

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

DAR ES SALAAM

REVISION NO. 482 OF 2020

MOHAMED.K. DADY AND 27 OTHERS APPLICANTS

VERSUS

BAKHRESA FOOD PRODUCTS LIMITED.....RESPONDENT

RULING

Date of Last Order: 23/09/2021

Date of Ruling: 23/9/2021

B. E. K. Mqanga, J.

Applicants were employed by the respondent as drivers. In 2017 they filed labour dispute No. CMA/DSM/ILA/R1340/17/293 claiming salary arrears from 2012 to 2017. During hearing of the dispute at CMA, Mohamed Masoud Kindamba testified as **PW1** and Abdurahman Zuberi testified as **DW1**. After conclusion of hearing and submissions by the parties, on 8th April 2019, Johnson Faraja, arbitrator issued an award by dismissing the complaint by the applicants. Being aggrieved by that decision, applicants filed this revision application seeking the court to revise the said award. In the application, applicant advanced five grounds of revision namely:-

- 1. That the arbitrator erred in law and fact for holding that the matter was time barred without considering that condonation was granted.*

2. *That the arbitrator erred in law and fact for failure to analyse, evaluate and interpret the evidence adduced by the applicants with regard to their employment status since 2012 to 2017.*
3. *That the arbitrator erred in law and fact for his failure to take into the concern of the applicants as the respondent refused to produce original contract since 2012.*
4. *That the arbitrator erred in law and fact for his failure to grant applicants their salary entitlements for the period they worked with the respondent.*
5. *That the arbitrator erred in law and fact by failure to make proper analysis of evidence adduced as a result ended with wrong conclusion contrary to the evidence adduced by the parties.*

When the application was called for hearing, Mr. Pascal Temba, appeared as the Personal representative of the applicants while Rose Mtesigwa, advocate appeared for the respondent. Before arguing grounds of revision, I asked the parties to address me the effect of omission of the arbitrator to append his signature at the end of evidence of the aforementioned two witnesses.

Mr. Pascal Temba, Personal representative of the applicant submitted by relying on the case of Appeal in the case of ***Tanzania Portland Cement v. Ekwabi Majigo, Civil appeal No. 173 of 2019*** (unreported) that omission by the arbitrator to append his signature at the end of evidence of each witness vitiated the proceedings. He therefore prayed CMA proceedings be nullified, award be set aside and order trial de novo.

Ms. Rose Mtesigwa, counsel for the respondent submitted that the CMA file shows that both witnesses testified under oath, but the arbitrator did not append his signature

at the end of evidence of each witness and that this omission is fatal to the case. Relying on the case of **Tanzania Portland Cement**, supra, and the case of Iringa International School v. Elizabeth Post, civil Appeal No. 155 of 2019, prayed that CMA proceedings be nullified, award set aside and order trial *de novo*.

I totally agree with submissions of both parties that the omission vitiated proceedings. The court of Appeal was confronted with similar irregularities in the case of **Iringa International School v. Elizabeth post, Civil Application No. 155 of 2019, CAT** (unreported) cited by both parties. In the said case, the Court of Appeal held:-

"Although the laws governing proceedings before the CMA happen to be silent on the requirement of the evidence being signed, it is still a considered view of the court that for the purposes of vouching the authenticity, correctness and providing safeguards of the proceedings, the evidence of each witness need to be signed by the arbitrator".

The Court of Appeal went on to quote the provisions of Order XVIII rule 5 of the CPC as follows:

*"The evidence of each witness shall be taken down in writing, in the language of the Court, by or in the presence and under the personal direction and superintendence of the judge or magistrate, **not ordinarily in the form of question and answer, but in that of a narrative and the judge or magistrate shall sign the same.**"*

The court of Appeal further quoted section 210(1) of the CPA as it provides:-

"S. 210(1) In trials other than trials under section 213, by or before a magistrate, the evidence of the witnesses shall be recorded in the following manner-

(a) The evidence of each witness shall be taken down in writing in the language of the court by the magistrate or in his presence and hearing under his personal direction and superintendence and shall be signed by him and shall form part of the record."

The Court of Appeal restated its holding in the case of ***Yohana Mussa Makubi and Another vs Republic, Criminal Appeal No. 556 of 2015*** (unreported) that:-

"...a signature must be appended at the end of the testimony of every witness and that an omission to do so is fatal to the proceedings."

Court of Appeal went on to quote reasons for appending the signature by a judge or a magistrate at the end of the testimony of every witness was as it was held in the case of ***Yohana Makubi*** (supra):-

*"...in the absence of the signature of the trial [Judge] at the end of the testimony of every witness; **firstly**, it is impossible to authenticate who took down such evidence, **secondly**, if the maker is unknown then, the authenticity of such evidence is put to questions as raised by the appellants' counsel, **thirdly**, if the authenticity is questionable, the genuineness of such*

*proceedings is not established and thus; **fourthly**, such evidence does not constitute part of the record of trial and the record before us”.*

The Court of Appeal went on that:-

*"For reasons that the witnesses before CMA gave evidence without having first taken oath and **as the arbitrator did not append her signature at the end of the testimony of every witness**...we find that the omissions vitiate the proceedings of the CMA...we hereby quash the proceedings both of the CMA and that of the High Court..."*

In the application at hand, witnesses gave evidence on oath, but the arbitrator did not append his signature at the end of the testimony of every witness. Not only that but also, evidence was taken in the form of question and answers. These irregularities are fatal and has vitiated the proceedings of CMA. Guided by the above cited case of the Court of Appeal, I hereby quash the proceedings of the CMA and set aside the award. I hereby order the file be dispatched to CMA for the labour dispute between the applicant and the respondent to be heard de novo before another arbitrator.

It is so ordered



A handwritten signature in black ink, appearing to read "B.E.K. Mganga".

B.E.K. Mganga

JUDGE

23/09/2021