

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**LABOUR REVISION NO. 127 OF 2021**

*(From the Ruling of the Commission for Mediation and Arbitration of Pwani at Mkuranga dated 24<sup>th</sup> day of February 2021 in Labour Dispute No. CMA/PWN/MKR/31/2020)  
(By Mkombozi: Arbitrator)*

**BETWEEN**

**WUZHOU INVESTMENT COMPANY LTD.....APPLICANT**

**VERSUS**

**PAUL SONDOLE JUMAL.....RESPONDENT**

**JUDGMENT**

**28<sup>th</sup> June 2022 & 19<sup>th</sup> July 2022**

**K. T. R. MTEULE, J.**

This is an application seeking for this court to call for the record of Commission for Mediation and Arbitration in Labour Dispute No. CMA/PWN/MKR/31/2020 to satisfy itself as to the appropriateness and legality of the ruling in respect of the application to set aside an ex-parte award issued therein. The application further seeks for this court to quash the said ruling and make an order for the matter to be heard interparty.

From the record of CMA, the affidavit of the Applicant and the submission in support of the Application, it shows that the Applicant

employed the Respondent as a Security guard on a fixed term contract which commenced from 03<sup>rd</sup> April 2018 with a monthly salary of TZS 150,000. In August 2020, the respondent was terminated for an alleged lock out initiated by the employer (respondent).

The termination aggrieved the Respondent who lodged a complaint in the CMA where after the failure of mediation, the matter went to arbitration. The arbitration was heard ex-parte and the award was issued in Respondent's favour. Being dissatisfied with the award the applicant filed in the CMA, an application to set it aside. The said application was dismissed hence the present application. The application is disputed by the Respondent's counter affidavit.

The application was argued by a way of written submissions, where the applicant was represented by Ms. Amina Mkungu, Advocate while respondent was represented, by Ms. Jackline Kayombo, Advocate. Their submissions approached 5 legal issues which were framed by the Applicant. The issues are:-

- (a) Whether it was proper for the Hon. Arbitrator to order for an ex-parte hearing for non-appearance of the applicant on the first date fixed for Arbitration hearing.

- (b) Whether it was proper for the Hon. Arbitrator to order for Ex-parte Arbitration Hearing without considering the principles of Natural Justice particularly the right to be informed.
- (c) Whether the Hon. Arbitrator used excessively his discretionary power to order ex-parte Arbitration hearing to the Detriment of the Applicant.
- (d) Whether there's any legality and proprieties for the Honorable Arbitrator to disregard the reasons adduced by the Applicant in the Application to set aside an ex-parte award.
- (e) Whether it is proper for the Honorable Arbitrator to dismiss the Applicant's application to set aside an ex-parte award.

The Applicant's counsel Ms. Amina Mkungu blamed the arbitrator on what he claims to be a defiance to the stages of arbitration. In her view the arbitrator ought to have sought the reason of the absence of the applicant as one of the actions to be taken at the preliminary step. She asserts arbitrator's noncompliance with the principles of natural justice for failure to afford the applicant an opportunity to be

heard which contravenes Article 13 of the Constitution of the United Republic of Tanzania.

Ms. Amina Mkungu challenged the arbitrator's disregard to the reasons of the applicant's officer's bereavement which caused the failure to attend court hearing. The Applicant's Human Resource officer claimed to have received information of the demise of his father on his way to attend court session on the same date when ex-parte hearing was ordered.

The Respondent's counsel Ms. Jackline Kayombo disputed the applicant's assertion. In her view, the arbitrator complied with the law which allows him to proceed with ex-parte hearing when the respondent does not appear on the date of hearing for expeditious justice. In his view, no principle of natural justice has been infringed. In her view the reasons of Applicant's absence did not hold water since the Applicant being a company, could have been represented by any other officer before the CMA. Ms. Jackline Kayombo is of the view that the arbitrator did not excessively use her discretionary power on the basis that, no evidence was adduced as to when the Applicant's Principal officer travelled or when funeral ceremony took

place. She prayed for the court to dismiss the application for want of merit.

