

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

**REVISION APPLICATION NO. 413 OF 2019**

**BETWEEN**

**ABDUL AZIZI ALLY SAID..... APPLICANT**

**VERSUS**

**WADSWORTH DISTRIBUTORS TANZANIA LTD..... RESPONDENT**

**JUDGMENT**

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

The application beforehand was lodged under the provisions of Section 91 (1) (a) (2) (b) and 94 (1) (b) (i) of the Employment and Labour Relation Act 2004 and Rule 24 (1), (2) (a) (b) (c) (d) (e) (f) (3) (a) (b) (c) (d) and Rule 28 (1) (a) (b) (c) & (e) Labour Court Rules, GN 106 of 2007. In his Chamber Summons, the applicant is moving the court for the following:

- (i) That this Honourable Court be pleased to revise and set aside the whole proceedings and Award/Ruling of the Commission for Mediation and Arbitration dated 20<sup>th</sup> August, 2018 in CMA/DSM/TEM/215/2017/115/17.
- (ii) Any other relief this Honourable Court may deem fit, just and equitable to grant.

The application was supported by an affidavit of the applicant dated 03<sup>rd</sup> May, 2019. As per the affidavit and the records of this court, the

background of the dispute is that the applicant was employed by the respondent since 1<sup>st</sup> August, 2015 as a warehouse assistant and his salary was Tshs. 390,000/=. Upon misconduct of the applicant, he was called for the disciplinary hearing where he was supposed to give a clear self-explanation as to why he did not obey the order of his supervisor and why he is in misunderstanding with his co-workers (M1). According to the applicant, he was eventually unfairly terminated from his contract after the disciplinary hearing without considering the self-explanation given by the applicant. He unsuccessfully lodged a dispute at the CMA, aggrieved by the award of the CMA, he has lodged this application on the following grounds:

1. That, the Honourable Arbitrator erred in law and facts to hold that the reason (s) for the termination of the employment contract of the applicants was fair.
2. That, the Honourable Arbitrator erred in law and facts to hold that, the applicant was not entitled any benefits as claimed without considering the evidence given by the applicant.
3. That, the Honourable Arbitrator erred in law and facts to hold that, the applicant was not entitled any benefits as claimed without considering the evidence given by the applicant.
4. That, the applicant is aggrieved by the Award of the Commission for Mediation and Arbitration hence this application for revision.

On those grounds, the applicant sought for the following relief(s):

- That this Honourable Court be pleased to call for the records of the proceedings and the award from the Commission for Mediation and Arbitration in Labour Dispute No. CMA/DSM/TEM/215/2017/115/17

revises and set aside the award dated 20<sup>th</sup> August, 2018 delivered by Hon. Kokusiima, L. the Arbitrator.

When the matter came for hearing on the 05/10/2021, the applicant appeared in person and unrepresented while the respondent was represented by Ms. Victoria Njau, learned advocate. In his submissions to support the application, the applicant submitted that he was the assistant supervisor and his duties included supervising all the operations of the company. He was stationed at the Company Godown and supervising his colleagues and the laborers. He didn't do any other work. He established that upon finding out on company's loss of properties and the abusive language used the Human Resource people to the laborers, he reported the matter to the Head Office. That issue was never resolved and as days went on the situation was going worse, he was eventually called by the CEO asking him about the loss of properties and he explained to him the loopholes that were there. Then the CEO asked him to control the situation again because in all stock takings they recognized some loss. He controlled the situation and in the next four months no loss was recorded.

It was after controlling the situation, the people who were affected by that control plotted against him. That one day they were loading tea leaves, the HR loaded 84 boxes and he ordered the items to go back to the godown. It is after that they started planning a plot against him and they succeeded as the HR reported to the bosses that he was arrogant, rude and he didn't want to work and this is what led to his termination. That the HR was forcing him to carry luggage to the car and he told him that he was not the

laborer but he was the supervisor so he refused to do that work. Then he was labeled as rude, arrogant and didn't have manners.

The appellant admitted that a hearing was conducted and it was chaired by Boss Salim who asked his colleagues what his problem was and they didn't have anything to reply. He issued another order as to why the applicant was kept there as supervisor and that the applicant should not be given the work of loading boxes to the car because he was the supervisor and he said the applicant should be left alone and should continue with supervisory work. Thereafter he was asked to do some works which were not his and refused. That he used to help in other work like recording the merchandise that comes and after sometimes when he saw that they were bringing too much work to him he refused to do the work because there were other people hired for that work while he had his duties.

Having heard the applicant submissions, it is clear that the appellant conducted some disobedience towards his superiors. He admitted to have refused to do some work simply because he was not hired to that work. In terminating the employee, all the employer has to prove that the reason for termination was fair. Looking at the submissions of the applicant and the evidence that was adduced during trial, it is clear that the applicant disobeyed several orders from his superiors claiming that those were not his duties. All he was interested in as he submitted, was to supervise others. He has also admitted in his submission that by the time he was terminated it was not the first offence as he has submitted that an earlier meeting was called on allegations of his arrogance and disobedience. At

this point therefore, I agree with Ms. Njau that the reason for termination was valid hence the termination was substantively fair.

Coming to the procedure of termination, the applicant admitted in the procedures were followed and other employees were asked to write on his bad behavior. According to Ms. Njau's submission which is also in the records of the CMA, before the hearing, the applicant was issued with a notice to attend the meeting dated 06/02/2017. He signed the notice and he was afforded opportunity to bring a representative. The notice was admitted as EXD2. Minutes of the disciplinary hearing were admitted and marked D3. Ms. Njau also submitted that in the said disciplinary meeting the Chairperson ordered every person who attended the meeting to make a statement on the allegations and the applicant did not do so.

There was also a witness DW1 Hussein Rajani who at the CMA testified that there was a disciplinary hearing conducted before the applicant was terminated, he mentioned the members who were present in that meeting. He tendered EXD4 which is one of the explanatory letters written by the representative of the applicant. Unfortunately the representative also admitted that the applicant was arrogant and rude. As per D5 he was paid all his dues and entitlements. The applicant was benefited under EXD2 and signed that he received his gratuity and didn't refuse the admission of the exhibit. In his submissions, the applicant also admitted to have received and signed reception of all payments. The respondent's evidence was therefore not shaken. It is to the satisfaction of this court that the termination of the applicant was procedurally fair.

In conclusion, under Section 37(2)(b)(i) of ELRA, the applicant was terminated due to misconduct committed when he was in employment, the reasons are well founded and the procedure followed. On those findings, I find no merits on this application; it is therefore dismissed in its entirety.

Dated at Dar-es-salaam this 15<sup>th</sup> day of October, 2021



  
S.M. MAGHIMBI  
JUDGE