

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

REVISION NO. 513 OF 2020

BETWEEN

BRITISH BROADCASTING CORPORATION (BBC)..... APPLICANT

VERSUS

JOHN SOLOMBI RESPONDENT

JUDGMENT

S.M. MAGHIMBI, J:

On the 01st April 2013, the respondent herein was confirmed employment by the applicant as Broadcast Journalist. The employment was eventually terminated on 6th August 2019 for what was alleged to be a gross misconduct and violation of the Applicant's policies. The Respondent was aggrieved by the termination and successfully referred his grievance to the Commission for Mediation and Arbitration for Kinondoni ("CMA") vide Labour dispute No. CMA/DSM/KIN/823/19. On 30th October, 2020 the CMA delivered its award holding that the termination of the Respondent's employment was substantively and procedurally unfair, subsequently

ordering the applicant to pay the respondent compensation to the tune of TZS. 96,483,997.50.

Aggrieved by the said decision, the applicant has preferred this application under the provisions of Section 91 (1) (a) and (2) (b) and (c), Section 94 (1) (b) (i) of the Employment and Labour Relations Act Cap 366 R.E of 2019 ("the ELRA"), Rule 24 (1); Rule 24 (2) (a), (b), (c), (d), (e) and (f); Rule 24 (3) (a), (b), (c) and (d) and Rule 28 (1) (c), (d) and (e) of the Labour Court Rules, Government Notice No. 106 of 2007 ("the Rules"). She is moving this Court for the following:

1. That, this Honourable Court be pleased to call for records and examine the proceedings of the Commission for Mediation and Arbitration at Dar es salaam in Labour Dispute Number CMA/DSM/KIN/823/19/550 with a view to satisfy itself as to legality, property, rationality, logical and correctness thereof.
2. That, the Honourable Court be pleased to revise and set aside the CMA Arbitration Award made on the 30th October 2020 by the Honourable Alfred Massay Arbitrator.

The above mentioned prayers were sought on the following grounds:-

- a) That, the Arbitrator erred in law and fact, for failing to address the issues that were raised during the hearing.
- b) That, the Arbitrator erred in law and fact, for failing to analyze and evaluate the evidence that were tendered by the Respondent hence reached into a wrong conclusion.
- c) That, the Arbitrator erred in law and fact, in holding that there was on valid reason for termination while the Respondent clearly admitted the misconducts.
- d) That, the Arbitrator erred in law and fact in holding that the Respondent was not aware of the Applicant's Expenses Policy that he was using for more than 9 years.
- e) That, the Arbitrator erred in law and fact for putting irrelevant matters into consideration and ignoring relevant facts and evidence.

In her affidavit to support the application, an affidavit which was deposed by Mr. Luka Elinganya, learned advocate representing the the applicant, the applicant raised the following legal issues:

- a) Whether the Arbitrator erred in law and fact, for failing to address the issues that were framed by the parties during the hearing hence making award improper.
- b) Whether the Arbitrator erred in law and fact, for failing to analyze and evaluate the evidence that were tendered by the Respondent hence reached into a wrong conclusion.
- c) Whether the Arbitrator erred in law and fact, in holding that there was no valid reason for termination while the Respondent clearly admitted the misconducts.
- d) Whether the Arbitrator erred in law and fact in holding that the Respondent was not aware of the Applicant's Expenses Policy that he was using for more than 9 years.
- e) Whether the Arbitrator erred in law and fact for putting irrelevant matters into consideration and ignoring relevant facts and evidence.

On his part, the respondent opposed the application by filing a notice of opposition under Rule 24(4) of the Rules and the grounds set out in the counter affidavit deposed by the respondent himself on the 29/01/2021. On 26th July, 2021 when this matter was called for hearing, I ordered the

revision to be disposed of by way of written submissions. Both parties filed their submissions accordingly hence this ruling.

Having gone through the records of the CMA, I got stuck with an irregularity I observed in the proceedings of the CMA. I have failed to follow the proceedings in order to come up with an informed decision. I realized that the proceedings have so many irregularities which made me question their authenticity. First of all, the proceedings include two types, one is a one page hand written proceedings followed by a bundle of typed proceedings attached to the file. My concern started with the fact that if one looks at the typed proceedings, they are purported to be the typed version of what transpired during hearing. Unfortunately there are no original handwritten proceedings to follow up on whether the typed ones are right. Much as I understand that the proceedings may be typed directly, but these particular started with a reflection of what transpired by the handwritten proceedings and continued to be narrated thereon. At this point, when the matter came for judgment, I asked the parties to address me on the mode which the arbitrator was recording the proceedings of the court, both Ms. Vicencia Fuko, learned advocate representing the applicant and Ms. Maria Mushi, learned advocate for the respondent confirmed that

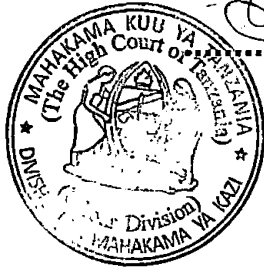
at the CMA, the Arbitrator was recording the proceedings by hand. That means there should have been handwritten proceedings in the file, while there was none!

The above notwithstanding, I have also been concerned with the way the exhibits were received (if at all they were received). The typed proceedings are a continuous narration of evidence and so is the part where the exhibits were received. However, having gone through the whole records, I did not see any exhibits that were received to reflect what is narrated in the proceedings. All the documents concerning the case that I found on records reflected the corresponding numbers that were assigned in the documents by the parties when they were either filing an affidavit, or a list of additional documents. So what is the meaning of the omission to label the exhibits that were received? It is as good as there was no exhibit that was received.

Consequent to the above, it means the Arbitrator proceeded to determine the case and referred to exhibits that were not received in court. So the evidence that was relied upon is not the evidence in the eyes of the law. that was received in court. This irregularity is fatal and vitiates the whole proceedings of the CMA. Consequently the proceedings of the CMA

are hereby nullified and the subsequent award set aside. The file is remitted back to the CMA to be heard afresh before another arbitrator with competent jurisdiction to determine the matter.

Dated at Dar-es-salaam this 21st day of February, 2022.



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

S. M. MAGHIMBI
JUDGE