

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM
REVISION NO. 359 OF 2020

GEORGE S MATANGA.....APPLICANT
VERSUS
DAWASA..... RESPONDENT

(From the decision Commission for Mediation & Arbitration of Pwani at
Bagamoyo)

(Wilbard: Arbitrator)

dated 5th August 2020

in

Labour Dispute No. CMA/PWN/BAG/R.984/103/018

RULING

4th November & 17th December 2021

Rwizile, J

This application emanates from the decision of the Commission for Mediation and Arbitration. This court has been asked to call for and examine the records of the Commission and thereby revise it. Facts culminating to application are simple to state;

The applicant was employed by the respondent as a technician. He was charged with duties of connecting water services to customers. It happened that water connections were made to a customer by other technicians but that was done passing through his land. He disconnected the same. Sometimes later, a customer complained to the management that the applicant had disconnected water services. The customer, had approached the applicant for water connections and was asked to pay 500,000/=, to the applicant, but did not do so. When due diligence was done by the same, including to ask for real costs of water connections, it was found that the amount of payment needed was 200,000/=. That amount was paid directly to the respondent in the office and water connections made. When the applicant realized it was so done, he disconnected the same and claimed for the sum of money he asked for before. The matter escalated to the applicant's office. Despite being asked by elderly people and his boss, the applicant did not agree to connect water services to the customer. He was then charged of insubordination and allegations of corruption. He was found guilty and terminated. Not satisfied with termination, he filed a dispute with Commission.

Two witnesses were called for the respondent on 14th June 2019, where Edgar Zakayo (Dw1) testified along, Jackline Patrick Mabeyo (Dw2). Later, the applicant also testified in the same day. The commission found that termination was fair and ordered the respondent to only pay him one month's notice. Not satisfied, he filed this revision to challenge the same. The application was argued by way of written submission. After all was done and the CMA record brought and crisscrossed at the time of composing the judgement, it was found that the witnesses that testified before the commission did so without taking oath or affirmation contrary to rule 25 (1) of GN No. 67 of 2007. I asked parties to address me on the issue, since it did feature in their submissions.

Ms Zuhura Kerenge for the respondent was of the brief submission that the effect of none compliance of the stated mandatory provisions of the law, vitiates the proceedings. She asked for a trial denovo. The applicant, who appeared in person, had nothing to say. Rather, he asked this court to award his terminal benefits.

Having been addressed by the parties on the effect of the unsworn or unaffirmed evidence as to vitiate the proceedings. I agree with the learned counsel that ruled 25(1) of GN No 67 of 2007 is coached in mandatory terms,

it should therefore be complied with. In the case of **National Microfinance Bank vs Leila Mringo and 2 Other**, Civil Appeal No. 30 of 2018, the Court of Appeal so held. From the foregoing, I hereby nullify the proceedings and the award. A retrial is ordered before another arbitrator with competent jurisdiction. The same has to be tried with expedient speed.




A.K. Rwizile

JUDGE

17.12. 2021