IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 177 OF 2021

BETWEEN

TANZANIA LEAF TOBACCO COMPANY LIMITED ..... 1ST APPLICANT

TANZANIA TOBACCO PROCESSORS LIMITED ..... 2ND APPLICANT

VERSUS

GABRIEL MWITA ..... RESPONDENT

JUDGMENT

S.M. MAGHIMBI, J:

This Revision emanates from the Award of the Commission for Mediation and Arbitration at Morogoro (CMA), in Labour Dispute No. CMA/MOR/185/2018 ("the Dispute"), dated 20 September 2019. The Award was delivered in favour of the Respondent whereby the CMA found his termination to be substantively and procedurally unfair and subsequently ordered re-instatement of the applicant and payment of compensation equivalent to salaries of twelve months salaries, payment in lieu of notice and general damages. The total amount of compensation to be paid by the applicant to the respondent was Tshs. 873,033,200/=. Aggrieved by the award, the applicant has lodged this application under

the provisions of Section 91(1)(a), 91(2)(a) and (c) 94(1) (b)(i) of the Employment and Labour Relations Act, Cap. 366 R.E 2019 ("The Act") and Rules 24(1), (2)(a),(b),(c),(d),(e)&(f), (3)(a),(b),(c)&(d), 28(1)(c),(d)&(e) of the Labour Court Rules, 2007 G.N. No. 106 of 2007 ("the Rules"). She is moving the Court for orders that:

1. This Honourable Court be pleased to revise and set aside the whole Award of the Commission for Mediation and Arbitration ("CMA" by Hon. Kayugwa Haji, Arbitrator, dated 20 September, 2019 in Labour Dispute No. CMA/MOR/185/2018 between Gabriel Mwita and Tanzania Leaf Tobacco Company Limited and Tanzania Tobacco Processors Limited; and
2. Any other relief(s) that the Honourable Court may deem fit to grant.

The application was lodged by a Notice of Application and a Chamber supported by an Affidavit of Mr. Richard Sinamtwa, the applicants' Group Legal and Corporate Affairs Director, an affidavit dated 11th May, 2021. Before this court, the applicant was represented by Ms. Samah Salah, learned advocate while the respondent was represented by Ms. Patricia Mbosa, learned advocate. The application was disposed by way of written submission.

Before I embark into determination of the merits or otherwise of this application, it is prudent that the brief background of the matter is narrated. From what is gathered in the records of this application the respondent was initially employed by the 2nd applicant as ...

While making her submissions in support of the application, Ms. Salah brought to the attention of the Court that although at paragraph 23 of the Affidavit the Applicants raised 23 issues for Court's determination, she prayed to consolidate and argue together some of the issues in the following manner; issues (a) and (b) in relation to manipulation of proceedings be argued together. Issues (c), (d), (e) and (f), relating to the finding that the Respondent was employed by two employers will be argued together, so will issues (g), (h), (i), (j) and (k) relating to the reasons for termination (substance) and issues (l), (m), (n), (o), (p) and (q) relating to procedures for termination on composition of disciplinary hearing, investigation and other procedural matters will be argued together. Lastly, issues (s), (t), (u) and (w) on reliefs granted to the Respondent will be combined.

In addition to that, Ms. Salah also pointed out that when arguing the consolidated issues as indicated above, she will begin with issues relating

to respondent's employment status, followed by issues relating to reasons for termination (substantive fairness), then issues relating to procedural fairness (investigation, composition of disciplinary hearing and other procedural matters) before going to issues in relation to reliefs granted and lastly issues in relation to the record of proceedings.

On my part, I will start to determine the issue of substantive fairness because this is a more crucial issue that is to be addressed before going into whether or not the procedure followed was fair. The issue of the applicant being employed by two employers will be determined later.

Starting with the issues (g), (h), (i), (j) and (k) regarding substantive fairness of the termination. The termination of the respondent was a consequence of a disciplinary hearing which found him guilty of three offences, one was dishonesty and/or major breach of trust (for failing to disclose conflict of interest situations involving partnership with fellow employees, provision of human resources services to service provider and a company engaged in tobacco related activities); the second offence was on totally unacceptable conduct towards other employees involving sexual harassment and retaliatory behavior towards interns and applicants for employment; and the last one was willful negligence for allowing a

microfinance company owned and managed by a former employee who was terminated for gross negligence to access employee's payrolls without appropriate approvals. In her submissions to support the fairness of the termination, Ms. Salah submitted that as rightly stated by the Arbitrator at page 20 paragraph 2 of the Award, the three offences justified termination of employment of the respondent. That despite this finding, the Arbitrator went ahead and found at page 21 paragraphs 3 and 4 of the Award that the 1st Applicant failed to consider the seriousness of the offences and that an alternative punishment could have been applied to the Respondent instead of termination.

