, 2015, which is almost 42 days from the date of decision hence the appeal was filed out of 30 days' time limitation provided by the law. However, the regulation provides that the appellate authority

may accept an appeal made out of time if satisfied that there was special circumstances precluding the submission of the appeal within the prescribed time. Unfortunately, there was no answer from the appellate authority hence it is not known whether the appeal was accepted or was rejected. For that reason, I presume that the appeal was accepted hence the appeal was properly filed to the appellate authority. There is signature dated on 22nd January, 2015 showing the letter of appeal – exhibit was received. Also, as there was no answer from the appellate authority for more than 50 days as a result the employee had all the right to refer the dispute to the Commission out of time. Thus, I'm of the same opinion with the Mediator that there was a good cause for condonation as the employee was exhausting the available internal remedies before referring the dispute to the Commission. Therefore, the answer to the first issue is negative that there was justifiable reason for the act of the CMA to condone the labour dispute.

The second issue for determination is whether reason for termination was valid and fair. Section 37 (2) (a) (b) (c) of the Employment and Labour Relations Act, No. 6 of 2004, provides that the termination of employment contract shall be unfair if the employer fails to prove that the reason for

termination was valid and fair and that the termination was in accordance with fair procedure. The section reads as follows, I quote:-

> '37 (2) A termination of employment by an employer is unfair if the employer fails to prove-
>
> (a) That the reasons for termination is valid;
>
> (b) That the reason is a fair reason-
>
> (i) Related to the employee's conduct, capacity or compatibility; or
>
> (ii) Based on the operational requirements of the employer.
>
> (c) That the employment was terminated in accordance with a fair procedure.'

In the case of **Tanzania Railway Limited vs. Mwajuma Said Semkiwa**, Revision No. 239 of 2014, High Court Labour Division at Dar Es Salaam, this Court held that;-

> *'It is established principle that for the termination of employment to be considered fair it should be based on valid reason and fair procedure. In other words there must be substantive fairness and procedural fairness of termination of employment'.*

Thus, it is the established principle that for the termination of employment to be considered fair it should be based on valid reason and fair procedure.

In the present application the reason for summary dismissal/termination as provided by the termination letter – Exhibit AW3 is that the employee mishandled and mismanaged Contract No. PA/015/2010/11/WBP/G/20(2) between DIT and Agumba Computers Ltd for supply, installation and commissioning of equipment for multimedia and

film technology which gave the employer loss of Usd 50,813.19. The employee was also found guilty of mishandling Tender No. PA/015/2012/13/WBG/G/16 worth Tshs. 117,150,400/= to the supply of office furniture by PARLEY Limited. The employee was charged for two offences. The first count is act or omission which tends to bring the public service into disrepute and failure to perform satisfactorily duties assigned to him as public servant while exercising his duties as the head of Procurement Unit of the DIT. The second count is that the employee changed the specifications for the tender without approval of the proper authority which is DIT tender board.

The evidence adduced to the probe committee as per probe team summary report – Exhibit SM6 especially the testimony of Mr. V. Ngunga who is DIT Chief Accountant and Mr. J. Chalo, DIT Quick Win Project Coordinator, shows that it was the duty of the Procurement Management Unit which Mr. Makomba was its head to request and verify performance security and bank guarantee from suppliers. But, the Procurement management Unit failed to request and verify performance security and Bank guarantee from Agumba Computers Ltd. As a result the advance payment was paid to the Supplier. When the supplier failed to deliver the items as per contract even after extension, the DIT decided to take the

guarantee to the bank for recovery of advanced payment made to the supplier only to find that the guarantee was not genuine. This evidence prove the first count against the employee that he failed to perform satisfactorily duties assigned to him.

Regarding the second count, the evidence available from Mr. J. Chalo, Dr. P. Mgaya who is a Tender Board Member and Mr. Haruna Mashebe who is assistant to the Head of the Procurement Unit shows that Mr. Makomba changed specification of the office furniture to be supplied by PARLEY limited without approval of the Tender Board.

The testimony by employer's witnesses is supported by employee's letter of explanation – Exhibit D3 where Mr. Makomba admitted to be negligent in handling the contract between the DIT and M/s Agumba Computers Ltd. Also he admitted in the letter that he communicated with the supplier Parley Limited who was worried that he cannot meet the deadline for manufacturing the furniture by using hardwood since the price of hardwood has increased and it takes a long time for the hardwood to get dry. The employee agreed that he allowed the supplier verbally to bring a sample of good furniture made of other woods. This evidence support the testimony of other witnesses that Mr. Makomba violated procurement procedures and changed verbally specification unlawfully.

The act or ommission amounting to gross negligence is among the misconduct which may justify termination according to rule 12 (3) (d) of the Employment and Labour Relations (Code of Good Practice) Rules, G.N. No. 42 of 2007. The disciplinary offences which the employee was charged with falls under this category. This means that the termination was justified. Therefore, I find that the reason for termination of employee's employment was valid and fair.

The next issue for determination is whether the termination was in accordance with fair procedures. Section 37 (2) (c) of the Employment and Labour Relations Act provides that termination of employment by an employer is unfair if the employer fails to prove that the employment was terminated in accordance with a fair procedure. This means that it is the duty of the employer when he terminates the employee's employment to prove that the procedures for termination was fair. The procedures for termination of employee's employment for misconduct are provided under Rule 13 of the GN.No.42 of 2007 and regulation 69 of the DIT Regulations.

