

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

**REVISION APPLICATION NO. 27 OF 2022**

*(Arising from an Award issued on 29<sup>th</sup> November 2021 issued by Hon. Alfred Massay, Arbitrator in  
Labour Complaint No. CMA/DSM/ILALA/R.58/17 at Ilala)*

**BETWEEN**

**NATIONAL BANK OF COMMERCE ..... APPLICANT**

**AND**

**FRANSISCA ASSEY ..... RESPONDENT**

**RULING**

*Date of Last Order & Ruling 15/06/2022*

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

Fransisca Assey, the respondent, was an employee of the National Bank of Commerce, the applicant, serving as Bank Teller. Her employment with the applicant commenced on 17<sup>th</sup> November 2008. On 17<sup>th</sup> January 2017, she filed Labour complaint No. CMA/DSM/ILALA/R.58/17 before the Commission for Mediation and Arbitration (CMA) at Ilala alleging that she was being harassed by the applicant during work hours which caused miscarriage of her pregnancy. She indicated in the CMA F1 that the applicant was humiliating and

threatening to terminate her employment which led to miscarriage of her pregnancy. She indicated further that the dispute arose on 28<sup>th</sup> December 2016. On 29<sup>th</sup> November 2021, Hon. Alfred Massay, Arbitrator having heard evidence of both sides, issued an award that there was grave discrimination in the form of harassment and awarded respondent to be paid TZS. 100,000,000/= as general damages.

Applicant was aggrieved by the said award as a result, she filed this application for revision. In support of the Notice of Application, applicant filed the affidavit sworn by Sweetbert Mapolu, her Relation Manager. In the said affidavit, applicant raised a total eight (8) grounds for determination by the court. On the other hand, respondent filed both the Notice of Opposition and the Counter affidavit.

When the application was called for hearing on 15<sup>th</sup> June 2022, Mr. Godfrey Tesha, learned counsel appeared for and on behalf of the applicant while Mr. Dismas Raphael, learned counsel appeared for and on behalf of the respondent. Before the two learned counsel had conversed the grounds of revision, I invited them to address the court on propriety of the CMA proceedings.

Mr. Tesha learned counsel for the applicant responded that he perused the CMA record and find that proceedings were not properly

recorded and that the same does not reflect correctly what transpired at CMA. He went on that, there are discrepancies on dates and contradiction such that, occurrence of events cannot be ascertained. That, the handwritten proceedings are not readable. Mr. Tesha submitted further that, the record shows that on 3<sup>rd</sup> July 2020, Hon. Massay, Arbitrator recorded in the proceedings that the matter will be reassigned. That, it was reassigned to Hon. Massawe, Y, Arbitrator, who, on 29<sup>th</sup> September 2020 returned the file to Hon. A. Massay, to proceed with the hearing. Counsel for the applicant went on that, the record shows that on 4<sup>th</sup> December 2020, Hon. A. Massay proceeded with the hearing to the conclusion. Mr. Tesha submitted further that, there are a lot of irregularities that has rendered the whole proceedings a nullity. He therefore invited the court to nullify the whole CMA proceedings, quash, and set aside the award arising therefrom and order trial *de novo*.

On his part, Mr. Raphael, learned counsel for the respondent was of the similar view that proceedings have discrepancies and a lot of inconsistencies. He submitted that proceedings are governed by the laws of procedures that are hand maid of justice and that if there is violation of these laws and rules, justice cannot be done or seen to have been done. He therefore concurred with the submissions by counsel for

the applicant that proceedings be nullified and order trial *de novo* so that proceedings can be properly recorded by another arbitrator without delay.

As submitted by both counsels, the CMA proceedings does not reflect correctly what transpired at CMA during hearing and there are a lot of discrepancies and contradictions. Some of them are as pointed by both counsels in their submissions. In addition to what was pointed out by both counsels, I will give just few examples of what I noted in both the handwritten and typed proceedings. Both the handwritten and typed proceedings shows that Fransisca Assey (PW1) gave her evidence in chief on 15/3/2018. In the handwritten proceedings it was recorded on 15/3/2018 further that examination in chief shall continue and thereafter the matter was adjourned for hearing on **28/11/2017** but the typed proceedings shows that it was adjourned for hearing on **18/4/2017**. The handwritten proceedings shows further that the matter was adjourned to 9/1/2017, 9/10/2017, 2/11/2017, 19/6/2017, 23/6/2017, 23/6/2017, 16/5/2018, 13/6/2018, 28/8/2018, 19/7/2018, 7/8/2018, 1/10/2018, 14/11/2018, 7/3/2019, 18/3/2019 for hearing but nothing proceeded. The handwritten proceedings show further that **cross examination was conducted on 22/3/2019** without showing as to

when examination in chief continued and ended. On the other hand, the typed proceedings show that on 15/3/2018 the matter was adjourned to 18/4/2017, 16/5/2018, 16/5/2018, 28/8/2018, 14/11/2018 and that on this date (14/11/2018) examination in chief of Fransisca Assey (PW1) continued then the matter was adjourned for hearing on 29/11/2018 when examination in chief of PW1 also continued. The typed proceedings shows further that the matter was adjourned to 8/12/2018 for cross examination of PW1 but cross examination was not conducted as a result it was adjourned to 4/2/2019, 7/3/2019, 29/3/2019 when cross examination was conducted. While the **handwritten** proceedings shows that **cross examination of PW1 was conducted on 22/3/2019**, the **typed** proceedings shows that the **cross examination was conducted** a week later namely, on **29/3/2019**. Yet the arbitrator certified and signed the typed proceedings as correct.

From the foregoing, I agree with submissions by both counsels that the CMA record does not reflect correctly what transpired at CMA during hearing stage of the complaint. It is my view that proceedings should always reflect what transpired in the hearing of the matter and that should always reflect chronological of event and sessions. If there is reassignment, reasons thereof should be reflected in proceedings. It is

my view that proceedings that does not reflect what transpired during hearing like the application at hand, cannot be acted upon. The reason behind this conclusion is that sanctity of proceedings cannot be established hence those proceedings are reduced to nothing like any record taken by any person during the nocturnal drinking sessions and not in an official business of administering justice to the parties. As pointed out hereinabove, with all discrepancies pointed out, Mr. Massay, arbitrator certified that the typed proceedings are correct and reflect the handwritten ones. In my view, those proceedings can only be accepted by people who are enjoying and are overwhelmed by nocturnal drinking session and not the sober ones in the administration of justice.

Connected to the above, in the application at hand, Mr. Massay recorded that the matter will be reassigned to another arbitrator, but no reasons were disclosed. The matter was reassigned to Massawe, Y, arbitrator without disclosure of reasons thereof. Again, the matter went back to Massay who heard to conclusion but without disclosure of the reasons behind this forward and backward reassignment.

In my view, all the pointed-out irregularities vitiated the CMA proceedings. I therefore agree with submissions by both counsels and nullify CMA proceedings, quash, and set aside the award arising

therefrom, and order the complaint be heard *de novo* before another arbitrator without delay.

Dated at Dar es Salaam this 15<sup>th</sup> June 2022.



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

Ruling delivered on this 15<sup>th</sup> June 2022 in the presence of Godfrey Tesha, Advocate for the applicant and Dismas Raphael, Advocate for the respondent.



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

