

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

REVISION APPLICATION NO. 185 OF 2021

BETWEEN

EQUITY BANK TANZANIA LTD.....APPLICANT

AND

ANTIGON FRATERN MROSO..... RESPONDENT

RULING

Date of last order:08/12/2021

Date of Ruling: 08/2/2022

B.E.K. Mganga, J

The respondent was employed by the applicant as Senior Relation Manager Credit Risk Analyst. Amongst the duties of the respondent was to analyze loan applications from applicant's customers and forward them to the Manager for approval. In 2017 applicant got information allegedly that respondent was involved in malpractice. Based on that information, on 27th May 2019 applicant terminate employment of the respondent on ground that he committed gross misconduct.

Aggrieved by termination, respondent filed labour dispute No. CMA/DSM/ILA/492/19/227 to the Commission for Mediation and

Arbitration hereinafter referred to as CMA. In the CMA F1, respondent indicated that termination of his employment was based on invalid reasons and further that procedures for termination were not adhered to. In the said CMA F1, respondent claimed to be reinstated without loss of remuneration, be paid severance, one-month salary in lieu of notice and compensation for 78 months' salary.

On 1st April 2021, J.R. Kato, Arbitrator delivered an award in favour of the respondent that termination was unfair both substantively and procedurally. The arbitrator therefore awarded the respondent to be paid TZS 124, 124,296/= being one-month salary in lieu of notice, severance pay for seven years and thirty (30) months' salary compensation.

Applicant was aggrieved by the said award hence this application for revision. In support of the application, applicant filed the affidavit of Prisila Clemence, her Legal Service Manager. On the other hand, respondent filed the notice of opposition and a counter affidavit sworn by Charles Kisoka, his advocate to oppose the application.

I perused the CMA record and find that Antigon Fratern Mroso (Pw1), Bahati Dollo (DW1) and Jackline Minja (DW2) the only witnesses who testified at CMA, their evidence was recorded not under oath. When the application was called for hearing on 8th December 2021, Mr.

Frank Kirian, advocate appeared for the applicant while Mr. Charles Mathias Kisoka, advocate appeared for the respondent. Before allowing the parties to submit on grounds of revision contained in the affidavit in support of the application, I asked them to address the court the effect of this omission.

Responding to the issue raised by the court, Mr. Kirian, counsel for the applicant submitted that the omission vitiated the whole proceedings and the award arising therefrom. He therefore prayed the court to quash proceedings and the award and remit the file to CMA for the dispute to be heard *de novo*. Mr. Kisoka, counsel for the respondent concurred with the submissions made by counsel for the applicant.

I entirely agree with submissions of both counsels that failure of the witnesses to take oath or affirm before testifying vitiates the entire proceedings and the award arising therefrom as it was held by the Court of Appeal in the case of ***Iringa International School v. Elizabeth post***, Civil Application No. 155 of 2019, ***Tanzania Portland Cement Co. Ltd v. Ekwabi Majigo***, Civil Appeal No. 173 of 2019 (unreported), ***Joseph Elisha v. Tanzania Postal Bank***, Civil Appeal No. 157 of 2019 [unreported], ***Unilever Tea Tanzania Limited v. Davis Paulo Chaula***, Civil Appeal No. 290 of 2019 (unreported) to mention by a few.

It is my considered view that taking an oath or affirmation before a witness testifies is a mandatory requirement of the law. This requirement is provided for under section 4(a) of the Oaths and Statutory Declaration Act [Cap. 34 R.E 2019] and Rule 25(1) of the Labour Institutions (Mediation and Arbitration Guideline) Rules, GN. No. 67 of 2007.

The logic and reasons for the position taken by the Court of Appeal, in my view, is that, when a witness testifies under oath or affirmation, promises to tell nothing but the truth and submits himself or herself to his/her God or any other superior power that he /she should be punished if he/she tells lies. This does not mean that all who takes oath or affirmation tells the truth, but the court or a judicial body, in the first place has to be assured that the witness will tell nothing but the truth. No judicial officer is ready to waste time and other resources knowing that the witness will tell lies. Not only that but also, taking an oath or affirmation is in compliance with the law. The courts are there to ensure that there is compliance with the law. If laws are enacted and being ignored, then, there is no need of enacting them. But the effect of failure to comply with the law may have a far-reaching effect to the society, which is why, laws has to be complied with. It is for that reason;

courts have insisted more than once that the law has to be complied with. For the foregoing, I hereby nullify CMA proceedings, set aside the award arising therefrom, remit the CMA file to CMA for the dispute between the parties to be heard de novo before a different arbitrator without delay, if the parties are still interested. I further order that the dispute should retain its CMA number.

Dated at Dar es Salaam this 8th February 2022.



B.E.K. Mganga
JUDGE