

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

REVISION APPLICATION NO. 233 OF 2020

BENEDICT NSOJO APPLICANT

AND

FINCA MICROFINANCE BANK LIMITED RESPONDENT

RULING

Date of last order: 17/11/2021

Date of ruling:17/11/2021

B. E. K. Mganga, J.

Applicant was an employee of the respondent, but his employment was terminated on 11th April 2017. Aggrieved with termination, he filed labour dispute No. CMA/DSM/KIN/R.453/17/551 to the Commission for Mediation and Arbitration henceforth CMA claiming to be paid TZS 100,000,000/= for unfair termination. On 31st July 2018, Hon. Masau, arbitrator issued an award against the applicant as he found that termination was substantively and procedurally fair. Being further aggrieved with the CMA award, applicant filed this application seeking the court to revise the said award.

When the application was called for hearing, I perused the CMA record and find that Benedict Ambikile Nsojo (PW1), Doris Robert Chagula (DW1) and Joseph Mihumbe Mwita (DW2) who are the only witnesses in this file

testified not under oath. I therefore asked both Mr. Juma Maro, the personal representative of the applicant and Stella Manongi and Yusta Kibuga, Advocates for the respondent to address the court on the effect of the said witnesses to testify not under oath.

Responding to the issue raised by the court, Mr. Maro submitted that it is a legal requirement that evidence has to be given under oath or affirmation. He submitted that the requirement is intended to remind the witness that he/she is duty bound to tell the truth and that if he/she tells lie, he/she may be punished, or legal action can be taken against him/her. Failure to take oath or affirmation means evidence was illegally received at CMA. He concluded by praying that the dispute be heard *de novo* at CMA after quashing proceedings and setting aside the award.

On her side, Ms. Manongi, counsel for the respondent submitted that, although there is no procedure of taking oath or affirmation in the Labour Institutions (Mediation and Arbitration) Rules, 2007, GN. No. 64 of 2007, evidence need to be taken under oath or affirmation. She conceded that the record does not show that witnesses testified under oath. She concluded by praying the CMA proceedings be nullified, the award be set aside and order trial *de novo* as the omission vitiated the whole proceedings.

I am in agreement with submissions made on behalf of the parties that all witnesses testified not under oath or affirmation in violation of Rule 25(1) of the Labour Institutions (Mediation and Arbitration Guideline) Rules, 2007, GN. No. 67 of 2007 which provides that it is mandatory for every witness who is called to testify at CMA to take an oath or affirm before giving his/her testimony. The same omission has also violated the mandatory provision of Section 4(a) of the Oaths and Statutory Declaration Act (Cap. 34 R. E. 2019) that requires every witness to take an Oath or affirm before giving his/her evidence.

The Court of Appeal had an advantage of discussing the effect of that omission in the case of **Tanzania Portland Cement Co. Ltd V. Ekwabi Majigo**, Civil Appeal No. 173 of 2019 (unreported) and held that the omission vitiates proceedings. In the **Ekwabi's case**, supra, the Court of Appeal nullified CMA proceedings set aside the award and ordered trial *de novo*.

Guided by the above cited Court of Appeal decision, I hereby nullify CMA proceedings, set aside the award arising therefrom and order trial *de novo* before a different arbitrator.



B.E.K. Mganga

JUDGE

17/11/2021