

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

REVISION NO. 489 OF 2020

BETWEEN

NATIONAL BANK OF COMMERCE (NBC).....APPLICANT

VERSUS

MARIA SINGANORESPONDENT

JUDGMENT

Date of Last Order: 22/06/2021

Date of Judgment: 02/07/2021

D. P. NGUNYALE, J.

This application emanates from a labour dispute No. CMA/DSM/ILA/808/19 before the Commission for Mediation and Arbitration (CMA) which was decided in favor of the respondent on 20th October 2020.

The same was made under Rule 24 (1)(2) (a), (b), (c), (d), (e), (f); Rule 24 (3) (a), (b), (c), (d), Rule 24 (11) (b) and Rule 55 (1) and (2) of the Labour Court Rules, G. N No. 106 of 2007; and any other enabling provisions of the law. The applicant calls upon this Court to revise the CMA's award on the following legal issue:-

Whether the Arbitrator considered the reasonableness of the amount awarded as a general damage.

The application was supported by an affidavit dully sworn by DESMOND MALYI the Principal Officer of the applicant. During hearing the applicant was represented by learned advocates namely **Ms. Wivina Karoli** and the respondent was represented by **MR. Baltazary Kitunu**. The Court is grateful for the kind cooperation of the parties during hearing on 22nd day of June 2021.

For easy of understanding let me briefly treat the facts as follows;- the respondent was employed by the applicant from 10th July 2015 as a Team Leader Charge Off within the Collection and Recovery Department, and later on as a Team Leader in Charge of Collection & Recovery Credit Risk. The employment relationship could not subsist long. She was terminated on 18th day of October 2018 after being found guilty of a disciplinary offence. The Disciplinary Committee found her guilty with gross negligence by initiating and processing loan settlement agreement without proper authorization. The respondent referred the dispute to CMA where the award was pronounced on 20th October 2020 in her favor. The commission found that the respondent was un fairly terminated because the applicant failed to prove that the reasons for the termination were

valid and fair in terms of section 37 (2) (a) (b) (i) of the Employment and Labour Relations Act Cap 366 R: E 2019.

During hearing of the application, the applicant submitted that in understanding about award of general damages it is important to understand its interpretation. He cited the case of **STANBIC BANK TANZANIA LIMITED VS ABERCROMBIE & KENT (T) LIMITED, CIVIL APPEAL NO. 21 OF 2001** Court of Appeal of Tanzania which interpreted general damages that;-

"That sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been if he has not sustained the wrong for which he is now getting compensation or reparation..."

In considering the award of general damages as noted in the above case the Court is supposed to look at the extend of which the party was injured or suffered. Those sufferings must be proved before the Court. In the case at hand it was her submission that it was not proved to what extend the respondent suffered loss. In the case of **ALBERT MLILO VS SUDI MWAKALIKAMO CIVIL APPEAL NO. 01 OF 2015** the Court of Appeal said that in assessing general damages the trial Court ought to consider the amount of suffering including those which need medical attention. In the case at hand there is no medical report on any injury. The respondent was awarded general damages of 250,000,000/= . The

amount of 250,000,000/= of damages issued was issued without justification. The Commission awarded without considering the reliefs prayed by the respondent. He referred the Court to the case of **ABEL MALIGISU VS PAUL FUNGAMEZA CIVIL APPEAL NO. 10 OF 2018** where this Court said;-

"This is bad in law as the damages were not specifically pleaded as observed by learned council. The learned magistrate on appeal granted relief not prayed for. Again this is also bad in law ..."

The respondent in his reply submission insisted that the proceedings of CMA at page 24 shows that the respondent suffered injuries. The sufferings include loss of income as a bread winner of the family, also psychological torture and depression. The applicant refused to issue her with a certificate of service. She is unemployed to date. The respondent cited the case of **RAZIA JAFFERALI VS AHMED MOHAMEDAL SEWJI & 5 OTHERS CIVIL APPEAL NO. 63 OF 2005** pg 15:-

"assessment of general damages is by no means easy. The High Court did not make any assessment because it found that there was neither assault nor harassment of the appellant"

In a brief rejoinder the applicant said that the respondent has argued that he suffered depression, family problems and other sufferings. It has not been established that those sufferings are directly connected

with the acts of the applicant. The Court should avoid to award claims which are too remote.

After the submission by those parties the Court was of the firm view that, two issues need to be answered by the Court that;-

- (i) Whether the award of general damages in the tune of 250,000,000/= was legally justified.**
- (ii) To what relief are the parties entitled to.**

The applicant was of the view that compensation awarded was not backed by evidence of the extent the respondent suffered. She said that general damages are awarded based on injuries and sufferings faced **STANBIC CASE** supra. The arbitrator awarded general damages without proper foundation or justification. The respondents' strongly contested the argument of the applicants. They insisted that in CMA proceedings suffered injuries were clearly shown. Those were loss of income of the respondent as a family bread winner, psychological torture and depression.

I wish to hold that the respondent might have suffered but the same cannot justify the CMA to depart from the reliefs sought. He would have departed if the evidence founded a serious and peculiar scenario of sufferings other than the way it was narrated. But the same might be

illegal basing on the principal that parties are bound by their own pleadings.

It is worth noting that at CMA, the respondent claimed for a relief of general damages in the tune of 100,000,000/= as reads in the CMA Form No. 1 for the injuries he suffered. It will be wrong to award outside such ambit. In the case of *FATUMA IDHA SALUM VS. KHALIFA KHAMIS SAID*, CIVIL APPEAL NO. 28 OF 2002, at Zanzibar (unreported) where Nsekela, J (as he then was) held at page 7 that;-

"With all due respect to both District and Regional Court, these issues were not pleaded and should not have been considered. It is now settled law that the only way to raise issues before the Court for consideration and determination is through pleadings as far as we are aware of, this is the only way."

I therefore agree with the applicant that it is bad in law to award damages which were not prayed for per the persuasive authority of **ABEL MALIGISU case supra**. According to CMA Form No. 1 the respondent prayed the Court to award general damages in the tune of 100,000,000/= the Commission ought to award such amount prayed for and not otherwise. It is a settled principle of law that parties are bound by their pleadings as already guided by the Court practice and procedure.

In the circumstance of the matter the award of general damages in the tune of 250,000,000/= was unlawful, the respondent deserves general damages in the tune of 100,000,000/= other orders in the award remain undisturbed.

The application succeeds to the extent that general damages is awarded in the tune of 100,000,000. I grant no orders as to the costs of the suit.



D.P. NGUNYALE

JUDGE

02/07/2021