In reply, Ms. Mbosa submitted that the Arbitrator was correct when he stated that the 1st Applicant failed to consider the seriousness of the offences and that an alternative punishment could have been applied to the Respondent instead of termination. Her argument was that the law by itself uses the word *'May',* and that the said provision has stated that offences which may constitute serious misconduct and leading to termination of the employee. Further that the 1st Applicant failed to show the seriousness of the two offences and she also failed to show how the acts of the Respondent which constituted to those offences made their

relationship intolerable if the same will continue hence finding termination to be the best penalty.

On my part, I will start by reproducing the holding of the arbitrator on page 21 of the award, where the arbitrator observed and held:

"To examine what stated by Respondent, Commission was guided by rule 12(4) of the G.N. No. 42/2007 (Supra) to reach conclusion on determining substantiveness of these offences, the provision states:

"According the law the issue of validity of the said offences must be proved on their existence before any decision, Rule 13(1) direct employer to conduct investigation, Respondent admitted to for so and concluded by ensuring the Commission that those allegation found valid.

In determining whether or not termination is the appropriate sanction, the employer should consider:-

a) the seriousness of the misconduct in the light of the nature of the job and the circumstances in which it occurred, health and safety, and the likelihood of repetition; or

b) the circumstances of the employee such as the employee's employment record, length of service, previous disciplinary record and personal circumstances."

Basing on the above guidance, I find that employer failed to consider other factors associated to occurrence of such offences to the complainant. It is my stand that the issue of removing an employee is a serious one, therefore before reaching a conclusion on that, the principle of balance of probabilities must be considered.

By doing so, alternative punishment could be applied rather than termination which is considered the highest sanction (punishment) in labor industry.

I therefore differ in conclusion reached by Respondent in this area."

I have decided to reproduce those findings to emphasize one important thing at this point, that in his findings, the arbitrator did not fault the employer/applicants' findings and conclusions on proof of the offences that the respondent/employee was charged with. Therefore the substance of the offences and the conviction was not questioned by the arbitrator, his

only concern was on the gravity of the sanction of termination that was imposed on the respondent. Since the arbitrator found that the offences were proved against the respondent, his only reason being that alternative punishment would have been a better remedy, this is what I will mainly consider in determining this application.

At this point, it is also pertinent to note that the respondent never challenged the award of the CMA by way of revision, meaning that he was also not aggrieved by any part of it including the findings that the offences against him were proved. Would he have been so aggrieved, he would have lodged a revision application to challenge those findings.

Having no opposition on the finding of guilt of the respondent by the applicants, and having no challenge on the subsequent approval of the finding of guilt on the part of the CMA; then the part of the award that found the employee's /respondent grounds for termination were proved at the disciplinary hearing remains unchallenged. Therefore Ms. Salah's submission that the Arbitrator failed to properly analyse the evidence on record and came to the wrong conclusion that the Respondent's termination was substantially unfair is partially off the hook because the

arbitrator found the respondent to have committed the alleged offences, he only challenged the remedial measure taken by the applicants which he found to be improper. This was also admitted by the respondent at page 4 of his written submissions in reply which I shall elaborate in due course, therefore I find that all the submissions re-analyzing the evidence adduced during arbitration to justify the substantive fairness of the termination is of no use. The issue here is rather a point of reasoning than facts; whether termination was the appropriate remedy under the circumstances and nature of the offences that the respondent was charged with.

Now turning to the crucial issue on whether termination was the appropriate remedy for the applicants to take upon finding the respondent guilty of the offences charged, unfortunately Ms. Salah did not make any substantive submission on this issue; her submissions were mainly based on re-analysing the evidence adduced during arbitration to justify the substantive fairness of the termination. As for Ms. Mbosa's submissions, she stated that the arbitrator was correct when he stated that the 1st applicant failed to consider the seriousness of the offences and that an alternative punishment could have been applied to the respondent instead of termination. That one cannot blame the finding of the arbitrator because

the law itself used the word "may" and that item 8 of the Schedule of the Employment and Labor Relations (Code of Good Practice) G.N. No. 42/2007 ("the Code"), mentioned the second offence as the offence that may be given a warning. Further that item 4(11) of the same schedule on disciplinary hearing provides that termination of employment should only take place in cases of serious or repeated misconduct when the employer is justified in concluding that the misconduct has made the employment relationship intolerable to be continued.

