

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

**REVISION NO. 387 OF 2021**

**BETWEEN**

**STAR OIL TANZANIA LTD ..... APPLICANT**

**VERSUS**

**REUBEN WILLIAM MWAKASEGE ..... RESPONDENT**

**JUDGEMENT**

**S. M. MAGHIMBI, J.**

This application emanates from the decision of the Commission for Mediation and Arbitration for Temeke (“CMA”) in Labour Dispute No. CMA/DSM/TEM/309/2020/133/2020 (“the Dispute”) delivered by Hon. Nyang’uye, H. A, Arbitrator on 31/08/2021. The applicant is praying for this court to revise both the proceedings and subsequent award of the CMA. The application was made by the notice of application supported by the affidavit of Mr. Hassan Dewji, the applicant’s Principal Officer. On the other hand, the respondent challenged the application through a counter affidavit of the applicant dated 15<sup>th</sup> November, 2021.

Brief background of the dispute takes us back to the 25/05/2013 when the respondent was employed by the applicant in the position of an electrician. He was terminated from employment on 03/07/2020 after

being charged and found guilty of gross dishonesty. Aggrieved by the termination, the respondent successfully lodged a dispute to the CMA claiming unfair termination. After considering the evidence of both parties the CMA found that the applicant had no valid reason to terminate the respondent. Following such finding the Arbitrator awarded the respondent a total of Tshs. 8,767,000/= being twelve months' (12) salaries as compensation for the alleged unfair termination and severance pay of two years. Aggrieved by the award, the applicant has lodged the present application on the following grounds:

- i. That the Arbitrator grossly misdirected herself by holding as she did, that there was no justifiable reason for termination of the respondent's employment contract, while the allegation against the respondent was gross dishonesty the offence which was not denied even by the respondent himself.
- ii. That the Arbitrator erred both in law and facts by confining herself to the definition of the term '**kukosa uaminifu**' by relying on the applicant's code of conduct only, while gross dishonesty is also an offence under the Code of Good practice, the offences that may justify termination of employment contract on the first incidence.

The application was argued by way of written submissions. Before me, the applicant was represented by Mr. Adam Mwambene, Learned Counsel whereas Mr. Muhindi Said, Personal representative appeared for the respondent.

Arguing in support of the first ground Mr. Mwambene submitted that gross dishonesty is one of the offences which may justify termination in terms of Rule 12(3)(a) of the Employment and Labour Relations (Code of Good Practice) Rules, G.N. No. 42 of 2007 ("the Code"). That in the course of hearing, the respondent admitted to have communicated with the labour officers through short message services (SMS) and that he admitted the fact that he told the Labour Officer that attendants at the meeting with the employees during the inspection were prepared. He continued to submit that based on his own admission to the charges against him, the applicant terminated him.

Mr. Mwambene further submitted that in the course of analysis of his evidence, the Arbitrator established that the respondent committed the offence charged and nowhere he concluded that the words 'giving wrong information' was gross dishonesty in the applicant's manual. He added that the Arbitrator misdirected herself and occasioned injustice to the applicant. The counsel argued that the term gross dishonest is the

appropriate word to describe all actions made with intent to deceive. To support his submission, he cited the cases of **Vedastus S. Ntulanyenka & six others v. Mohamed Trans Ltd, Revision No. 04 of 2014**, High Court Labour Division, Shinyanga Registry (unreported) and **Daudi Migani v. Mantra Tanzania Ltd, Revision No. 66 of 2019**, High Court Labour Division, Dar es salaam (unreported).

Regarding the second ground Mr. Mwambene reiterated his submissions on the first ground and further defined the term dishonesty as it is defined in various dictionaries such as the online Cambridge Advanced Learner's Dictionary & Thesaurus (c) Cambridge University Press; where the same it is defined as "the telling the truth or able to be trusted and not likely to steal, cheat or lie." As well from the Online American Dictionary, Cambridge Academic Content Dictionary (c) Cambridge University Press, where the term honest is defined thus; "of a person) truthful or able to be trusted; not likely to steal, cheat or lie, or (of actions, speech, or appearance) showing these qualities; an honest man; an honest answer. To be honest (=to tell the truth), I didn't like the movie". He submitted that if the Arbitrator would have considered the meaning of dishonesty, he would have arrived to a

different conclusion. He further submitted that honesty goes to the root of every employment contract as there is no employer who will employ an employee who is untrustworthy. To support his submission, he cited the case of **Paschal Bandiho v. Arusha Urban Water Supply & Sewerage Authority (AUWSA), Civil Appeal No. 4 of 2020**. He therefore urged the court to allow the application and quash the CMA's award.

