

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

**REVISION APPLICATION NO. 64 OF 2021**

**BETWEEN**

**ADILY NDILLE ..... APPLICANT**

**AND**

**TANZANIA INTERNATIONAL PETROLEUM RESERVES (LTD) ..... RESPONDENT**

**RULING**

Date of last order:15/9/2021

Date of ruling:19/11/2021

**B. E. K. Mganga, J.**

The Applicant is an ex-employee of the respondent and was the complainant before the Commission for Mediation and Arbitration in labour dispute No. CMA/DSM/TEM/244/19/109/19. At CMA the applicant was claiming TZS 25,000,000/= and be reinstated on ground that the respondent had no valid reasons for terminating and further that did not adhere to the procedures in terminating his employment.

On 15<sup>th</sup> January 2021, M. Batenga, arbitrator issued an award that applicant is not entitled to any payment as the respondent had valid reasons for termination and that he adhered to the procedure in terminating the applicant's employment. Applicant was aggrieved by the said award as a result he filed this application seeking the court to revise

the said award. The applicant filed his affidavit in support of the notice of application. On the other hand, the respondent filed both the notice of opposition together with the Mr. Emmanuel Godson Maige, her advocate to oppose the application.

When the application came for hearing, parties opted and prayed to argue it by way of written submissions as a result I granted their prayer. After completion of submission by the parties and while in the course of composing my judgement, I discovered that Martin Lucas Masha (DW1), Hamis Hassan Minzakano (DW2) and Maurine Emmy Ponda (DW3) who are the only witnesses who testified for the respondent, their evidence was recorded not under oath. On the other hand, the evidence of Adily Owden Ndille (PW1) the applicant was recorded under oath. Having so discovered, I resummoned counsels for the applicant and respondent and asked them to address the effect of the omission of evidence of DW1, DW2 and DW3 to be recorded not under oath.

Responding to the issue raised by the court, Faraja Kajuni, Advocate for the Applicant, submitted that the arbitrator, in recording evidence of a witness without administering an oath or accept affirmation, is violation of Rule 25(1) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, 2007, GN No. 67 of 2007, which provides a mandatory condition for

every witness at CMA to take an oath before giving evidence. He went on that, it is in violation of Section 4(a) of the Oaths and Statutory Declaration Act [Cap 34 R.E. 2019] which provides a mandatory requirement for every witness to take an oath or affirm before testifying. Counsel submitted that the omission vitiated the whole CMA proceedings. He submitted further that the remedy available is to quash CMA proceedings, set aside the award and order trial *de novo*. He cited the Court of Appeal decision in the case of **Joseph Elisha V. Tanzania Postal Bank**, Civil Appeal No. 157 of 2019 [unreported].

Emmanuel Maige, Advocate for the Respondent, concurred with submissions made on behalf of the applicant that evidence was recorded in violation of Rule 25(1) of GN. No. 67 of 2007. He submitted that, this irregularity is incurably and that the only remedy is to quash CMA award as the whole proceedings has been vitiated.

Both parties submitted that the omission of taking an oath or accepting affirmation vitiated the whole proceedings and prayed CMA proceedings be nullified, the award arising therefrom be set aside and order trial *de novo*. I entirely agree with them as that is the correct position of the law as restated by the Court of Appeal in **Joseph Elisha's case**, (supra).

The logic and reasons for that position 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.



B.E.K. Mganga

**JUDGE**

19/11/2021