

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

REVISION APPLICATION NO. 446 OF 2021

*(Arising from the Award issued on 30th December 2019 by Hon. Wilbard G.M., Arbitrator, in Labour
Complaint No. CMA/DSM/ILA/R.1114/18/424 at Ilala)*

BETWEEN

JUDITH CHIRWA 1ST APPLICANT
RUTH MBWANA MZIRAY 2ND APPLICANT
ZARUKI ABDALLAH 3RD APPLICANT
ZAITUNI SHABANI WILLIAM 4TH APPLICANT
SCOLASTICA HENRY 5TH APPLICANT
SALEHE JUMA KITENGE 6TH APPLICANT
RAMADHANI A. MWANYIRO 7TH APPLICANT
MARTIN NKONDAKAYA 8TH APPLICANT

AND

COMPLEXE LIMITED RESPONDENT

RULING

Date of last Order & Ruling: 19/7/2022

B. E. K. Mganga, J.

On diverse dates, the respondent employed Applicants on different capacities. It is said that due to operation requirements, respondent terminated employment of the applicants on 8th October 2018. Aggrieved

with termination, applicants filed the complaint before the Commission for Mediation and Arbitration henceforth CMA claiming that they were unfairly terminated. On 30th December 2019, Hon. Wilbard G.M, Arbitrator having heard evidence of both sides, issued an award that termination of employment of the applicants was fair. Applicants were not satisfied by the award, as a result, they file a joint affidavit in support of the notice of application seeking the court to revise the said award. On the other hand, the respondent filed both the notice of opposition and the counter affidavit opposing the application.

On the date of hearing, applicants were represented by Mecky Humbo, their Personal Representative while respondent was represented by Castor Rweikiza, learned Advocate. Before the parties has conversed the grounds of revision, I notified them that the CMA record does not show that witnesses testified under oath or affirmation. I therefore asked the parties to address the court the effect of the evidence of Huruka Samwel Kanonyele (DW1), Scola Makoloweka (PW1), Hellen Sabas Mwenda (PW2) and Lulu Mugenga (PW3) who are the only witnesses on record, to be recorded not under oath or affirmation.

Mr. Humbo, the personal representative of the applicants having been shown the handwritten CMA record, conceded that the record does

not show that witnesses testified under oath or affirmation. He briefly submitted that the effect is that evidence of all witnesses was rendered worthless hence cannot be acted upon by the court. He therefore prayed that CMA proceedings be nullified, the award be quashed and set aside and order trial *de novo*.

Mr. Rweikiza, learned counsel for the respondent joined hands with Mr. Humbo by conceding that the CMA record does not show that witnesses testified under oath. He therefore concurred to the prayer of nullification of CMA proceedings and order trial *de novo*.

I agree with submissions made on behalf of the parties and their prayer that CMA Proceedings be nullified and quash the award arising therefrom because that is the correct position of the law 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 clear in my mind that the position is settled that the arbitrator has power in terms of section 20(1)(c) of the Labour Institutions Act [Cap. 300 R.E. 2019) and Rule 19(2) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, GN. No. 67 of 2007, to administer an oath or affirmation to a person called as a witness. More so, it is a mandatory requirement under the provisions of 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 that before a witness testifies, must take an oath or affirmation. The CMA record is loud that these provisions were violated. Therefore, guided by the above cited Court of Appeal decisions, I hereby nullify CMA proceedings and order trial *de novo* before a different arbitrator without delay.

Dated at Dar es Salaam this 19th July 2022.



B. E. K. Mganga
JUDGE

Ruling delivered on this 19th July 2022 in the presence of Mecky Humbo, Personal Representative of the applicants and Castor Rweikiza, Advocate for the respondent.



B. E. K. Mganga
JUDGE