

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

MISCELLANEOUS LABOUR APPLICATION NO. 361 OF 2021

BETWEEN

NATIONAL BANK OF COMMERCE (NBC) LTD APPLICANT

VERSUS

MARIAMU MABULA RESPONDENT

RULING

S.M. MAGHIMBI, J.

The applicant herein filed the present application urging for the following orders:-

- i. That this honourable court be pleased to interpret its decision/judgement and decree in Revision No. 916 of 2018 between National Bank of Commerce (NBC) LTD v. Mariamu Mabula on grounds set forth in the annexed affidavit and on such other grounds which may be adduced on hearing date.
- ii. That this honourable court be pleased to determine the dispute in the manner it considers appropriate

The application was disposed by way of written submissions. Mr. Innocent Felix Mushi, learned Counsel appeared for the applicant whereas Mr. Stephen Ndila Mboje, learned Counsel was for the respondent. I appreciate the comprehensive submissions of both

Counsels which shall be taken on board in due course of constructing this ruling.

The Mr. Mushi strongly submitted that the applicant has complied with the court's order by paying the respondent 12 months salaries and severance pay. He argued that the respondent's allegation that the salary arrears have not been paid is contrary to the meaning of reinstatement as it is provided under section 40 (1) (a) and 40 (3) of the Employment and Labour Relations Act [CAP 366 RE 2019] (ELRA). On his part, Mr. Mboje insisted that the court's order is quite clear which needs no further interpretations.

Having heard the parties and having gone through the decision of this court in controversy, for easy of reference I will start by quoting the court's order which the applicant pleases this court to interpret:-

"The applicant has submitted that in the banking- industry where honest and trust are key factor an orders for re-instatement is not appropriate remedy and he cited the case of Twiga Bancorp. I agree with the submission that the position is correctly stated and this court has reiterated the position in several cases. In the case at hand, the CMA awarded the respondent with the order for re-instatement without loss of

remuneration and in alternative, to pay the respondent the compensation of salaries from the day she was unfairly terminated (02/11/2015) to the date of the CMA award which is 28/09/2018 plus a compensation of twelve months salaries for unfair termination. It is my finding that the CMA award was lawful to the extent that the applicant have to compensate the respondent for salaries from the day she was terminated 02/11/2015 to the date of CMA award 28/09/2015 plus 12 month salaries for unfair termination. Therefore, re-instatement order is hereby set aside and the compensation order by the CMA is upheld."

From the above quotation I entirely agree with Mr. Mboje that the Court's order was clear and needs no further interpretation. The order was straight forward that the applicant should pay the respondent salaries from the date of termination on 02/11/2015 to the date of the delivery of the award at the CMA on 28/09/2018. This Court ordered:

*"It is my finding that the CMA **award was lawful** to the extent that the applicant have **to compensate the respondent** for salaries **from the day she was terminated 02/11/2015 to the date of CMA award 28/09/2015"***

This means that the part of the award that ordered the compensation of the respondent from the date of termination to the date of the CMA was UPHOLD by this court and the applicant is liable to pay the respondent that amount. In addition to that, the court FURTHER ordered payment of compensation equivalent to 12 months salary hence the holding:

*"the applicant have to compensate the respondent for salaries from the day she was terminated 02/11/2015 to the date of CMA award 28/09/2015 **plus** 12 month salaries for unfair termination.*

I don't think the Honourable Judge could have been more clear than the word plus meaning in addition to. The applicant is a bank so I am sure they know better of the interpretation of the word plus in issue of payment. This court ordered two categories of compensation, one is salaries from the date of termination to the date of the award and the other was 12 months salaries. The two compensations were in addition of the other and not in complimentary of the other one.

It was Mr. Mushi's submissions that the applicant is not liable to pay the respondent that amount because the order of reinstatement was set aside by the decree of this court. Indeed the order of reinstatement was set aside but that was all that was set aside. Not the order of compensation from the date of termination to the date of the CMA

award, the order and the further order of compensation of twelve are still in force and the applicant is liable to make those payments. Just in case it was Mr. Mushi's wish that by setting aside the order of reinstatement, then the order of compensation would have died, I think he should have just taken time to go through the simple English meaning of what the judge held:

*"Therefore, **re-instatement order** is hereby **set aside** and the **compensation order by the CMA is upheld.**"*

Very simple and straight forward! The order which was set aside was only the reinstatement order and not compensation. The compensation order was even stated by the Court, I therefore fail to understand where Mr. Mushi fell out in understanding the meaning of the order.

I have noted that in his submissions, Mr. Mushi contested that Section 40(a)(b)&(c) of ELRA provides three remedies which are reinstatement, re-engagement or compensation whereby he argued that the respondent is insisting on compliance with Section 40(a) which was set aside. He then argued that the position of the respondent is contrary to what the law says. At this point I must comment, much as Mr. Mushi is disguising himself on throwing the arguments on the respondent, but it is obvious that he is attacking the order of this court in relation to the

provisions of Section 40. This is insubordination on the part of the learned Counsel because being a learned counsel, he knows very well the proper channel to challenge the decision or orders of this court and it is not by filing a simple application for interpretation in disguise. So I will not entertain the part of argument which challenged the order of the court in disguise.

Having made that observation, I don't think we need to labor for what is clearly on the face of record. The applicant is liable to pay the respondent two categories of compensations; arrears of her salaries from the date of termination plus 12 months' salaries as compensation. Now if the record is undisputed that the applicant has paid the respondent the twelve months' salary compensation, then the remaining unexecuted part of the decree is the respondent's salaries from the day she was terminated 02/11/2015 to the date of CMA award 28/09/2018 which the applicant is still liable to pay.

I have also noted a clerical error in the order of this court and for the sake of further clarity, I rectify the clerical error on the judgment of this court. The date of the CMA's award is written in the judgment as 28/09/2015 instead of 28/09/2018 which actually is. Therefore the compensation to be paid as order will range from the 02/11/2015 when

the applicant was unfairly terminated to the 28/09/2018 when the CMA award was issued. It is so ordered.

Dated at Dar es Salaam this 19th day of April, 2022.




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S.M. MAGHIMBI
JUDGE