Ms. Mbosa submitted further that Rule 12(3)(a) of the Code provides that the act of gross dishonesty may justify termination. That item 4(80-(d) of the Code provides for factors to be considered before issuing a penalty. That the said factors are seriousness of the offence and the likelihood of repetition, employees circumstances (including personal circumstances, length of service and previous disciplinary record), nature of the job and circumstances of the infringement itself. That when all these laws are observed, the arbitrator was right to make findings that are alleged by the 1st respondent to bring confusion.

Having considered the parties' submissions and looking at the offences that the respondent was charged with, they included willful negligence in the performance of work, Dishonesty or major breach of trust and Unacceptable behavior towards other employees. While analyzing whether termination was the appropriate remedy the arbitrator relied on Rule 12(4) of the Code which reads:

"In determining whether or not termination is the appropriate sanction, the employer should consider:

(a) the seriousness of the misconduct in the light of the nature of the job and the circumstances in which it occurred, health and safety, and the likelihood of repetition; or

(b) the circumstances of the employee such as the employee's employment record, length of service, previous disciplinary record and personal circumstances."

However, after reproducing the Rule, the arbitrator did not elaborate how he considered those factors in coming to a finding that termination was not the appropriate remedy, he only commented that the issue of removing an employee is a serious one therefore on reaching that conclusion, the principle of balance of probability would have been

considered and alternative remedy applied. It is important to remind arbitrators at this point that giving reason for the decisions they make is of crucial importance in order to deliver a fair and just decision. Issues of remedy are paramount reasons why parties approach the judicial or quasi-judicial bodies to seek reliefs; therefore this is where our tasks in administration of justice lies by doing so with impartiality of the highest level. This impartiality is manifested in our decisions by providing detailed reasons for our decisions. In his book **"The Road to Justice",** Sir Alfred Denning discusses the importance of a judge giving reasons for his decision when he said:

> *"The judge must give reasons for his decision: for by so doing, he gives proof that he has heard and considered the evidence and arguments that have been produced before him on each side: and also that he has not taken extraneous considerations into account. It is of course true that his decision may be correct even though he should give no reasons for it or even give a wrong reason: but, in order that a trial should be fair, it is necessary, not only that a correct decision should be reached, but also that it should be seen to be based on reasons; and that can only be seen if the judge*

himself states his reasons. Furthermore if his reasons are at fault, then they afford a basis on which the party aggrieved by his decision can appeal to a higher court."

From the words of Lord Denning above, it is obvious that absence of reasoning in a decision leaves a lot to be desired. Coming back to the case at hand, having been convinced that termination was not the appropriate remedy under the circumstances; the arbitrator was required to give reasons for finding that termination was not the proper remedy. He should have explained how he found that the seriousness of the misconduct in the light of the nature of the job and the circumstances in which it occurred, health and safety, and the likelihood of repetition is not so crucial to justify termination. He was also duty bound to elaborate how he found the circumstances of the employee such as his employment record, length of service, previous disciplinary record and personal circumstances to be so convincing that he deserved another chance. All these were not done by the arbitrator. He just cited the guiding provisions in finding whether termination was the appropriate remedy then without giving reasons; he concluded that termination was not the appropriate remedy.

On my part, having made that observation, in line with the same Rule 12(4) of the Code, I will analyse whether or not termination of the respondent was the appropriate remedy. Starting with the *seriousness* of the misconduct in light of the nature of the job and the circumstances in which it occurred, I have taken into consideration the fact that the respondent was a very high level/senior manager of the 1st applicant responsible for both companies, hence the term "Group HR Director" (Exhibit DD4). As per the job description, this person was the one responsible for all human resources issues including disciplinary matters and indeed a custodian of all the crucial disciplinary documents of the company (see Exhibit PD1). That means he is supposed to provide leadership by example and all employees were looking at him for guidance. Therefore he should have been the last person to breach any part of the Disciplinary Codes. Now if such a high level human resource leader commits such serious offences in breach of disciplinary codes and was left scot free, would he have had the moral authority of now ensuring discipline, safety and harmony is streamlined at the workplace? Would he have had a moral authority of charging anyone for disciplinary misconduct? The answer to all these questions is NO. Given his position and the image

that such a senior managerial personnel would have been expected to portray, the seriousness of the offences that he was charged with, then his continued employment would have jeopardized the institution's integrity and disciplinary well-being affecting the workplace harmony.

