

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

REVISION NO. 320 OF 2020

FAMILY CARE DISPENSARY AND PHARMACY.....APPLICANT

VERSUS

STEPHEN MBOJE.....RESPONDENT

(From the decision of the Commission for Mediation and Arbitration at Ilala)

(Mpapasingo: Arbitrator)

Dated 29th January 2020

in

CMA/DSM/ILA/R.250/14

JUDGEMENT

28th & 31st March 2022

Rwizile J

This application is for Revision. It emanates from the decision of the Commission for Mediation and Arbitration (CMA). By the chamber summons, supported by an affidavit of Agnella Chambega a principal officer of the applicant, this application was filed. It has been alleged that the applicant employed the respondent on 1st June 2013. Some months later, the respondent resisted to register himself in the electronic attendance register newly installed in the applicants place of work. The respondent started coming later for work, despite two warning made. The

respondent did not stop coming to work late. He was terminated for that reason on 11th March 2014.

Not satisfied by the termination, he filed a labour dispute with Commission where he was paid the sum of 10,162,143/= as terminal benefits after the commission found he was unfairly terminated. The applicant was aggrieved, hence this application challenging the same.

During the oral hearing, the applicant was represented by Juma Mtatiro learned advocate, while the respondent was represented by Josephat Mmuru learned advocate.

On perusal of the record, it come to my knowledge that the evidence before the commission was recorded without witnesses taking oath or affirmation. When counsel were asked to comment on the effect, they were in agreement that such evidence contradicts the law and asked this court to nullify the same and order a retrial before another arbitrator with competent jurisdiction.

Having given a careful thought of the submission of the parties, I have to note that the law governing recording of evidence under oath is Rule 25(1) of the Labour Institutions (Mediation and Arbitration Guidelines) G.N. No.67 of 2007 which states: -

"The parties shall attempt to prove their respective cases through evidence and witnesses shall testify under oath..."

Further, section 4(a) of the Oaths and Statutory Declaration Act [CAP. 34 R.E.2019] provides: -

"S. 4-

Subject to any provision to the contrary contained in ny written law an oath shall be made by-

(a) Any person who may lawfully be exemined upon oath or give or be required to give evidence upon oath by or before a court"

This court is of the view that, when a witness does not take oath, his evidence has no value and none compliance has devastating effects. This position was stated in the case of [Catholic University of Health and Allied Science \(CUHAS\)](#), Civil Appeal No. 257 of 2020 (unreported), the Court of Appeal stated: -


"Where the law makes it mandatory for a person who is a competent witness to testify on oath, the omission to do so vitiates the proceedings because it prejudices the parties' cases. "

In yet another case of [Iringa International School v Elizabeth Post](#), Civil Appeal No. 155 of 2019, Court of Appeal of Tanzania at Iringa, the court elaborated that: -

"For reasons that the witness before the CMA gave evidence without having first taken oath...and also on the above stated position of the law, we find that the omissions vitiate the proceedings of the CMA... we hereby quash the proceedings both of the CMA and of the High Court. "

There is no dispute therefore to hold that whenever the evidence is not taken under oath /affirmation;(the effect of doing so is expunging the same from the record, because all the witnesses were not sworn. Therefore, the award and proceedings are nullified and the matter is remitted to the Commission for a retrial before another arbitrator with competent jurisdiction.




A.K. Rwizile
JUDGE
31.03.2022