

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

**REVISION APPLIICATION NO.155 OF 2020**

**BETWEEN**

**ALLIANCE LIFE ASSURANCE LIMITED.....APPLICANT**

**VERSUS**

**ELIHURUMA NGOWI.....RESPONDENT**

**JUDGMENT**

*Date of Last Order: 29/06/2021*

*Date of Judgment: 02/07/2021*

**T.N MWENEGOHA, J.**

This Application emanates from the Commission of Mediation and Arbitration (CMA) Award issued against complaint No.CMA/DSM/ILA/336/19/171 by Hon. Mbeni on 25<sup>th</sup> March 2020.

The Applicant, who was presented by advocate Praygod Uiso, being aggrieved, prayed for this court to call for records, revise and quash the award of the Commission for Mediation and Arbitration on the following grounds:

- i. That, the honorable arbitrator erred in law and facts by failure to record and analyse properly the evidence which was adduced before

the commission and jumped into the wrong conclusion contrary to the evidence adduced by parties to the labour dispute.

- ii. The Honorable Arbitrator has erred in law to interpret Rule 17(1),(a),(b),(c),(d),(e)17 (2),(3) and 18 (1),(2),(3),(4), Employment and Labour Relations (Code of Good Practice G.N No .42 of 2007.
- iii. The Honorable Arbitrator erred in law for failure to include and interpret Rule 18(5), (a) and (b) of the Employment and Labour Relations (Code of Good Practice G.N No 42 of 2007.
- iv. The Honorable Arbitrator erred in law for introducing new fact of representation during the meeting in determination of the Procedural requirement, the facts which was never argued by either party during the hearing at the Commission.
- v. That the award does not reflect the proceeding of the case.
- vi. Whether it was correct for the Arbitrator to rule out that Performance Improvement Plan (PIP) entered between Applicant and Respondent was unreasonable while the Respondent never rejected the agreement.

At the beginning of hearing, counsel for applicant, Mr. Uiso prayed to adopt the affidavit of the applicant to form part of his submission. He also prayed for withdrawal of five grounds, being grounds no. 1,2,3,4 and 6. This left him with one ground, No.5, on that the Award does not reflect the proceeding of the case.

In submitting to this ground, Mr. Uiso argued that the CMA Award does not reflect the proceeding of the case. In elaborating further on this point, he provided that in CMA Form No. 1, the respondent's name appears as Alliance Assurance Limited. Similarly Form No. 6 also bears the same

name of Alliance Assurance Limited for respondent. However the Award contains a different name, that of Alliance Life Assurance Limited. It was his submission therefore, that the the respondent who is Alliance Life Assurance Limited, has never appeared for Mediation.

Counsel for applicant further argued that S.86 (7) (b) (i) of the Employment and Labour Relations Act, Cap 366, emphasis on referring a complaint to Arbitrator. Hence the parties who where at Mediation level have never referred the matter to Arbitration, if this was the case the award could have contained same parties as in CMA Form No.1 and Form No.6; that is if the parties themselves signed. He submitted further that the respondent who is written in the Award, Alliance Life Assurance Limited, has never appeared for Mediation at CMA.

Counsel for applicant also submitted that the first page of the Award states that the dispute was brought under Form No.1, however there is no Form No.1 filed by the respondents against the applicant. That Form No. 1 was against Alliance Assurance Limited and not Alliance Life Assurance Limited.

Mr.Uiso supported his submission with a High Court Case of **National Oil vs Aloyse Hobokela, Misc. Labour Application No. 122 of 2013** where Hon. Aboud J. being encontered with the same circumstances, had found that the ommission of the applicant's name (in National Oil instead of National Oil Tz Limited) to have the effect of having two dinstinctive entities. Mr.Uiso associated this to circumstances of the case at hand, since the respondents who appeared in the CMA Award do not resemble the names indicated in CMA Form No.1. He therefore prayed for Arbitrator's Award to be quashed and set aside as it would be unfair to deliver the

Award to the parties against other parties who had never enjoyed mediation.

In his submission, the respondent, who was presented by Advocate Prosper Mrema advanced that the complainant Huruma Ngowi filed Form No. 8, as in accordance to R. 34 (1) Employment and Labour Relations GN No.47/2017 against Alliance Life Assurance Limited. The Award was against Alliance Life Assurance Limited. At the Mediation the parties who appeared were Alliance Life Assurance Limited. Therefore, it is not true that applicant was denied the right to be heard at CMA. He referred the Court to the Award as it reflects all that has transpired in CMA.