Having considered parties' submissions on the issues raised in the applicant's affidavit, I am inclined to address an issue as to **whether the applicant has established sufficient grounds to warrant revising of the CMA ex-parte award.**

The law is clear. **Section 88 (8) (a) of the Employment and Labour Relations Act, Cap 366** confers a discretion to the arbitrator to order ex-parte hearing and proceed ex-parte when the respondent does not appear in court. It is not disputed that the applicant missed appearance and there was no notice of such nonappearance. The arbitrator can not be blamed for exercising her discretion to order ex-parte hearing due to unaccounted absence of a party. The arbitrator acted within the powers conferred to him by the law. I would not differ with the CMA on the validity of the order to proceed ex-parte.

The question to be resolved now is whether after the missed appearance, the applicant adduced sufficient reasons for the absence to warrant an order to set aside the ex-parte award. This Court finds it worth to direct itself to the well-known principle that for the

application to set aside an ex-parte award to be granted, the applicant is placed on a duty to establish good cause or sufficient ground/reason to convince the court (See **Mbeki Teachers Sacco's V. Zahra Justas Mango**, Revision No. 164 of 2010, High Court Labour Division at Mbeya, (Unreported)). This is one of cases where the Court held that sufficient reason is pre-condition for the Court to set aside ex-parte order.

What amounts to good cause has been a subject of discussion in various cases, one being the case of **Attorney General v. Tanzania Ports Authority & another**, Civil Application No. 87 of 2016. From this case, the following words are quoted:-

*"Good cause includes whether the application has been brought promptly, absence of any invalid explanation for the delay and negligence on the part of the applicant."*

What constitute a good cause needs to be determined by reference to all the circumstances of each particular case. In the instant matter the CMA record reveals that the applicant had a good tendency of appearing before the Commission for mediation, except the only one day on 21<sup>st</sup> October 2020 when the matter was set for arbitration after the failure of mediation. For furtherance of substantive justice

and right to be heard in the impugned matter, a benefit of doubt could have been given to the Applicant to see if there could have been any reason of absence. It is deponed that the Applicant's Principal got the news of her father's demise while on the way coming to attend the court session. In my view, this could be a sufficient cause to enable the CMA to channel the hearing of the matter through a more just procedure of hearing the matter inter parties by setting aside its ex-parte award.

From the above legal reasoning, since this Court is the Court of equity, I am of the view that for the sake of substantive justice, the principle of natural justice must be observed, including the right to be heard by allowing parties to be heard interparty. In the case of **Palm Beach Casino V. Theresa Martin**, Miscellaneous Application No. 54 of 2019, High Court, Labour Division, at Dar es Salaam, (Unreported), this Court held that right to be heard is fundamental right which will be infringed when the party is not heard before being condemned.

Basing on the nature of this application I agree with the Applicant's Counsel on the principle in the case of **Meis Industries Limited & 2 Others v. Twiga Bankcorp**, Misc. Commercial Cause No. 243,

HC, at Dar es Salaam in supporting what amount to sufficient cause cannot be defined by a hard and fast rule but depends on the circumstances of each case. The respondent's assertion regarding awareness and negligence on the part of the applicant lacks legal merits, as there was no history of applicant's negligence and she has been acting promptly throughout except the day the principal officer failed to attend due to the demise of her father. In a reasonable apprehension the arbitrator ought to consider this as a reasonable cause to allow the application to set aside the ex-parte award. This calls for a need to revise the CMA ruling.

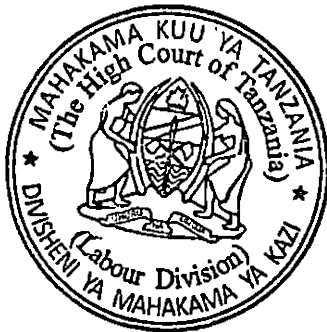
From the above reasons, it is my finding that the issue as to **whether the applicant has established sufficient grounds to warrant revising of the CMA decisions** in respect of ex-parte award is answered affirmatively.

Therefore, for the interest of substantive justice and since the applicant had reasonable cause of missing appearance, I hereby quash the decision in Labour Application No. CMA/PWN/MKR/01/2020, set aside the award therein and replace it with an order to set aside the CMA ex-parte award issued in Labour Dispute No. CMA/PWN/MKR/31/2020. CMA records of Labour Dispute



No. CMA/PWN/MKR/31/2020 to be returned to the CMA to proceed with hearing inter-parties from the stage it was before the order to proceed ex-parte. The Application is therefore allowed. It is so ordered.

Dated at Dar es Salaam this 19<sup>th</sup> day of July, 2022.



  
**KATARINA REVOCATI MTEULE**

**JUDGE**

**19/07/2022**

Labour Court TZ.