Going to the circumstances of the employee such as the employee's employment record, length of service, previous disciplinary record and personal circumstances health and safety, and the likelihood of repetition. As stated earlier, the circumstances of the employee are all in his adverse favor because being a Senior HR Director; he is one who is dealing will all issues of well-being of the company including procurement processes and the custodian of employer's records. Having breached the trust by using his position for some personal gains cannot be said as a light offence to justify a warning only. His length of service also puts him in a jeopardizing position because he is well acquainted with those issues to have breached them.

On all those observations and reasons, it my conclusive finding that the learned arbitrator fell into error by making a finding that termination was not the appropriate remedy under the circumstances. I therefore revise the finding and instead make a finding that termination of the

respondent was the appropriate remedy under the circumstances. Hence the termination was substantively fair.

The next issue is the fairness of the procedure. The arbitrator found that the procedure for termination was unfair; however, he commented that to some extent, the 1st applicant had complied with the requirements of Section 7(9) of the ELRA. He then pointed out the applicant's Discipline and Grievance Procedures contained in Universal Corporate, in those procedures under item 5.1 is where the key issues in managing disciplinary matters are stipulated. He faulted the item because it is silent on composition and form of a Disciplinary Committee. His main concern was on the fact that DW2 was engaged in conducting the investigation (EXDD11) and was also a member of the disciplinary hearing. He also faulted the fact that the respondent was not supplied with an investigation report and that he was denied contact with Government officials and the extent which the employer considered the defence issued by the applicant. However, I find that this last concern on consideration of the respondents defence is misplaced because that would have been discussed under substantive fairness on the final finding of guilt of the respondent and not

on procedural aspect. I will therefore deal with the other remaining concerns of the arbitrator.

In her submissions on the procedural fairness, Ms. Salah argued that the Arbitrator faulted the termination procedures on three aspects namely, that the composition of the disciplinary hearing committee was as per the employer's interest (page 25 of the Award paragraph 3), the investigator was a team member of the disciplinary hearing (page 26 paragraph 3 of the Award) and that the Respondent was to be supplied with the investigation report (page 26 paragraph 3 of the Award). She then submitted that procedures for termination on ground of misconduct are provided under Rule 13 of the Code. Among other requirements, the provision require the employer to investigate the circumstances of the offence to determine whether the same are founded, present evidence in support of the allegations at the hearing and avail the employee with the proper opportunity to be heard. In addition, the Schedule to the Code, sets out Guidelines for Disciplinary Procedures and in terms of item 4(2) under Disciplinary Hearing, the Chairperson of the Hearing should be impartial and should not be involved in the issues giving rise to the hearing.

Ms. Salah submitted further that the Arbitrator merely made a finding that since the Applicant's Discipline and Grievance Procedure is silent on procedure for formation and composition of the disciplinary hearing committee, then the disciplinary hearing committee was composed in the interest of the defendant. That there are no reasons provided in the Award as to why the Arbitrator was satisfied that the committee was composed in the interest of the 1st Applicant. Further that the Respondent also failed to produce anything to show that the composition of the hearing committee was for the interest of the 1st Applicant. She then argued that under Rule 13 (4) of the Code, read together with Guideline 4(2) of the Disciplinary Hearing Guidelines contained in the Schedule to the Code, disciplinary hearing should be chaired by a senior manager who shall be impartial and should not, if possible, have been involved in the issues giving rise to the hearing. That in the testimony of DW1 (Mr. Johan Knoester) at page 31 of the CMA Proceedings that the disciplinary hearing was chaired by Mather (sic) (Mr. Mathew Kapnias) who was senior to the Respondent thus he was a senior manager. She then pointed out that the Respondent did not challenge this testimony during cross examination of DW1 hence this

ains unchallenged. That the disciplinary hearing was properly constituted in compliance with the requirements of the law.

On the issue of the investigator, DW2 being a team member of the disciplinary hearing committee whereby the Arbitrator observed that the presence of DW2 at the disciplinary hearing was contrary to the principle of natural justice (*nemo judex in causa sua);* Ms. Salah submitted that DW2 was not a chairperson of the disciplinary hearing, he was a witness/prosecutor as he is the one who investigated the allegations facing the Respondent and collected all the relevant information and documents in support of the allegations. He presented the documents to the chairperson of the disciplinary hearing committee, as reflected at page 32, 33, 74 of the CMA Proceedings. That the Chairperson is the one who made the decision on the allegations based on the information presented by DW2 (see paragraph 10 of the Hearing Form (**Exhibit DD12**). She concluded that DW2 was not a judge of his own cause as found by the Arbitrator and his presence as the 1st Applicant's representative does not make him a team member of the committee and if it does, his presence did not have an effect on the chairperson's impartiality.

