

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**DAR ES SALAAM**

**REVISION NO. 837 OF 2019**

**BETWEEN**

**TPB BANK PLC ..... APPLICANT**

**VERSUS**

**POSTER MAHABA ..... RESPONDENT**

**JUDGEMENT**

*Date of Last Order: 19/02/2021*

*Date of Judgement: 12/03/2021*

**Aboud, J.**

The applicant, **TPB BANK PLC** filed the present application seeking revision of the award of the Commission for Mediation and Arbitration (herein CMA) in labour dispute No. CMA/DSM/ILA/R.403/15/796 delivered on 28/06/2019 by Hon Gerald J, Arbitrator. The application is made under section 91 (1) (a), 94 (1) (b) (i) and section 91 (2) (c) of the Employment and Labour Relations Act [CAP 366 RE 2019] (henceforth the Act) read together with Rule 24(1) 24 (2) (a) (b) (c) (d) (e) (f) 24 (3) (a) (b) (c) and Rule 28 (1) (c) (d) (e) of the Labour Court Rules GN. No. 106 of 2007 (herein referred as the Rules).

Briefly, the respondent, **POSTER MAHABA** filed a dispute at the CMA claiming for unfair termination. On its findings the CMA was of the view that the respondent was unfairly terminated both substantively and procedurally. Following such finding the CMA ordered the applicant herein to reinstate the respondent without loss of remuneration. Aggrieved by the CMA's findings the applicant filed the present application urging this Court to revise and set aside the CMA's award on the grounds set forth at paragraph 5 of the applicant's affidavit in support of the application.

The respondent strongly challenged the application through his counter affidavit.

The matter was argued by way of written submission where both parties enjoyed the services of Learned Counsels. Mr. Godfrey Tesha appeared for the applicant while Mr. Charles Lugaila was for the respondent.

The second ground of revision raised by the applicant draws the attention of this court for it to be determined first as a point of law before going to the merit of the application. The relevant ground is to the effect that, the Arbitrator erred in law by delivering the award which is contrary to Rule 27 (3) (a) (d) and (e) of the Labour Institutions (Mediation and

Arbitration Guidelines) Rules GN No. 67 of 2007 (herein referred as GN. No. 67 of 2007)

Arguing in support of the mentioned ground Mr. Charles Lugaila, learned Counsel submitted that, Rule 27 (1) of GN No. 67 of 2007 states clearly that the Arbitrator shall write and sign a concise award containing the decision within prescribed time with the reasons. The Learned Counsel added that, Rule 27 (3) of GN 67 of 2007 provided for the content of an award. He also submitted that, the Arbitrator did not comply with the legal requirements mention above because the impugned award does not contain any summary of evidence and the detailed argument of the parties.

It was further submitted that, failure of the Arbitrator to comply with the requirement of the law has resulted to the irregularity as it is very difficult for the parties to understand the basis of his award. He added that, it is very difficult to know the reasoning (ratio decidend) of the finding of the Arbitrator to enable the aggrieved party to challenge thereto. It was strongly submitted that, the Arbitrator only stated that the applicant failed to prove fairness of the termination without giving the detailed reasons of his decision.

It was also submit that, the Honourable Arbitrator failed to analyse the evidence of the applicant, hence reached to erroneous decision that the applicant did not bring any evidence to prove fairness of the termination.

Responding to the second ground of Revision the respondent's Counsel submitted that, the applicant's assertion is not true. He stated that the evidence in this matter was relying much on documentary evidence. It was further submitted that, the summary of evidence and arguments of the parties are so vividly seen at page 2 paragraph 2 to page 4 of the impugned award. The Learned Counsel added that, the analysis of the evidence is seen at page 5, 6 and 7 of the award in question.

Regarding the issue of the reason for the decision it was submitted that, the reasons are very clear at page 5, 6 and 7 of the award. He argued that, it was clearly stated that the applicant failed to prove the reasons for termination and failed to follow laid down procedures as the result the termination was unfair both substantively and procedurally. He therefore prayed for that ground to be dismissed for lack of merit.

In rejoinder the applicant's Counsel reiterated his submission in chief and strongly submitted that the Arbitrator did not comply with Rule 27 (3) of GN. No. 67 of 2007.

After considering the rival submission by the parties, Court records and relevant laws I find the court is called upon to determine whether the impugned award complied with the requirement of Rule 27 of GN 67 of 2007.

