

THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION APPLICATION NO. 327 OF 2020

BETWEEN

ABUBAKARY RASHID SHEKIFU & 4 OTHERS..... APPLICANT

AND

NAS DAR AIR CO.LTD..... RESPONDENT

RULING

Last order 16/11/2021

Date of Ruling 03/12/2021

B.E.K. Mganga, J

The Applicant is an ex-employee of the respondent. Applicant was the complainant before the Commission for Mediation and Arbitration in labour dispute No. CMA/DSM/ILA/817/19. At CMA, the applicant was claiming to be awarded TZS 115,035,000/= on ground that the respondent had no valid reasons for terminating him and further that respondent did not adhere to the procedures of termination in terminating his employment.

On 4th December 2020, N.J. Hilary, arbitrator issued an award that applicant is not entitled to any payment as the respondent had valid reasons for termination and that he adhered to the procedures for termination of applicant's employment. Applicant was aggrieved by the

said award as a result he filed this application seeking the court to revise the said award.

The applicant filed his affidavit in support of the notice of application. On the other hand, the respondent filed both the notice of opposition together with the affidavit of Mr. Arnold Emmanuel Peter, her advocate to oppose the application.

Having perused the CMA file, I discovered that Bakari Rajabu Ng'utu (PW5), Brayon William Shonga (PW4) and Haminu Yunus Nindi (PW3) who are the witnesses who testified for the applicant, their evidence was recorded not under oath. On the other hand, the evidence of the applicant was recorded under oath. Having so discovered, I resummoned counsels for the applicant and respondent and asked them to address the effect of the omission of evidence of PW5, PW4 and PW3 to be recorded not under oath.

Responding to the issue raised by the court, Thomas Gaigi, Advocate for the Applicant, submitted that, the arbitrator in recording evidence of a witness without administering an oath or accept affirmation, violated Rule 25(1) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, 2007, GN No. 67 of 2007, which provides a mandatory condition for every witness at CMA to take an oath before

giving evidence. Supporting his argument, counsel for applicant cited the case of ***Iringa International School v. Elizabeth post***, Civil Appeal No. 155 of 2019 He went on that, the omission vitiated the whole CMA proceedings. He prayed, as the remedy, that CMA proceedings be quashed, the award be set aside and order trial *de novo*.

Arnold Emmanuel Peter, Advocate for the Respondent, concurred with submissions made on behalf of the applicant that evidence was recorded without an oath. He also submitted that the record does not show that the respondent closed his case. Counsel submitted that the record is supposed to show that evidence either or the applicant or respondent was closed and that, that failure an irregularity. He concluded that failure to take an oath or affirm is incurable irregularity and that the only remedy is to quash CMA proceedings as set aside the award.

I entirely agree with submissions of both counsels as that is the correct position of the law as it was held by the Court of Appeal in ***Iringa International School's case***, (supra). The logic and reasons for that position in my view, is that, when a witness testifies under oath or affirmation, promises to tell nothing but the truth and submits himself or herself to his/her God or any other superior power that he /she

should be punished if he/she tells lies. This does not mean that all who takes oath or affirmation tells the truth, but the court or a judicial body, in the first place has to be assured that the witness will tell nothing but the truth. No judicial officer is ready to waste time and other resources knowing that the witness will tell lies. Not only that but also, taking an oath or affirmation is compliance with the law. The courts are there to ensure that there is compliance with the law. If laws are enacted and being ignored, then there is no need of enacting them. But the effect of failure to comply with the law may have a far-reaching effect to the society, which is why, laws has to be complied with. For the foregoing, I hereby nullify CMA proceedings, set aside the award arising therefrom and order trial *de novo* before a different arbitrator without delay.

For the foregoing, I hereby nullify CMA proceedings, set aside the award arising therefrom and order trial *de novo* before a different arbitrator without delay. I further order that the dispute should retain its CMA number.



B.E.K. Mganga

JUDGE

03/12/2021