

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

**REVISION APPLICATION NO. 346 OF 2020**

**BETWEEN**

**EMMANUEL B. MVANDA & 13 OTHERS ..... APPLICANTS**

**AND**

**COMMERCIAL BANK OF AFRICA (T) LIMITED ..... RESPONDENT**

**RULING**

Date of last order: 23/11/2021

Date of Ruling: 25/11/2021

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

On diverse dates the respondent employed Emmanuel Bernard Mvanda, Eliud Marko, Esther Mwaipyana, Fransis Msangule, George Malyeta, Grace Charo, Hipolite Emil, Ingram F. Ngailo, Jane Msangi, Julius W. Sindato, Marry Tryson Mwasile, Mary Augustine Mtani, Musa Isack Msigwa and Upendo A. Kibona at different positions, salary and place of recruitment. In January 2018 respondent contemplated retrenchment of

some of her employees, applicants inclusive. On 17<sup>th</sup> April 2018, the respondent referred to the Commission for Mediation and Arbitration henceforth CMA, a dispute for retrenchment against the applicants. On 16<sup>th</sup> July 2018 an award was issued in favour of the respondent that there were valid reasons for retrenchment, fair procedures were adopted and that terminal benefits offered to the herein applicants were fair and justifiable.

Applicants were aggrieved by the said award as a result they have filed this application seeking the court to revise the said award. The Notice of Application is supported by a joint affidavit of the applicants. In their joint affidavit, applicants deponed *inter-alia* that the arbitrator did not sufficiently consider testimonies of the applicants and placed a burden of proof to the applicants. In the joint affidavit, applicants raised nine (9) grounds of revision which, I have decided not to reproduce them for obvious reasons, as they are not the base of my ruling.

When the application was called for hearing, Ms. Edna Mwakenja, Advocate, appeared on behalf of the applicants while Ms. Regina Kiumba and Irene Mchau, Advocates appeared for and on behalf of the respondent.

Before the aforementioned advocates kicking off their respective submissions, I pointed to them that the record shows that initially the

herein respondent filed a dispute against 34 respondents at CMA and that at the conclusion of hearing there were only 20 respondents. I further pointed that the application has been preferred by only 14 applicants and that two applicants namely George Malyeta (DW1) and Emmanuel Mvanda (DW2) out of 14 testified at CMA. Those who testified at CMA did so, not in representative capacity as there was no application and order to that effect. I therefore, asked counsels to address the Court whether, proceedings at CMA were properly conducted and whether, applicants are properly before this Court taking into account that one of their complaint is that arbitrator did not sufficiently consider testimonies of the applicants.

Responding to the issue raised by the court, Ms. Edna Mwakenja, counsel for Applicants, submitted and conceded, that there was neither application for, nor leave for representative capacity that was granted in favour of those who testified. She submitted that, it was an irregularity for only two applicants namely George Malyeta (DW1) and Emmanuel Mvanda (DW2) to testify. She was of the view that, the said irregularity invalidates the whole CMA proceedings and prayed proceedings be nullified and order trial *de novo*.

Regina Kiumba, counsel for the Respondent, concurred with the submission of Counsel for the applicants and prayed proceedings be nullified and order trial de novo. Counsel for respondent prayed that priority should be given to this dispute at CMA as it is an old dispute.

Having heard submissions of both counsels, I am in agreement with them that this is a fatal irregularity. In their testimony, George Malyeta (DW1) and Emmanuel Mvanda (DW2) did not cover other applicants herein. It is also true that they testified not in representative capacity. I have found that all applicants were recruited on different positions at different dates and from different areas. For the arbitrator to rely on evidence of Dw1 and DW2 who were recruited on different dates and from different areas and more so, who testified not on representative capacity was a fatal error. In the CMA record, there is no evidence of the applicants save for two applicants who testified at CMA that can be used by this court to revise the award against or in their favour. In other words, their names appear in the application, but they have nothing to do before me if I decide to go by the available evidence. I find in the interest of justice, in agreement with both counsels that the only remedy available is to nullify

CMA proceedings, set aside the award arising therefrom and order trial de novo.

For the foregoing, CMA proceedings, set aside the award arising therefrom and order trial de novo.

It is so ordered.



B.E.K. Mganga

**JUDGE**

25/11/2021

Labour Court TV