

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

REVISION NO. 349 OF 2019

BETWEEN

SIMBA STEEL LIMITED APPLICANT

VERSUS

CASBERT CHARLES & 10 OTHERS 1ST RESPONDENTS

TUICO 2ND RESPONDENT

JUDGMENT

Date of Last Order: 12/03/2020

Date of Judgment: 28/04/2020

S.A.N. Wambura, J.

Aggrieved by the award of the Commission for Mediation and Arbitration [herein after to be referred to as CMA] the applicants **SIMBA STEEL LIMITED** have filed this application under the provisions of Sections 91(1)(a), (2)(c) and 94(1)(b)(i) of the Employment and Labour Relations Act, No. 6 of 2004 under Rules 24(1), (2)(a)(b)(c)(d)(e)(f), (3)(a)(b)(c)(d)

and 28(1)(c)(d)(e) of the Labour Court Rules, GN No. 106 of 2007 praying for:-

- 1. This Honourable Court be pleased to revise and set aside the award of the Commission for Mediation and Arbitration of Dar es Salaam in the matter CMA/DSM/KIN/603/10/1420 delivered by Hon. Mwakisopile, Arbitrator on 06th April, 2018.*
- 2. Any other relief this Honourable Court deems fit and proper to grant.*

The application is supported by the sworn affidavit of Praygod Jimmy Uiso Advocate.

The respondents **CASBERT CHARLES & 10 OTHERS** filed a notice of preliminary objection along with the counter affidavit of Mr. Gaudine Rwekaza Mrugaruga Personal Representative.

It is worth pointing out here that the filing of affidavit and counter affidavits by the Advocate and Personal Representative is not very healthy. It has been strongly and repeatedly advised to have parties swear or affirm the same and not their Advocates or representatives. The preliminary objection was however later withdrawn and hearing proceeded interparties.

Mr. Uiso prayed to adopt the affidavit in support of the application to form part of his submissions.

At paragraph 8 they have raised three grounds. He however prayed to abandon the 3rd ground and proceed to argue the remaining two grounds together that:-

At Page 6 of the award the Arbitrator issued reliefs to the respondents who were not parties at CMA for example one Mohamed Tabasam was awarded 1,600,000/= but his name is not in the list in CMA Form No. 1. He did not sign the same. There are persons with one name each Emmanuel and Christopher who are not in the said Form.

It was his submissions that the Arbitrator awarded relief to persons who were not entitled to any relief. He thus prayed for the award to be quashed and set aside.

In response Mr. Mrugaruga submitted that the names and persons referred to by the applicant that is, Mohamed Tabasam, Emmanuel and Christopher all appeared before CMA and there was no dispute that they were employees of the applicant. They are thus entitled to benefit from the award.

In rejoinder Mr. Uiso prayed that the Court considers CMA Form No. 1 whereby Mohamed Tabasam did not sign the Form. The names of Emmanuel and Christopher were not in the said list so there was an error in delivering the award which he prayed to be quashed and set aside.

The only issue to be determined in this matter is whether the Arbitrator awarded reliefs to persons who were not parties to the dispute.

I need not labour much on this matter. It has been held time and again that parties have to be addressed by their proper names see cases of **Christina Mrimi Vs. Cocacola Kwanza Bottlers Ltd**, Civil Appeal No. 112 of 2008 (CA) and **National Oil Vs. Aloyce Hobokela**, Misc. Labour Appl. No. 212 of 2013.

Going through the record I have noted that in the list attached along CMA Form No. 1 Mohamed Tabasam whose name is Serial Number 10 did not sign on the list meaning he was not a party to the complaint. So he was indeed not entitled to any reliefs at CMA.

I have also noted that the name of Christopher Kayombo does appear under Serial Number 9 of the said list. Likewise the name of Emmanuel Pilla is Serial Number 11 in the said list, and all of them signed

on the said list. So it was not wrong for the Arbitrator to award them the reliefs sought.

Thus the application is allowed in respect of one Mohamed Tabasam only but dismissed in respect of Christopher Kayombo and Emmanuel Pilla. It is so ordered.

S.A.N. Wambura
JUDGE
28/04/2020