

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

REVISION NO. 08 OF 2022

*(Arising from the decision of the Commission for Mediation and Arbitration at Ilala in
Labour Dispute No. CMA/DSM/ILA/790/368 (Hon. Msina, H.H; Arbitrator) Dated 26th November, 2021)*

DAMIAN MAKANJILA APPLICANT

VERSUS

AZAM POLYSACKS LTD RESPONDENT

JUDGEMENT

S.M. MAGHIMBI, J;

This application is lodged under the provisions of Section 91(1)(a), 91(2)(b)(c), 94(1)(b)(i) of the Employment and labour relation Act [Cap 366 R.E. 2019] (“ELRA”) and Rule 24(1),24(2)(a)(b)(c)(d)(e)(f), Rule 24(3) (a)(b)(c)(d), Rule 28(1)(a)(b)(c)(d) of the Labour Court Rules, GN. No. 106 of 2007 (“the Rules”). The applicant has moved the court for the following orders;

- i. That this honourable court be pleased to call for records, revise the proceedings and subsequent set aside the whole award of the CMA in Labour Dispute No. CMA/DSM/ILA/790/368 by honourable MSINA H.H. (Arbitrator) delivered on 26th November 2021.

- ii. Any other relief that this honourable Court may deem fit and just to grant.

Briefly; the applicant was employed by the respondent as a Supervisor Treasurer on a fixed term contract of one year commenced from 1st October 2013 to 30th September 2014. After expiry of the first contract on 30th September 2014, the respondent renewed the contract for another period of one year until 30th September 2015. The said contract had been renewed for several times after its expiry and the last contract which is the subject matter of this application was entered on 01/10/2019 and ended on 30/09/2020. When the last contract expired the respondent did not renew it and it is at the point when the dispute arose. The applicant felt aggrieved by the termination of the contract, he therefore filed a dispute of unfair termination at the CMA which was dismissed for want of merits. Aggrieved by the CMA's award, the applicant filed the present application urging the court to determine the following legal issues:-

1. Whether the testimonies of the witness were received without oaths or affirmation.
2. Whether the arbitration did sign at the end of evidence of each witness.

3. Whether the testimony of the witness was signed at the end of the testimony.
4. That the CMA procured and award out of its jurisdiction
5. That the CMA exercised its jurisdiction with material irregularities.
6. That the Arbitrator Award is not supported by the sufficient evidence in arriving at its decision.
7. That the Arbitrator total ignored the applicant testimonies and evidence presented and submitted during Arbitration hearing.
8. That the CMA proceedings were unfair hence miscarriage of justice.

The application proceeded by way of written submissions. Before this court the applicant was represented by Mr. Kelvin Mundo, Personal representative whereas Ms. Zainabu Salum, learned counsel appeared for the respondent.

In his submission in support of the application Mr. Mundo abandoned the third to eighth issues and remained with the first and second only.

As to the first issue Mr. Mundo submitted that at the CMA the respondent's witnesses were Damian Makanjila and Aziza Juma Charila. He submitted that all witnesses testified without taking oath. He argued that the Arbitrator recorded the evidence contrary to Rule 19(2) and

25(1) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, GN. 67 of 2007 (GN. No. 67/2007) therefore the CMA's award is improper. To support his submission, he cited the Court of Appeal case of **Tanzania Portland Cement Co. Ltd vs Ekwabi Majigo** (Civil Appeal 173 of 2019) [2021] TZCA 443 (02 September 2021).

Regarding the second ground Mr. Mundo submitted that the Arbitrator did not sign at the end of each witness's testimony. He stated that the pointed irregularities vitiate the CMA's proceedings and award. To support his preposition, he cited the case of **Yohana Mussa Makubi & Another vs Republic** (Criminal Appeal 55 of 2015) [2018] TZCA 80 (10 July 2018) where it was held that:-

"A signature must be appended at the end of the testimony of every witness and that an omission to do so is fatal to the proceedings."

He also cited the court of Appeal Case of **Iringa International School vs Elizabeth Post** (Civil Appeal 155 of 2019) [2021] TZCA 496 (20 September 2021). Based on the pointed irregularities he urged the court to quash and set aside the CMA's proceedings and award.

In response to the first ground Ms. Salum submitted that both witnesses gave evidence under oath thus, the applicant's ground has no

merit. Regarding the second he stated that in this case the Arbitrator signed in the proceedings at every page to prove the testimony of the witnesses are correct. She added that the Arbitrator also signed on the documents submitted as exhibit. Ms. Salum further submitted to the ground which was abandoned by the applicant I therefore finds no relevance to reproduce her submissions.

In rejoinder Mr. Mundo reiterated his submission in chief.

Starting with the first issue, the requirement to give evidence under oath or affirmation is provided for under Rule 25 (1) of GN 67/2007 which provides as follows: -

'Rule 25 (1) The parties shall attempt to prove their respective cases through evidence and witnesses shall testify under oath through the following process-'

The position of the law above is emphasized in numerous court decisions including the decisions cited by the applicant. As contested in his submission above the applicant is claiming that the respondent's witnesses testified without taking oath. Examining the records, the applicant's submission is contrary to the records available. The record shows that DW1, Aziza Juma Charia was administered oath on 29/03/2021 as it is reflected at page 6 of the CMA typed proceedings.

Again DW2, Damian Daud Makanjila was administered oath on 06/10/2021 as it is reflected at page 19 of the typed CMA proceedings. I therefore find such issue lacks merit.

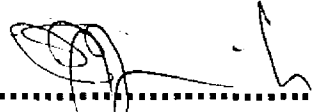
Coming to the second issue, the applicant alleges that the Arbitrator did not sign at the end of each witness's testimony. There is no provision requiring Arbitrators to sign at the end of each witness's testimony as contested. However, the position has been developed by case laws including the Court of Appeal case of **Iringa International School vs Elizabeth Post** (supra) where it was held that:-

"Although the laws governing proceedings before the CMA happen to be silent on the requirement of the evidence being signed, it is still a considered view of this Court that for purposes of vouching the authenticity, correctness and providing safe guards of the proceedings, the evidence of each witness need to be signed by the arbitrator. On this, we need to draw inspiration from the Civil Procedure Code [Cap 33 R.E. 2019] (the CPC) and the Criminal Procedure Act [Cap 20 R.E. 2019] (the CPA) wherein it is mandatorily provided that the evidence of each witness must be signed."

Looking at the matter at hand, I find the pointed irregularity is contrary to the records available. As rightly submitted by Ms. Salum the CMA proceedings shows that the same were rightly signed by the Arbitrator. The Arbitrator also signed when admitting each exhibit tendered before the CMA. Thus, this grounds also lacks merit.

In the result, I find the present application has no merit. Consequently, it is hereby dismissed. The Arbitrator's award is upheld.

Dated at Dar es Salaam this 14 day of September, 2022.



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S.M. MAGHIMBI
JUDGE

