

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

REVISION NO. 288 OF 2021

BETWEEN

SAVEKI SECURITY SERVICES LIMITED APPLICANT

VERSUS

RAMADHANI SAIDI ABDALLAH & OTHERS RESPONDENTS

JUDGEMENT

S. M. MAGHIMBI, J.

The present application emanates from the decision of the Commission for Mediation and Arbitration for Ilala ("CMA") in Labour Dispute No. CMA/DSM/ILA/510/2020/228 dated 11th June, 2021. At the CMA, the respondents who were employed as Drivers of the applicant were terminated from their employment on ground of retrenchment. Aggrieved by the termination, the respondents lodged a dispute at the CMA who found that the respondents were unfairly terminated both substantively and procedurally. Following such findings, the respondents were awarded one month salary in lieu of notice, leave payment, severance pay as well as twelve (12) month's salaries as compensation for the alleged termination. Dissatisfied by the CMA's decision, the applicant filed the present application on the following grounds: -

- i. That the Arbitrator erred in law and in fact by taking into account matters which he ought not to consider in reaching the award hence arrived at a wrongly premised award.
- ii. That the Arbitrator erred in law and in fact by deciding among others that the disciplinary hearing against the respondent was unfairly procured while the respondents were involved in the retrenchment exercise.
- iii. That the Arbitrator unjustifiably exceeded her discretion by awarding 12 month's salaries to the respondent without justification.

The application proceeded by way of written submissions. Before the court Mr. Jacob C. Minja, Learned Counsel appeared for the applicant whereas Ms. Janeth Kazimoto, Learned Counsel was for the respondents.

In his submissions in support of the application Mr. Minja pointed two illegalities which allegedly transpired during arbitration, I find it prudent that I determine the pointed illegalities first before going to the merits of the application.

The first illegality pointed out was that the Arbitrator never appended her signature after recording the evidence of each witness thus, it amounts to procedural irregularity. He argued that rules of procedure require the Arbitrator to append her signature at the end of the fixed session. He added that the signature ought to be appended immediately before an order of adjournment. To support his position Mr. Minja cited the case of **National Bank of Commerce Limited Vs. Sabas Kessy, Labour Revision No. 277/2020**, High Court Dar es salaam (unreported). He therefore urged the court to nullify the CMA proceedings.

Responding to the pointed irregularity, Ms. Kazimoto submitted that the applicant's advocate should be held responsible for such anomaly because being the officer of the court, Mr. Minja had a duty to notify the CMA or point out such issue during hearing and not at this stage. She therefore urged the court to refrain from nullifying the CMA's proceedings as prayed by Mr. Minja.

After considering the submissions of the learned counsels on the relevant issue, the court had to revisit the CMA proceedings to find out the truthfulness of the said alleged irregularity. Upon perusal of the records, it is revealed that in the handwritten proceedings, the Arbitrator

appended her signature at the end of every witness's statement. She went further by appending her signature at the end of every order given thereto and at the end of each session. On such basis, I find the Mr. Minja's argument to be misleading this court for want of truth. The Arbitrator complied with the requirement of the law and procedure contrary to what was contested by Mr. Minja. In the event, such ground lacks merit and it is hereby dismissed.

The second illegality pointed by Mr. Minja is that the Arbitrator did not determine the preliminary objection raised by the applicant before hearing of the substance of arbitration commenced. He stated that at the CMA, the applicant raised the preliminary objection to the effect that the CMA had no jurisdiction to entertain the matter and the same was not determined by the Arbitrator. On her part, Ms. Kazimoto strongly disputed such fact and submitted that the applicant did not tender any proof that the said objection was raised.

After thorough perusal of the records, it is clear that on 14/09/2020, the applicant herein who was the respondent, filed a notice of preliminary objection at the CMA on the point of law that the court has no jurisdiction to hear and determine the application.

The records further reveal that the above raised objection was not determined by the Arbitrator as the parties were not afforded an opportunity to argue on the same. So what is the effect of such omission; it is a serious procedural irregularity which resulted to infringement of the applicant's right to be heard. It is a matter of procedure that when a preliminary objection is raised, the court should not proceed with the substance of the matter until the same is determined, dismissed or withdrawn. This same position was held by the Court of Appeal in the case of **Zahara Kitindi & Another Vs. Juma Swalehe & 9 others, Civil Application No. 04/05/2017** (unreported) where it was held that: -

"In the wake of preliminary objection, the main application had to be kept at abeyance pending the determination of the preliminary objection."

Being guided by the above decision, it is my view that the CMA was duty bound to determine the preliminary objection first before going to the main application. Taking into consideration the relevant objection questioned the jurisdiction or powers of the CMA to adjudicate the matter, it should have been taken into consideration regardless of the fact whether it has merit or not. As I stated earlier, failure to do so


infringed the parties' right to be heard, a procedural irregularity which cannot be ignored by the court. The remedy is to nullify the proceedings in denial of the right to be heard. Having made those findings, I see no need to dwell on the remaining grounds of revision.

Consequently, the CMA's proceedings from when the preliminary objection was raised and the subsequent award thereto are hereby quashed and set aside. The file is remitted back to the CMA to determine the preliminary objection on record and proceed according to the outcome of the raised of the objection.

It is so ordered.

Dated at Dar es Salaam this 11th July, 2022.




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S.M. MAGHIMBI
JUDGE