In reply, Ms. Mbosa submitted that the Respondent was never supplied with the investigation report and other documents which he requested as seen in the conversation between the 1st Applicant and the Respondent which is Part of DD9. Also the disciplinary committee was chaired by the person who was junior to the Respondent and the said committee was in the interest of the 1st Applicant. Further the investigator was senior to all the members of the panel hence the panel could not be impartial.

She then submitted that the Arbitrator was right finding that the committee was composed in the interest of the 1st Applicant. That it was the 1st Applicant who initiated the hearing, conducted it and terminated the Respondent. Some of the charges or offences the Respondent was charged related to the 2nd Respondent but the panel did not include any officer of the 2nd Applicant despite the fact that the same involved her. Also the investigator/prosecutor who is DW2 was senior to all the members of the committee thus the decision which could come up could have his influence as one cannot go against his master. Further that the chairman was junior to the Respondent, as the Chairman was the Director of sales and leaf

operations of the 1st Applicant and the Respondent was Group Human Resources Director serving the Applicants.

Ms. Mbosa submitted further that DW1 only stated the chairman was senior to the Respondent without explaining how senior he was noting that the Chairman was a Director of one entity and the Respondent was a Group Director. So the Respondent being a Group Director serving two entities seemed to be senior than the chairman. She then referred to item 4(1) (c) of the schedule of the Code on Disciplinary Hearing which provides that Senior manager should be appointed as chairperson to convene a disciplinary hearing in the event of allegations which could on their own justify a final written warning or dismissal. Therefore, as per the said provision the senior member to Respondent could have chaired the committee during the disciplinary hearing. She argued that that the allegation against the Respondent was a serious one and the Arbitrator could not ignore. Since it was the fundamental right which had to be exercised, the right to be heard thus the cited case by the Arbitrator was very relevant to this allegation. That the Arbitrator was moved by the evidence of both parties in his findings thus it cannot be said he failed to reason his findings as alleged by the Applicants. That the Arbitrator found

that DW2 who was the investigator and prosecutor in the disciplinary hearing to be part of the disciplinary committee from the evidence presented during the hearing of the arbitration.

Further on the issue of investigation, Ms. Mbosa submitted that from the circumstances of his case it was important for him to be supplied with the investigation report. That the 1st Applicant alleged to have conducted investigation which leads to the disciplinary hearing therefore there must have been a report in whatever form which was presented to form the charges. She cited Rule 13 (1) of the Code which provides that the employer shall conduct investigation to ascertain whether there are grounds for hearing to be held arguing that the Respondent had a right of being supplied with it as the same could help him in knowing the sources of the allegation. She emphasized that the Respondent had a belief that the charges were fabricated and did not exist and that the charges based on the documents which were found in possession of the Respondent thus when the 1st Applicant started the investigation he had no solid reason to do it hence jumped to what was found in possession of the Respondent which was an afterthought. That there was an issue of SINO, which was not alleged in the notice of Disciplinary hearing but the same was raised

during the hearing without giving any notification to the Respondent contrary to the law. She argued that Rule 13(2) of the Code provides that 'where a hearing is to be held, the employer shall notify the employee of the allegations using a form and language that the employee can reasonably understand'. Further that Item 4(5) of the same schedule of the Code on Disciplinary Hearing provides that 'the employee and the representatives are entitled to be present at all times during the hearing and should be informed of the facts of the case against the employee.....'

She submitted further that the Respondent was denied a right to call witnesses contrary to the law. The background of this argument comes from the suspension letter and a notice of disciplinary hearing which were part of 'DD8'. That in the said letters, the Respondent was prohibited to contact any employee, organ/authority including the government institution or third parties providing services to the 1st Applicant. The prohibition had a condition that the same can be done after agreeing in writing with the 1st Applicant and that the Respondent also requested some evidences but the 1st Applicant refused on the ground that she did not use them, this can be witnessed through the letters which were admitted as 'DD9' and 'DD10'.

