

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

REVISION NO. 271 OF 2022

DISMASS DOMINICK NSINDO APPLICANT

VERSUS

NMB BANK PLC RESPONDENT

*(Arising from the decision of the Commission for Mediation and Arbitration at Ilala in
Labour Dispute No. CMA/DSM/ILA/928/20/34/21)*

JUDGEMENT

S. M. MAGHIMBI, J;

The application beforehand was made under the provision of Section 91(1) (a), (b), 91(2) (a), (b), 91(4) (a), (b) and 94((1) (b)(i) of the Employment and Labour relations Act [CAP. 366 R.E 2019] ("ELRA") and Rules 24(1), 24(2) (a), (b), (c), (d), (e) and (f) and 24(3) (a), (b), (c), (d) and 28(1) (c), (d), (e) of the Labour Court Rules, G.N 106 of 2007 ("LCR"). He is moving the court for orders that this court call for records of the Commission for Mediation and Arbitration for Ilala ("CMA") in Labour Dispute No. CMA/DSM/ILA/928/20/34/21 ("the Dispute") in order to examine and satisfy itself as to the correctness,

legality and propriety of the proceedings and award of the CMA. He also prayed for any other relief that the court may deem fit and just to grant. The application was lodged by a notice of application and a Chamber Summons supported by an affidavit of applicant dated 24th August, 2022. On her part, the respondent opposed by filing a notice of opposition and counter affidavit affirmed by Ms. Sharifa Karanda, a Principal Officer of the respondent, dated 12th September, 2022.

Before going into the determination of the merits or otherwise of this application, it is prudent that the brief background of the matter is narrated. The applicant was employed by the respondent since 2011 (EXD1) on a permanent contract in a position of Microsoft Dynamics Specialist. He was promoted to various positions up to the position of Manager Security, the position he held until his termination on 10th November, 2020. The applicant was terminated from employment on the ground of misconducts following a loan application in the year 2017, whereby he requested to be granted secured Personal Loan Facility to the tune of Tshs 150,000,000.00. After due diligence done by the Respondent the Applicant was granted only Tshs 120,000,000.00 (Collective Exhibit N4).

The securities to the abovementioned loan included the applicant's personal property situated at Plot No. 102, Block A, YomboVituka, Temeke Municipality in Dares Salaam. It was the valuation report of this security property that got the applicant into trouble whereby on 10th November 2020, the Applicant was terminated by the respondent for the reasons that in 2017, the Applicant submitted forged valuation report that he used to acquire the personal mortgage loan and henceforth exposed the bank to high risk. Aggrieved by the termination, the applicant referred the matter to the CMA claiming for unfair termination. After hearing the parties, the CMA was satisfied that the respondent had valid reasons for terminating the applicant and that he followed the proper procedures and eventually dismissed his claim. Still convinced that his termination was unfair, the aggrieved applicant has lodged this revision on the on the following grounds:-

- i. That, the Honourable Arbitrator erred in law and facts in holding that the termination of the employment contract by the respondent was fair both procedural and substantial
- ii. That, the Honourable Arbitrator erred in law and facts by failure to differentiate the employment relationship thereby reached to the wrong findings.

- iii. That, the Honourable Arbitrator erred in law and fact by failure to analyze and evaluate evidence tendered by the parties thereby reached to wrong findings.
- iv. That, the Honourable Arbitrator erred in law and facts by finding that the applicant was granted dispensation of the bank procedure in respect to the duty to conduct valuation of the security to allow the applicant to use his own valuer in the due process of applying loan facility consequently thereof reached to the wrong findings.

The application was disposed by way of written submissions. Before this court, the applicant was represented by Mr. Emmanuel William Kessy, Learned Counsel whereas Mr. Leonard Masatu, Learned Counsel appeared for the respondent. The application was disposed by way of written submissions.

In his submissions to support the application, Mr. Kessy submitted that the respondent had no fair and valid reason to terminate the applicant. He added that the procedures for termination were also not followed. He argued that pursuant to the provision of section 37 of the ELRA, it is the duty of the employer to prove that the termination was fair. To support his submission the counsel cited the case of **Standard**

Chatered Bank T. Ltd vs Linas Simon (Revision 378 of 2019)
[2020] TZHCLD 46 (08 May 2020) where that position was held.

