

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(LABOUR DIVISION)**  
**AT DAR ES SALAAM**

**REVISION NO. 357 OF 2020**

**BETWEEN**

**SUNTRUST COMPANY LTD. .... APPLICANT**

**VERSUS**

**ROBERT JOHN MINANI ..... RESPONDENT**

**JUDGMENT**

**S.M. MAGHIMBI, J:**

This judgment is on revision filed by the Applicant after being aggrieved by what she termed as erroneous and incurable decision by the Arbitrator before the Commission for Mediation and Arbitration (CMA) in Labour dispute no. CMA/PWN/KBH/132/19/28/2019 ("the Dispute") with its Award dated 14<sup>th</sup> July, 2020. The applicant has moved this court under the provisions of Sections 91(1)(a) and (b), 91 (2) (b) and (c), 94 (1) (b) (i) as amended of the Employment and Labour Relations Act No. 6 of 2004, Rules 24(1) and (2)(a), (b), (c), (d), (e), (f), 24(3) (a), (b), (c), (d) and (e) of the Labour Court Rules GN. No. 106 of 2007, moving the court for the following:

1. That the Honourable Court be pleased to revise the award delivered by Honourable Arbitrators Tibenda, E. dated 14<sup>th</sup> July 2020 and received by the Applicant on 20<sup>th</sup> July, 2020 in labour dispute No.

CMA/PWN/KBH/132/19/28/2019 on grounds that the said award is illegal, unlawful and improperly procured.

2. Any other relief(s) be granted as the Honourable Court deems fit and just to grant.

The above prayers were based on the following legal grounds:

- (a) That the Arbitrator erred in law by deciding that there was constructive termination and breach of contract in favor of Respondent without considering that the Respondent failed to prove that he was terminated in anyhow by the Applicant.
- (b) That the Arbitrator erred in law by delivering a decision in favor of the Respondent without considering that an issue of Constructive termination was neither addressed by Respondent nor in proceeding so as the same may be proved or counter argued by the Applicant.
- (c) That the Arbitrator erred in law and fact by holding that the Applicant unfairly terminated the employment contract of the Respondent while the Respondent did not exhaust the internal remedies available to him before referring the matter to the Commission for Mediation and Arbitration.
- (d) That the Arbitrator erred in law by failure on delivering Award out of the prescribed time of Law without any reason.

The appellant hence prayed that in the circumstances and in the interest of justice, the intervention of this Honourable Court is of utmost importance to call for and examine records of the Arbitration Proceedings and set aside the decision and award of the Arbitrator. The application was disposed by way of written submissions.

Having considered the submissions of the parties, I am to determine whether the termination of the respondent was fair substantively and procedurally. Starting with the substantive part of the termination, the CMA found that the applicant failed to state the reasons as to why she refused to pay the respondent his salary and annual leave. The records show that the respondent was terminated when he came back from annual leave and was refused to enter the office premises. On the other hand, the applicant alleges that the respondent had stolen several properties of the employees and he was also involved in carrying other properties which were not supposed to be carried by the employer's car. The applicant showed several documents whereby the respondent had admitted those misconducts and promised to make good the loss.

I have noted that although the applicant alleges all the misconduct by the respondent, she did not prove if the respondent was terminated after following the procedures. If the applicant alleges all the misconduct, then he was under a duty to show that the respondent was informed of the misconduct



and further informed that they will lead to his termination if proved. Instead, the applicant just created unfavorable environment which as correctly found by the respondent, led to constructive termination. And since no procedures for termination were adhered to, the CMA was right to find that the termination of the respondent fell under the provisions of Section 36(a)(ii) of the ELRA.

On the reliefs sought, I have re-visited the CMA award on the compensation that were awarded by the CMA. Having found that the termination of the respondent was unfair both procedurally and substantively, I find no need to revise the compensation that were awarded including payment of leave for one month. It is on record that the reason that led to the termination of the applicant started when the applicant came back from leave which he was not paid, neither was he paid his salary for the month of September as he returned from work and was refused entrance. Therefore the compensation awarded need not be interfered with.

On those grounds, I find the revision before me to be lacking merits and it is hereby dismissed in its entirety.

Dated at Dar es Salaam this 10<sup>th</sup> day of December, 2021.



  
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**S.M. MAGHIMBI**  
**JUDGE**