With regard to the issue of Aidat and Polla on the mode of which they testified, the Applicants insist that it is permissible by the quoted law. That the Respondent agrees that the law does allow the use of video conference when the circumstances do not favor the witness to appear in person but not a phone call. She pointed out that the complaint of the Respondent on the issue which was also a concern of the Arbitrator, was that, there was no solid ground established to opt the said mode which is not favored by the law. That the Respondent had a belief that the charges were framed and due to his position as a group Director he could not be treated that way of examining the witnesses through a phone call. The 1st Applicant alleged that the witnesses were far and could not appear physically in the hearing. The Respondent found this excuse baseless due to the fact that the 1st Applicant had the opportunity of making all the efforts to make sure that the two appear before the panel as he did to other witnesses and members of the panel who came from outside the country.

She argued that even if it was true then the best way was through a video call or skype but not a phone call which by itself is questionable on the witnesses were true Aidat and Polla as could be any body, the two were not employees. She concluded that all these facts made the

Respondent argue that his right of being heard was never fully exercised hence the procedure of terminating the Respondent's employment with the 1st Applicant was totally unfair contrary to what has been established by the 1st Applicant in this revision. In rejoinder, Ms. Salah mostly reiterated her submissions in chief.

On my part, having analysed the records, I agree with Ms. Mbosa that it was not proper for the person who investigated the alleged misconducts to sit as one of the panellists of the disciplinary hearing committee. I have noted Ms. Salah's argument that the person making the decision was the Chairperson, I think on this point she has misled herself. The meaning of having the committee hearing means after the hearing there will be deliberations and the whole committee makes a decision on majority role. The Chairperson is not the sole decision maker. Therefore it was wrong to have the DW1 in the same panel as member of the committee because you cannot be a prosecutor of your own cause. I find this observation to be sufficient to determine the issue of procedural fairness. Since the issue goes to the impartiality of the committee and the respondent's right to a fair trial, I find that the termination of the respondent was procedurally unfair.

That said, the next issue is of the applicant being employed by two employers. The issue should not detain me much. Having considered the submissions of the parties I find that the issue is not worth of a lengthy findings because it is a clear but issue. This is because according to the evidence, the respondent willfully accepted the employment to the 1st applicant in 2014 (EXDD1&EXDD2) and on 01/09/2017 he was promoted to Group Director of Human Resource (EXDD4 and EXDD6). The terms in the said two contracts were clear that he will be responsible for the human resource issues for both companies hence he consented to the fact that he will be serving two masters. That is why using that as an excuse now and the CMA having related it to Regulation 38 of GN No. 67/2017 is something which should not detain me much at this stage where more substantive issues are at stake.

Having made the above findings, the last issue is on the reliefs sought by the parties. Having considered the parties' submissions and having perused the records, I have not seen a single, even remote justification as to why the arbitrator ordered payments of damages to that huge amount. There was nothing analysed by the arbitrator to justify the

amount, and surprisingly the 5% was charged on the whole amount claimed while the arbitrator himself did not award all that was asked for.

It is worth reminding arbitrators that in labor cases, awarding damages is not something which is encouraged because the law itself provides for compensation in cases where termination is found to be unfair. Therefore, it should be in very rare circumstances that damages should be awarded and concrete reasons should be adduced for doing so and not just awarding damages because you can write an amount of money and so it becomes an award. The Court/CMA must explain the reasons why and how did he arrive to such an amount as damages and this is after the party has established sufficient reasons to warrant the court to use its discretion and award damages. None has been explained by the arbitrator. Owing to the omission, the award of damages of Tshs. 496 million is hereby revised, so is the amount awarded in lieu of notice. Having revised, the applicant shall pay the respondent an amount of Tshs 23,148,600/- as one month's salary in lieu of notice (if not paid at exit). The respondent shall also be entitled to repatriation allowance if he had not been paid. On compensation, the arbitrator had awarded a compensation of 12 months, this is after finding that the termination of the

respondent was both substantively and procedurally unfair. Since procedural unfairness should carry a lesser weight (see the case of **National Microfinance Bank Ltd vs Neema Akeyo (NMB) (Civil Appeal 511 of 2020) [2022] TZCA 44 (21 February 2022);** I hereby order the applicant to pay the respondent a compensation equivalent to 6 months' salary calculated at 6 X 23,148,600/- which equals to 138,891,636/-. Therefore in total, the applicant shall pay the respondent a total sum of **Tshs 162,040,236/-** and a certificate of service pursuant to Section 44(2) of the ELRA.

Dated at Dar es Salaam this 25th day of April, 2022.

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S.M. MAGHIMBI
JUDGE