The employee argued that the composition of the probe team was against the DIT Regulations and the Chairman of the team was not impartial as he was appointed from among the DIT employees. Reading

regulation 68 (1) of the DIT Regulations it provides that it is the disciplinary authority which appoint the Probe Committee. The Probe Committee report – Exhibit D5 provides in background information that the Committee composed of 5 members was appointed by the DIT Principal. However, regulation 67 (2) provides that the disciplinary authority for senior officers and the Principal shall be the Council. This means that the Probe Committee was not appointed by the disciplinary authority of the employee. As the head of Procurement Management Unit, the employee disciplinary authority is the Council. Further, the regulation 68 (4) provides that the number of members of Probe Committee shall be 2 to 3 members. The Probe report shows that the members appointed to the Committee were 4 which is against the regulation. Concerning impartiality of the Chairman of the Committee, the DIT Regulation was silent. However, as submitted by the both parties the Chairman of the Committee was supposed to be impartial according to Item 4(2) of Guidelines for Disciplinary Procedures of Good Practice Rules, G.N No. 42 of 2007. I'm of the opinion that the GN. No. 42 of 2007, was observed as the Chairperson in this matter was from Academic staff while the employee was Administrative staff. In such circumstance the Chairman appear to be impartial and there is no allegation of impartiality of the Chairman or any

member of the probe team which was raised by the employee. Concerning the delay of the disciplinary authority to make decision, I agree with the employer Counsel that the Council meets quarterly and wherever the situation requires. As the delay did not cause any injustice to the employee the allegation has no merits.

Further, the employee alleged that he was punished twice for the same offence. First he was demoted from the post of the head of Procurement Unit by the Principal of the DIT and later on he was summarily dismissed from employment. I have read the letter removing the employee from his post as the head of the Unit – Exhibit A2 which stated that he was removed from the post for the reason that he was found guilty of the disciplinary charges. The letter states further that the disciplinary action for the established offences will be handled by the Governing Board which is the Council. From the wording of the letter it is clear that the Principal was not disciplinary authority of the employee and the step taken was not disciplinary one. The principal aim was to interdict the employee under regulation 66 of the DIT Regulations. However, the interdiction has to be followed by institution of a charge against employee under regulation 66 of the DIT Regulations. This means that the interdiction was supposed to be issued before institution of the disciplinary charges. Thus, the

employer erred to interdict the employee after the institution of disciplinary charges. The interdiction despite being unlawful was not punishment to the employee as the letter clearly stipulated. The punishment to the employee was imposed by the disciplinary authority which is the Council. The employee was given the right to be heard before the Probe Committee which found him guilty hence the disciplinary authority rightly decided to terminate him on the basis of Committee's report.

The employee's representative was of the opinion that the CMA had no jurisdiction to entertain the matter. For that reason he asked for the Court to find that the CMA award was unlawful and to set aside the same. He also prayed for the Court to substitute the CMA award by a declaratory order that the decision on 11th November, 2014 by the 70th Meeting of the DIT Council that the employee Samson Makomba was summarily dismissed is null and void. This argument and prayer by the employee's representative is surprisingly peculiar. The employee is the one who referred the dispute to the Commission, the question is how he referred the dispute to the CMA if it has no jurisdiction? Further, if the Court find the CMA has no jurisdiction the Court also would not have jurisdiction to entertain the matter and as result it could not grant any prayer from the parties herein. This means that the decision of the employer to terminate

the employee will remain intact. This is how peculiar the employee prayer is. However, the DIT Regulations provides in regulation 69 (1) that among the laws applicable for disciplinary procedures is the Security for Employment Act, 1964, which was repealed and replaced by the Employment and Labour Relations Act, 2004. This means that the Employment and Labour Relations Act is applicable in disciplinary procedures for the employer and the Act gives the employee when aggrieved by employer's decision right to refer the dispute to the CMA.

Reading the evidence available in record it shows that some of the procedures for termination were adhered. The employee was notified of hearing date for the disciplinary hearing, he was served with the disciplinary charges, he was given right to bring to the hearing a person, co-worker or advocate of his choice, the disciplinary charges and evidence was presented before the employee and he was given chance to present his defence. However, there is no evidence to prove that the investigation to ascertain the misconduct was conducted as the probe Committee was acting in the place of the Disciplinary Committee. Also, the probe team Committee report – Exhibit D5 does not show at all if the employee was given opportunity to cross examine the employer's witnesses during hearing or he was given an opportunity to put forward his mitigation after

he was found guilty of the misconduct. This is contrary to rule 13 (5) and (7) of the G.N. No. 42 of 2007. Further, the employee was not given right to appeal. All of this proves that the procedures for termination were not adhered by the employer.

Therefore, the employer failed to prove that the procedures for termination were adhered as a result I find that the procedure for termination was not fair.

The last issue is what remedies are entitled to parties? As I find that the termination was not fair procedurally, I'm of the opinion that the employee is entitled to compensation as provided under section 40 (1) (c) of the Employment and Labour Relations Act, 2004. As the compensation for termination which is not fair procedurally is supposed to be of less amount compared to the substantive termination (see the case of **Sodetra (SPRL) Ltd vs. Njelu Mezza and Another**, Labour Revision No. 207 of 2008, High Court Labour Division), I order the employer to compensate the employee for payment of six months' salary. Also the employer has to pay the employee one month salary in lieu of notice of termination. At the time of termination the employee's salary was Tshs. 3,054,000/=. Thus, the employer has to pay a total of Tshs. 21,378,000/= being a six months' salary compensation for unfair termination and notice of termination

payment. Consequently, I hereby set aside the Commission Award. Each party to take care of its own cost of the suit.

It is ordered.

A. E. MWIPOPO
JUDGE
18/12/2020