On the reasons for the termination, Mr. Kessy submitted that as per the termination letter (exhibit N18), the reason for termination was based on the allegation that the applicant submitted to the respondent forged evaluation report to obtain loan facility which exposed the respondent's bank to high financial risk. He argued that it was the respondent's duty to prove that the applicant submitted the forged valuation report and further prove by forensic report that the said valuation report was a forged document. Further that there is no any document on record to prove that the applicant submitted the forged valuation report and that even the register book (exhibit D4) does not prove such fact while the said register shows that the applicant submitted his original title deed certificate on 31/10/2019.

Mr. Kessy disputed the testimonies of DW1 and DW2 that the same does not prove that the applicant was the one who submitted the contested valuation report. He went on to submit that the respondent's loan policy does not require the applicant to conduct and submit valuation report. Rather he was supposed to fill the loan application form and submit the title deed to the respondent who was required to

conduct valuation of the security before granting the loan. Mr. Kessy submitted further that the alleged reason for termination of employment does not relate to the conduct of the applicant while performing his duties related to his employment. He insisted that the reason for termination relates to borrower and lender in which the respondent had to follow procedures for mortgage contract but not to terminate the applicant's employment. He added that the loan agreement (exhibit N4 collectively) under clause 21.0 (b) provided for the governing law and jurisdiction in case of any dispute in relation to any breach of the loan agreement and/or in connection to the loan agreement the dispute to be referred to the High Court Commercial Division. Thus, the Arbitrator wrongly held that the applicant contravened section 15:15 subsection 9.9.1, 9.9.2 and 9.9.8 of the Respondent's Human Resource Policies of 2019 as the policy only applies when the applicant dishonestly performed his employment duties.

As to the loan procedures and policy, Mr. Kessy submitted that it is the respondent's duty to ascertain the legality of the security of all related documents to the loan facility before granting the loan pursuant to clause 8.1 of the loan policy (exhibit D2). He contended that DW1 testified that the applicant applied for dispensation of the loan procedure

and was granted the same, however, there is no any evidence in record to prove such allegation. It was further submitted that the valuation report (exhibit N1) and (exhibit N2) was an afterthought by the respondent as the same was prepared after the commencement of the disciplinary hearing and the applicant had already appeared before the first disciplinary hearing. He insisted that the Arbitrator was wrong to consider evidence which was prepared after commencement of the disciplinary hearing. That the respondent never suffered any loss in relation to the loan granted to the applicant because he is still in possession of the original title deed of the house worth TZS. 192,000,000/=.

Mr. Kessy went on to submit that the Arbitrator wrongly relied on the case of **Charles Mwita Siaga Vs. National Microfinance Bank Plc (Criminal Appeal 112 of 2017) [2022] TZCA 227 (29 April 2022)** to find out that the respondent had fair reason to terminate the applicant's employment.

As to termination procedures, Mr. Kessy submitted that the same were not adhered to as provided under Rule 13 of the Employment and Labour Relations (Code of Good Practice) Rules, G.N. No. 42 of 2007 ("the Code"). He stated that the respondent was supposed to conduct

investigation to ascertain whether there were grounds for a hearing to be held however, he argued, the investigation was conducted after the applicant was served with a charge sheet. The counsel went on to insist that the termination procedures were not followed at all in this case.

As to the reliefs claimed, Mr. Kessy insisted that the applicant was unfairly terminated both substantively and procedurally thus, he is entitled to the order of reinstatement as prayed at the CMA. He therefore urged the court to revise and set aside the CMA's decision.

In reply, Mr. Masatu submitted that on the basis of the evidence on record, it is clear that the applicant was fairly terminated both substantively and procedurally. He added that the evidence of DW1 and DW2 proved the misconducts levelled against the applicant. That the applicant tendered the letter dated 30/09/2020 (exhibit N1) showing the efforts of the bank to verify the valuation report brought by the applicant. He stated that the Director of Temeke Municipal Council responded to such letter (exhibit N2) that the valuation report purported to be prepared by S. Mbapila was not prepared by the staff from Temeke Municipal Council. It was further submitted that the respondent conducted investigation and the report revealed that the valuation report submitted by the applicant was not genuine.

