

**IN THE HIGH COURT OF TANZANIA**  
**LABOUR DIVISION**  
**DAR ES SALAAM**  
**REVISION APPLICATION NO. 443 OF 2021**

**BETWEEN**

**BAKARI MNIPA.....APPLICANT**

**AND**

**LEDGER PLAZA BAHARI BEACH..... RESPONDENT**

**RULING**

*Date of Last Order: 23/03/2022*  
*Date of Ruling: 08/04/2022*

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

The employment relationship between the parties commenced on 13<sup>th</sup> November 2006 when the applicant was employed by the respondent as an Accountant in a one (1) year fixed term contract. The contract was renewed on different contractual terms up to 19<sup>th</sup> October 2020, when the same was terminated by the respondent on the reason applicant attained compulsory retirement age.

Aggrieved with the termination, applicant knocked the doors of the Commission of Mediation and Arbitration (CMA) claiming that respondent breached the contract. After hearing evidence of both sides, the

arbitrator issued an award in favour of the applicant. Applicant was not satisfied with the award as a result, he filed this application seeking the court to revise the said award. It is worth to note that at CMA, applicant was represented by Trofmo Tarimo, Advocate, while the respondent was represented by Praygod Jimmy Uisso, Advocate.

When I perused the CMA file, I found that both witness for the applicant and respondent testified not under oath. I therefore asked the two advocates who appeared also before me to address the effect of witnesses to testify not under oath.

Responding to the issue raised by the court, Mr. Tarimo, Advocate for the Applicant, submitted that it is mandatory for witness to testify under oath. That, a witness takes oath promising that he will tell nothing but the truth. He conceded that the record does not show that witnesses testified under oath. He concluded that the omission vitiated the whole CMA proceedings and prayed that the award be quashed and set aside and order trial *de novo*.

On his part, Mr. Uisso, Advocate for the respondent, joined hands with counsel for the applicant that CMA record does not show that oath was taken before witness testifying. He added that the omission vitiated CMA proceedings and prayed that the matter be heard *de novo*.

It is mandatory that every witness must take oath or affirm before testifying at CMA. In fact, Rule 19(2) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, GN. No. 67 of 2007, provides for the power of the arbitrator to administer oath or affirmation at CMA and require witness to take oath or affirm before testifying. The said Rule provides: -

*"19(2) The powers of the Arbitrator include to-*

*(a) **administer an oath or accept an affirmation from any person called to give evidence;***

*(b) summon a person for questioning attending a hearing, and order the person to produce a book, document or object relevant to the dispute, if that person's attendance may assist in resolving the dispute". [Emphasis added]*

The said Rule 19(a) (supra) is read together with Rule 25(1), (2) and (3) of Labour Institution (Mediation and Arbitration Guidelines) Rules, GN. No. 67 of 2007 which requires a witness to testify under oath. The later Rule also provides guideline on how hearing can be conducted after taking oath. Rule 25(1) provides that: -

*"25(1) The parties shall attempt to prove their respective cases through evidence and **witnesses shall testify under oath** through the following process..."*

Basing on the wording of the above cited Rules, taking oath by a witness is a mandatory requirement of law. Its omission vitiates the whole proceedings. This position has been emphasized by the Court of

Appeal in the case of ***Catholic University of Allied Sciences (CUHAS) v. Epiphania Mkunde Athanase***, Civil Appeal No. **257/2020** (unreported) that: -

*"Where the law makes mandatory for a person who is competent witness to testify on oath, the omission to do so vitiates the whole proceedings because it prejudices the parties' cases"*

A similar position was taken in the case of Joseph ***Elisha v. Tanzania Postal Bank***, Civil Appeal No. **157/2019** (unreported).

That being the position of the law, I agree with submissions by both counsels because DW1 and PWI who were the only witnesses who testified at CMA, their evidence was recorded not under oath. I therefore have no other option than nullifying the whole CMA's proceedings and quash the CMA's award. The CMA file is remitted back to CMA for the dispute between the parties to be heard *de novo* by another arbitrator without delay.

Dated at Dar es Salaam this 8<sup>th</sup> April 2022



B.E.K. Mganga  
**JUDGE**

Ruling delivered on this 8<sup>th</sup> April 2022 in the presence of Trofmo Tarimo, Advocate for the applicant and Praygod Uisso, advocate for the respondent.



A handwritten signature in black ink, appearing to read "B. E. K. Mganga".

B. E. K. Mganga  
**JUDGE**

Labour Court-TZ.