

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

CONSOLIDATED REVISION APPLICATION NO. 349 OF 2021 AND 352 OF 2021

BETWEEN

**TANZANIA TELECOMMUNICATIONS
CORPORATIONAPPLICANT/RESPONDENT**

AND

HENRY KYARUZI..... RESPONDENT/APPLICANT

RULING

Date of last order:23/11/2021

Date of Ruling: 10/12/2021

B.E.K.Mganga, J

Henry Kyaruzi, the respondent in revision application No.349 of 2021 and respondent in revision No.252 of 2021 was an employee of the Tanzania Telecommunications Corporation. It happened that their relationship went sour as a result Mr. Henry Kyaruzi filed labour dispute No. CMA/DSM/ILA/874/19/266 at CMA. On 30th July 2021, Hon. Lucia Chrisantus Chacha, Arbitrator issued an award in favour of the said Henry Kyaruzi ordering the Tanzania Telecommunications Corporation to pay him a total of TZS 40,129,920/=. Tanzania Telecommunications Corporation was aggrieved by the said award as a result she filed this revision application No. 349 of 2021. On the other

hand, Mr. Henry Kyaruzi was not satisfied with the award as a result he also filed revision No. 352 of 2021. As all these applications emanated from the same CMA proceedings and same award. I therefore, issued a consolidation order.

I perused the CMA record and find that Henry Kyaruzi (PW1) testified under oath while Alphonse Edward Alphonse (DW1) testified not under oath. These were the only witnesses who testified at CMA. When the application was called for hearing and before hearing grounds advanced by the applicant in the affidavit in support of the application, I asked both counsels to address the court the effect of the evidence of DW1 to be recorded not under oath or affirmation.

Responding on this issue, Ms. Zamaradi Johanes, State Attorney on behalf of the Tanzania Telecommunications corporation, submitted that the omission invalidated the evidence of DW1 and that there is no evidence in support of the application by the Tanzania Telecommunications corporation. She therefore prayed CMA proceedings be nullified and the award be set aside and order trial de novo.

On the other hand, Mr. Augustino Ndomba, counsel for Henry Kyaruzi, submitted that the omission vitiated the CMA proceedings. He submitted that the only remedy available is to order trial de novo.

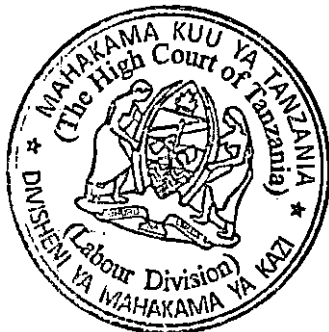
I entirely agree with submissions of both counsels that the omission vitiated the entire CMA proceedings and the award arising therefrom as it was held by the Court of Appeal in the case of **Tanzania Portland Cement Co. Ltd V. Ekwabi Majigo**, Civil Appeal No. 173 of 2019 (unreported), **Joseph Elisha V. Tanzania Postal Bank**, Civil Appeal No. 157 of 2019 [unreported], **Unilever Tea Tanzania Limited vs. Davis Paulo Chaula**, Civil Appeal No. 290 of 2019 (unreported) to mention by a few.

Taking an oath or affirmation before a witness testifies is a mandatory requirement of the law. This mandatory requirement is provided for under section 4(a) of the Oaths and Statutory Declaration Act [cap. 34 R.E 2019] and Rule 25(1) of the Labour Institutions (Mediation and Arbitration Guideline) Rules, 2007, GN. No. 67 of 2007.

The logic and reasons for the position taken by the Court of Appeal 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
10/12/2021