In reply, Mr. Said submitted at length on the source of the dispute in question. As to the merits of the application, he submitted that the respondent was unfairly terminated from employment. He stated that the respondent strongly denied the allegation levelled against him as reflected in the letter of reply to the allegations (exhibit D4). As to the alleged short messages, Mr. Said submitted that the same were not admitted at the CMA because they were not tendered pursuant to Electronic Evidence Act. He further submitted that the cases cited by Mr. Mwambene are distinguishable to the case at hand.

Mr. Said further argued that the termination procedures were not adhered by the applicant. I find no relevance on the argument because the applicant did not dispute the findings on the procedural part of the

termination. In conclusion, he urged the court to uphold the CMA's award. In rejoinder, Mr. Mwambene reiterated his submissions in chief.

After considering the parties rival submissions, I find the court is called upon to determine the grounds for revision herein. In this application, both grounds for revision challenges the findings of the Arbitrator that the applicant had no valid reason to terminate the respondent. As alluded earlier the respondent was terminated from employment on the ground of gross dishonesty. The Arbitrator found that the applicant wrongly terminated the respondent on such ground because the offence charged was contrary to the meaning of gross dishonesty provided in the applicants' Codes of Conduct.

As rightly submitted by Mr. Mwambene gross misconduct in our labour laws is one of the misconducts which may led to termination of employment. This is pursuant to Rule 12(3)(a) of the Codes. The question to be addressed is whether the applicant proved the misconduct levelled against the respondent as required by the law under section 39 of Employment and Labour Relations Act, [Cap 366 RE 2019] ('ELRA'). Looking at the show cause letter (exhibit D5) served to the respondent he was required to answer the allegation against him on gross dishonesty. The letter indicated the following: -

*"Kukosa uaminifu: kwa kitendo cha kutoa taarifa za uongo dhidi ya kampuni kwa maafisa wa Serikali (Maafisa Kazi)"*

The above literally translates that:

*"Gross dishonesty: knowingly giving wrong information to the government officials (Labour Officers)"*

The wrongly information alleged to have been alluded by the respondent is that the employees questioned by the labour officers during inspection were prepared by the applicant. That the respondent gave the alleged information to the labour officer through a short message (sms). On his part, the respondent strongly disputed the misconduct tabled against him though he agreed to have made communication with the labour officer. During disciplinary hearing the respondent admitted to inform the labour officer that the interviewed employees were as if they were prepared by the applicant but it was not a direct information. Under such circumstance it is my view that the fact that the respondent admitted sending the alleged message even in absence of any exhibit suffices to prove that he gave wrong information to the labour officer. However, it is my view that the words altered were not direct ones they were suggestive information which any reasonable

man would have taken those words with caution. The respondent himself was not sure with the information given to the labour officer.

As rightly stated by the Arbitrator in the applicant's office they have their own Codes of conduct and the offence committed by the respondent does not fall within such offence. Even in the employment contract they specifically agreed to be guided by their Codes. This is provided under clause 12 of the respondent's employment contract (exhibit D1) which provides as follows:-

**"12. MASHARTI YA MKATABA**

- a. Mwajiri atatii na kufuata kanuni/taratibu za kampuni*
- b. Nakala ya kanuni za nidhamu na matokeo ya adhabu husika zitapatikana sehemu yako ya kazi."*

Therefore, on the basis of the above agreed term of the contract it is my view that as much as what the respondent did can also be termed as dishonesty since the parties agreed to be governed by their own rules and the offence committed is listed therein, then the same ought to have been adhered. Looking at the applicant's Codes of Conduct offence number 22 is termed as follows:-



*"Kutoa madai ya uongo (inategemea hali halisi ilivyo)"*

The above literally translates that:

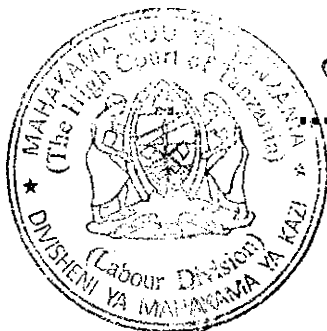
*"Alleging false claims (depends on the circumstance)"*

The evidence on record is directly suggestive that the misconduct committed by the respondent falls with the misconduct quoted above. The applicant's Codes further provided that the punishment for such misconduct for the first offender is warning. Since there is no evidence that the respondent committed such misconduct more than once then termination was not proper sanction to be imposed to him. The termination was substantively unfair.

In the premises, I see no reason to fault the findings of the CMA on the fairness of the termination and the subsequent awards of compensation. This application has no merits and it is hereby dismissed.

It is so ordered.

Dated at Dar es Salaam this 15<sup>th</sup> day of July, 2022.



  
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**S.M. MAGHIMBI**  
**JUDGE**