Mr. Masatu went submitting that all misconducts levelled against the applicant were proved. Starting with the misconduct of dishonesty, Mr. Masatu submitted that the same has been proved by the evidence of DW1 who proved that the applicant submitted fraudulent valuation report hence it was fair to terminate him from employment. To support his submission Mr. Masatu referred the court to the case of **Bank of Tanzania Vs. Adrian Leonard Kaozya (High Court Labour Division) (Revision 96 of 2019) [2020] TZHC 845 (21 April 2020)** and emphasized that since the applicant was working in the financial institution, offences like providing false information, forgery and dishonesty could not be tolerated in the banking industry. To strengthen his submission the counsel referred to range of decisions including the decision of this court in the case of **TPB Bank Plc Vs. Ahobokile Mwanjoka (High Court Labour Division) (Revision 476 of 2020)** while quoting the case of **NMB Bank Plc Vs. Andrew Aloyce LCCD 2013** the court held that:-

"The applicant is in the banking industry where honesty by its employee is the key stock in trade: without it, its business would collapse with dire consequences not only to the employer and its other employees but also to the economy at

large. It is true therefore that the nature of the bank's demands a unique degree of honesty from its employees such that any show of dishonesty amounts to grave misconduct and may be sanctioned more severely than if it committed in any less honest sensitive industry."

Mr. Masatu continued to submit that the applicant's argument that the dispute ought to have been referred to High Court Commercial Division pursuant to clause 21.0 (b) of the loan agreement has no merit, that the referred clause does not bar the respondent to take disciplinary measures against the applicant in case of any misconduct.

Submitting on the fairness of the procedures for termination, Mr. Masatu maintained that the same were properly followed by the respondent. Regarding the argument that the investigation was not properly conducted, the counsel disputed such submission and added that the investigation was conducted and the applicant was properly afforded the right to be heard. To support his submission the counsel cited the case of **Serenity on the Lake Limited Vs. Dorcas Martin Nyanda [2019] TZCA 64, Civil Appeal No. 33 of 2018.**

On the reliefs sought, Mr. Masatu submitted that the applicant was fairly terminated both substantively and procedurally hence, he is not

entitled to the reliefs claimed. He therefore urged the court to dismiss the application and uphold the CMA's decision.

After considering the parties submissions and the records before me, the issue for determination is whether the termination of the applicant was procedurally and substantively fair. As sequenced by the parties, I will start with the fairness of the reasons for termination. As rightly submitted by Mr. Kessy and held by the Arbitrator, the law (Section 39 of the ELRA) imposes the duty to the employer to prove that the termination was fair. Further to that, the demands of Section 37 of the ELRA requires employers to terminate employees on fair and valid reason only. This is also the position in the **International Labour Organization (ILO) Convention No. 158 of 1982**. The Convention sets out the conditions under which employment contracts can be terminated, and imposed a duty on employers to give a valid reason for termination of employment contracts. Article 4 of the Convention provides that: -

"The Employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based

on the operation requirements of the undertaking, establishment of services.”

(Emphasis is mine).

In the application at hand the applicant's employment contract was terminated on the ground of misconducts namely; dishonesty, forgery and providing false information to the Bank which are disciplinary offences under section 15.15 (9.9.1), (9.9.2) and (9.9.8) respectively of NMB Bank Plc Human Resources Policies 2019 (exhibit N9) as it is reflected in the termination letter (exhibit N18). The misconducts levelled against the applicant originates in January, 2017 when the applicant applied a mortgage loan for TZS 120M whereas on applying for the loan, he used the residential house/collateral located on Plot Number 102, Block A, Yombo Vituka, Dar es salaam with Registration CT No. 35292, LO No. 113293. The investigation report stated that when applying for the loan the applicant was supposed to use the Bank approved Valuer but he asked for special dispensation that was given to him by the Chief Credit Officer – Tom Borgos on 27th January, 2017. Thereafter the applicant submitted the valuation report purported to be prepared by one S. Mbapila from Ministry for Lands, Valuation section, Dar es salaam. The applicant strongly disputed such findings on the

reason that there is no proof that he applied for special dispensation and that there is no prove he was the one who submitted the purported forged evaluation report.