Mr. Mrema submitted that it is a principle of law that parties are bound by their own pleadings and that the all pleadings filed by parties including CMA Form No.1, opening statements, final submissions, the form to refer the matter to Arbitration and even the Award delivered by Hon. Arbitrator clearly indicated that the respondent herein was suing Alliance Life Assurance Limited and not any other party. He submitted that the minor omission of not putting the word 'Life' would not prejudice or deny the respondent herein from reaping his fruit from the matter which has been referred by the applicant.

It was further admission of Mr. Mrema that the pleading of the applicant filed for this Revision indicates that he is aware that he has been sued as Alliance Life Assurance Limited.

In responding to the case referred by the applicant, that of National Oil (Supra), Mr. Mrema was of the view that the case is distinguishable to the current matter at hand because in the current case, the only omission appears in CMA Form No.1, where the word 'Life' does not appear but in all

other pleading the word Alliance Life Assurance Limited appears. Whereas in the case submitted, the applicant was wrongly referred throughout from Form No.1, to pleadings and to the award.

It was Mr. Mrema's prayer that the court uphold Award delivered by CMA.

In rejoinder, Mr Uiso submitted that it will not be fair for the applicant herein to suffer for the case which was not against him and hence reiterated his prayers.

This Court has considered carefully arguments of both sides and pondered on the provisions of the law and the case submitted to it. It has examined carefully the CMA records in order to determine whether the applicant, Alliance Life Assurance Limited, has never appeared for Mediation resulting into the CMA Award not to reflect the proceeding of the case, as alleged by the applicant.

At this juncture, I am forced to agree with the respondent that Alliance Life Assurance Limited appeared to Mediation and Arbitration at CMA and is the party addressed in CMA Award for the reasons explained below.

In order to appear before a court or a commission, an applicant must have a claim against the other named person, and for a party to appear as defendant or respondent there must be a legal claim against him or her presented for court's determination. The fact that the applicant appeared willingly at the CMA is evident that he was aware that there is a legal claim against him presented for Commission's determination.

I wish to address the case submitted for reference by the counsel for applicant, National Oil (supra) by distinguishing the circumstances in National Oil to the facts of this case. In National Oil, applicant having been

heard from CMA as National Oil Tz Ltd proceeded to request a revision at Labour Division at Dar es Salaam as National Oil. Upon such action, the respondent lodged a Preliminary Objection on the identity of the applicant. In that application, the Court held correctly that the two, National Oil Tz Ltd and National Oil were not the same. Had the matter at hand exhibited similar circumstances as those of National Oil case then the answer would have been straight forward.

However, in the current circumstances, the respondent addressed applicant as Alliance Assurance Ltd instead of Alliance Life Assurance Ltd, omitting the word 'Life'. It is noted the stage at which the omission occurred was at the Mediation stage at CMA, where parties had to be summoned to the Commission and commence mediation. The fact that the applicant entered appearance to that name without objecting the same (as noted above), and continued to mediation of the dispute establishes the fact that the party was very much aware that he is the one in question. He had no doubt that he was party to a case.

Moreover, it was at the beginning of adjudicating the referred case of National Oil when the objection was raised, while the one at hand had gone through several stages, including mediation and arbitration; and Award was granted by the Arbitrator. The applicant did not raise an objection at all these stages.

It is also noted that this omission by the respondents was rectified while the matter was still at CMA, where the word 'Life' was added to Alliance Assurance Ltd.

I also wish to scrutinize on whether one can easily confuse identity of the name Alliance Assurance Ltd, to mean a total different person to

Alliance Life Assurance Ltd. It is my view that the name of the applicant, 'Alliance Life Assurance Ltd.' appears conclusive, with a whole phrase ending with Ltd. Even when the word Life is omitted it still remains conclusive; a whole phrase ending with Ltd. The likelihood of causing confusion is minimal and that is probably why the applicant responded to it and had no doubt that he was an intended party at the CMA proceedings. This is different from the identity of National Oil Tz Ltd and National Oil referred in the case above as National Oil is not conclusive and anything can be added to it, and very likely to confuse. It is evident why the respondent in National Oil was aggrieved and raised a Preliminary Objection.

It is the view of this court therefore that the applicant was accorded both services of mediation and arbitration and is correctly the party addressed in CMA Award and that the Award does reflect the proceeding of the case. Consequently, the Arbitrator's decision is hereby upheld. Each party to take care of its own cost of the suit.

It is so ordered.



  
T. N. Mwenegoha

**JUDGE**

2/07/2021