It is an established principle that in writing the award the arbitrator must consider and comply with the provisions of Rule 27 of GN 67 of 2007 which is to the effect that:-

*'Rule 27 (1) The Arbitrator shall write and sign a concise award containing the decision within the prescribed time with reasons.*

*(2) The award shall be served on all parties to the dispute in the manner specified in the rules for mediation and arbitration proceedings.*

*(3) An award shall contain the following –*

*(a) details of the parties;*

*(b) the issue or issues in dispute;*

*(c) background information (i.e. information admitted between the parties);*

*(d) summary of the parties' evidence and arguments;*

*(e) reasons for the decision; and*

*(f) the order (the precise outcome of the arbitration).'*

The wording of the above provision is in a mandatory term "shall" which requires the Arbitrator to comply with the same. Failure of the Arbitrator to comply with the above provision has a direct meaning that the award is resulted from irregularity. This is also the position in the case of **Bidco Oil Soup V. Abdu Said and 3 other**, Rev. No. 11/2008 which was quoted in the consolidated revisions No. 292/2019 and No. 362/2019 between **Stanbic Bank v Martin Kahimba & 2 others**, DSM 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.'*

In the application at hand the applicant is contending that, the arbitrator did not summarize the evidence of the parties and state reasons of his decision. I have careful gone through the impugned award, and is my observation that the Arbitrator did not summarise the evidence and arguments of the parties as rightly submitted by the applicant's Counsel. I have also considered the respondent's Counsel submission that the summary of parties evidence is found at page 2, 3, 4 of the impugned



award, however with due respect to such submission, I am of the view that at the mentioned pages the Arbitrator merely stated the testimony of the parties and the exhibits tendered thereto, without summarizing the crucial evidence tendered by the parties as well as their arguments as required under Rule 27(3) (d) of the GN 67 of 2007.

The CMA proceedings reveals that, DW1 testified in details of how the respondent was charged and found guilty of the misconduct in question. However, reading the relevant award I observed that such testimony is not reflected at all, so as to enable the parties and the public at large to understand what transpired at the CMA. Also in his award Arbitrator failed to summarise the evidence of DW1, DW2 and the respondent (PW1).

Furthermore, looking at the Arbitrator's reasoning at page 4, 5, 6, 7 and 8 of the contested award it is crystal clear that, he did not link the misconduct in question with the evidence tendered by the parties. Likely in the procedural aspect of termination the Arbitrator did not state any reasons for his decision. The Arbitrator merely concluded that, the termination procedures were not followed by the applicant without connecting them with the evidence tendered before him. For easy of

reference, I quote the Arbitrator's finding at page 6 of the impugned award: -

*'Kwa kuzingatia tena Ushahidi uliowasilishwa mbele ya Tume hii hakuna Ushahidi wowote kuthibitisha kama mlalamikaji alipewa nafasi ya kusikilizwa kikamilifu kwani mbali na maelezo ya mashahidi hakuna mwenendo wa kikao cha nidhamu uliosainiwa na pande zote na kuwasilishwa katika Tume hii kama sehemu ya Ushahidi wa mlalamikiwa.'*

Loosely translation of the quotation above is that, the Arbitrator stated that there was no any evidence to prove that the respondent was afforded with the right to be heard and that the disciplinary minutes signed by both parties were not tendered at the CMA.

On the basis of the above discussion, I have no hesitation to say that the Arbitrator failed to compose the award in line with the requirement of Rule 27 of GN No. 67 of 2007. By lacking the mandatory contents required under rule 27 (3) of GN No. 67 of 2007 the purported award was not only arrived with material irregularity but also it lacks merit for this court to confirm. Therefore, on the basis of the discussion above and the position of this Court in the case of **Stanbic Bank** (supra), the impugned award is hereby quashed and set aside.



In the result as it is found that the award was not properly composed, the Court finds no need to labour much on the remaining grounds of revision. Consequently, the impugned award is quashed and set aside. The file is to be remitted back to CMA within 14 days from the order, so that the award should be composed afresh by another competent Arbitrator in accordance with Rule 27 (3) of GN No. 67 of 2007. In consideration of speedy administration of justice, the CMA should compose the award within 90 days from the date of receipt of the file from this court.

It is so ordered.



I.D. Aboud  
**JUDGE**  
12/03/2021