

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 505 OF 2019

AFRICAN BANKING CORP. (T) LTD.....APPLICANT

VERSUS

MUSSA MASEMBO.....RESPONDENT

JUDGEMENT

Date of Last Order: 14/08/2020

Date of judgment: .../10/2020

E. B. Luvanda, J

The applicant African Banking Corporation (T) LTD, filed this revision against the award of the Commission for Mediation and Arbitration (CMA) in labour dispute No. CMA/DSM/ILA/R.1044/16/922 delivered on 28/03/2019 in favor of the respondent above mentioned.

At the hearing of the application Mr. Mohamed Muya Raphael learned Advocate for appellant dropped the third ground and argued in respect of the first and second

grounds, which are conveniently reproduced hereunder: one, whether it was proper for the honorable arbitrator to make findings that the co-accused of the respondent were guilty of fraud and yet went ahead and held that the respondent not guilty of negligence; two, that the honorable arbitrator failed to analyze and consider the evidence of DW1, DW2, DW3 and DW4.

Mr. Dismas Raphael learned Counsel argued in opposition of the application.

Basically the learned arbitrator is faulted for nothing. At the disciplinary hearing, the evidence presented by the applicant was shoddily and inadequate. The alleged victims of fraud, to wit Japhet Elias Chiwanga and Ombadia Azaria Mbowa who testified at CMA as DW2 and DW4, respectively were not summoned at the disciplinary hearing. The loan agreements were not tendered to substantiate the alleged fraud racket. Neither stated if at all the respondent had dealt on anyhow, including approving the said loans. DW1 Rashid Salum Bura an investigator, did not tender any report to support his verbal explanation which bordered reported speech, on what he managed to unearth

regarding accusation levelled to the respondent. As alluded by the learned Counsel for respondent, the findings of disciplinary committee were whole hinged on hearsay evidence. There is no any tangible evidence produced to connect the respondent with the accusation. It was in evidence that the fraud acts were committed by Beatrice Kalamata and Daniel Mbasu. But as alluded by the learned Counsel for respondent, no evidence was tendered on how the respondent is connected or related to the wrong doings or negligence. Even on cross examination, DW1 stated that the respondent was not involved anywhere with the alleged fraud. More important, the complaint subject to the disciplinary hearing were too remote to connect the respondent, as were committed outside the jurisdiction of the respondent. The alleged fraud was alleged to had occurred at Shinyanga and Kahama, as stated by DW2 and DW4. But a letter of engagement (exhibit A5) which contain detailed terms and condition of the respondent service of employment, at item 3 show that the respondent place of work is ABCT's premises located in Mwanza, where he ought to manage three regions mentioned therein including Mwanza, Mara and Kagera. Shinyanga region is

missing, was not mentioned. DW3 was attempting to take refuge at a saving proviso of item 3 above, which provide that the respondent will also be required to work at any other of ABCT's premise. However, DW3 did not say as to when the respondent was assigned to manage Shinyanga. Neither tendered any office correspondence or document to that effect.

An issue of parties being mandated to be governed by the terms of the contract, it was discussed in the case of **Hotel Sultan Palace Zanzibar Vs. Daniel Leizer and another**, Civ. Appl. No. 104 of 2004 (unreported) where it was held that,

"It is elementary that the employer and employee have to be guided by agreed terms governing employment. Otherwise it would be a chaotic state of affair if employees or employers were left to freely do as they like regarding the employment in issue".

It is my view that, since no evidence was tendered by the applicant to justify such extension of place of work, then it was unfair to impose sanction by way of termination over a cause of action which arose outside scope of work assigned to the respondent, whose place of work was Mwanza, Kagera and Mara regions as per his job description. And as much DW1 put in evidence that until the time he left, he did not detect any actual fraud at Mwanza. In the circumstances, surely it cannot be said that the respondent was fairly terminated.

Regarding reliefs, the learned Counsel for respondent submitted that relief granted in the award are valid, lawful and fair. However, considering the stance of the matter, an award of compensation of 18 months, is on a higher side. Again the arbitrator did not state as to why he imposed compensation over and above the minimum amount. I therefore fault the same and reduced to a minimum which is twelve months equal to Tsh 45,600,000/=. Terminal benefits on item (i) to (vi), inclusive of the CMA award remain undisturbed, are uphold.

The application is partly granted to the extent adumbrated above.



E.B. Luvanda, J

JUDGE

10/10/2020