

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

**LABOUR REVISION NO. 412 OF 2020**

**BETWEEN**

**MBONIPA KASASE..... APPLICANT**

**VERSUS**

**TANZANIA REVENUE AUTHORITY..... RESPONDENT**

**JUDGMENT**

*Date of Last Hearing: 28/01/2022*

*Date of Judgment: 28/01/2022*

**I. Arufani, J.**

The applicant, Mbonipa Kasase was employed by the respondent, Tanzania Revenue Authority as an Assistant Custom Officer. He was thereafter promoted to the position of Assistant Tax Officer, the position he held until when he was terminated from his employment. On 26<sup>th</sup> August, 2013 the applicant was charged and found guilty of disciplinary offence of gross negligence in the performance of his duties, contrary to schedule 2 (21) of the TRA Staff Regulations 2009 (Revised Edition of 2010).

It was stated that, when the applicant was on duty between 9<sup>th</sup> and 13<sup>th</sup> April, 2013, he negligently examined goods in two containers and recorded false examination remarks in the Asycuda++ which

attracted lesser amount of tax. Thus, the applicant's employment was terminated on 23<sup>rd</sup> October, 2013. After being dissatisfied by the said decision the applicant appealed to the respondent's disciplinary review body which was the Commissioner General of TRA who confirmed the Management Disciplinary Sub-Committee's decision.

As the applicant was aggrieved by the decision, he referred the matter to the CMA. After hearing the evidence from the parties, the CMA found the applicant was unfairly terminated. Following the stated finding the Arbitrator awarded the applicant six months salaries as compensation for the alleged unfair termination of his employment and a certificate of service. Being dissatisfied by the CMA's decision the applicant filed the present application in this court to challenge the award issued by the CMA.

When the application came for hearing the applicant appeared in the court in person and the respondent was represented in the matter by Ms. Jackline Chunga, learned advocate from the respondent's legal department. Following the prayer made to the court by the applicant, the parties were allowed to argue the application by way of written submission. Having received the submission from the parties and while preparing the judgment, the

court found the witnesses testified before the CMA were not administered to oath before adducing their evidence as required by the law.

Having observed the stated irregularity, the court summoned the parties and required them to address it about the stated irregularity. The applicant told the court that, as long time has passed from when the matter was heard at the CMA he does not remember if the witnesses were administered to oath before giving their evidence or not. He told the court he is leaving the matter to determine it basing on the stated irregularity.

On her side the counsel for the respondent told the court that, the record they have do not show if the witnesses gave their evidence under oath. She told the court that, when the case was before the CMA, the respondent was being represented by private advocate, hence they do not know if the witnesses were administered to oath before adducing their evidence as required by the law or not. The applicant and the counsel for the respondent told the court that, as it is a mandatory requirement of the law that, witnesses are required to give their evidence while under oath and as the record of the matter brought to the court does not show the witnesses gave

their evidence under oath, they are praying the court to order the matter be heard *de novo*.

After hearing the applicant and the counsel for the respondent in relation to the irregularity found by the court in the proceedings of the CMA the court has gone through the record of the CMA and find it is not indicated anywhere in the proceedings of the CMA if the witnesses testified at the CMA they gave their evidence under oath as required by the law. The court has found the law as provided under Rule 25 (1) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, GN. No. 67 of 2007 is very clear that, in the whole process of receiving evidence by the CMA, witnesses are mandatorily required to give their evidence on oath. That means during examination in chief, cross examination and re-examination witnesses are supposed to be under oath.

The issue of requirement to administer oath to witnesses before taking their evidence as provided under the above cited provision of the law was clearly elucidated by the Court of Appeal of Tanzania in the case of **Iringa International School V. Elizabeth Post**, Civil Appeal No. 155 of 2019, CAT at Iringa (unreported) where it was

stated that, the requirement for witnesses to take oath before giving their evidence at the CMA is mandatory.

That being the position of the law the court has found that, as the evidence of the witnesses testified in the matter at hand were taken without oath the remedy available for the stated irregularity is to nullify the whole proceedings of the CMA from where the witnesses started adducing their evidence and order the matter be tried de novo as prayed by the parties. In the premises the proceedings of the CMA from where the parties started to adduce their evidence is nullified and the award issued on the basis of the nullified proceedings is quashed and set aside for being procured irregularly and illegally. The court is ordering the matter to be tried de novo before another competent Arbitrator. The file of the CMA to be remitted immediately to the CMA to expedite retrial of the parties' dispute. It is so ordered.

Dated at Dar es Salaam this 28<sup>th</sup> day of January, 2022.



I. Arufani

**JUDGE**

28/01/2022



**Court:** Judgment delivered today 28<sup>th</sup> day of January, 2022 in the presence of the applicant in person and in the presence of Ms. Jackline Chunga, advocate for the respondent. Right of appeal to the Court of Appeal is fully explained to the parties.



*I. Arufani*

I. Arufani

**JUDGE**

28/01/2022

Labour Court TZ.