Looking at the loan application/form (exhibit N4) when applying for the loan the CCO recommended as follows:-

"Recommended for

refinancing staff loan (secured) Tshs 120 million on exceptional basis as staff has valuation report prepare by a valuer outside NMB's approve panellist. Recommended subject registration of LM over house after transfer of title."

Again in his written statement of defence on additional charges (exhibit N15) on response to complaint number 1 the applicant responded as follows:-

- 1. "I strongly dispute the allegations that I submitted to the bank a fake/forged valuation report. I further state that the valuation report submitted to the bank 2017 during my loan application was not fake/forged as it was genuinely issued by Temeke Municipal Council.*

2. I went to Temeke Municipal asking for Valuation Report of my plot, I was directed by office no. 2 and been told to give the site location to Mr. Kagimbo for site visiting as the process of doing valuation, which I did. Also, I was told to come after one week to collect my report as it would be already completed."

On the basis of the evidence on record, it is sufficient to prove on balance of probabilities that the applicant applied for dispensation of the normal loan procedures and he was granted thereto as evidenced in exhibit N4. Even in his defence the applicant did not dispute his involvement in the submission of the purported forged valuation. The applicant only disputed the fact that the valuation report was fake but he admitted that he went to Temeke Municipal council to apply for the contested valuation report the evidence which definitely proves that he was the one who submitted the contested valuation report.

The respondent went further to prove that the submitted report was forged as it is evidenced by the Municipal letter dated 07/10/2020 (exhibit N2). Therefore, on the basis of such evidence and in the absence of any evidence to counter it, it is crystal clear the respondent proved the misconduct of dishonesty levelled against the applicant.

As to the second misconduct of forgery, since the first misconduct is proved that the submitted report was not genuine it falls that the same was forged by the applicant who submitted the same. Regarding to the misconduct of providing false information, the same was also proved by the respondent since the submitted report contained false information that the report was prepared by Suzan Mbapila an officer from Temeke Municipal Council while such information was not true as evidenced by exhibit N2. In the premises, the all misconducts levelled against the applicant were proved. Thus, as rightly found by the Arbitrator, the respondent had a valid reason to terminate the applicant's employment.

Coming to the second issue as to termination procedures, as indicated above, the applicant was terminated on the basis of misconduct. The termination procedures on ground of gross misconduct are provided under Rule 13 of the Code. In the application at hand the applicant contended that investigation was conducted after the respondent was summoned to the disciplinary hearing. The record shows that the applicant was summoned to the first disciplinary hearing on 17/09/2020. In the outcome of the said hearing (exhibit 11) the committee at page 8 stated that they hesitated to make decision regarding the outcome of the case considering the contradictory

evidence presented by the witnesses. Three valuation reports were presented, thus they recommended further investigation to be conducted so as to arrive to a fair and informed decision.

After the committee's recommendation the respondent proceeded with the investigation regarding the valuation reports submitted and it was found that the applicant submitted forged valuation report as stated above. After the investigation the applicant was served with the additional charge sheet (exhibit N8) and he responded thereto as reflected in exhibit N15. Then the second disciplinary hearing was held on 05/11/2020 where the applicant was found guilty with the charged misconducts and consequently terminated. On the basis of such evidence, it is my view that the respondent followed the termination procedures as they are provided under Rule 13 of the Code. As correctly found by the Arbitrator the applicant was afforded the right to be heard. Thus, the respondent followed the stipulated procedures hence the termination procedurally fair.

Turning to the last issue of the reliefs sought, since it is found that the applicant was fairly terminated both substantively and procedurally, I find the present application to be lacking merits hence no reason to

interfere with the findings of the arbitrator. Consequently, this application is hereby dismissed in its entirety.

Dated at Dar es Salaam this 02nd December, 2022.



A handwritten signature in blue ink, appearing to be 'S.M. Maghimbi', written over a horizontal dotted line.

S.M. MAGHIMBI
JUDGE