IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION APPLICATION NO. 245 OF 2022

(Arising from an Award issued on 10/3/2022 by Hon. Faraja Johnson, L, arbitrator in Labour Dispute No. CMA/DSM/ILA/636/19 at Ilala)

THE BOARD OF TRUSTEES OF THE NATIONAL SOCIAL SECURITY FUND ..... APPLICANT

VERSUS

ELIZABETH M. NGABO ..... RESPONDENT

JUDGMENT

Date of last Order: 29/09/2022
Date of Judgment: 25/10/2022

B. E. K. Mganga, J.

Facts of this application are that, on 1st April 1977, applicant employed the respondent for unspecified period contract of employment. On 15th September 2005 both applicant and respondent agreed and changed the unspecified term contract of employment of the respondent into fixed term contract renewable. In the said fixed term contract, it was agreed that gratuity payable to the respondent for the period she worked under permanent and pensionable (unspecified period) shall be paid upon attaining compulsory retirement age. It is undisputed fact that, after expiry of each fixed term contracts, respondent was paid gratuity. It is also undisputed that,

respondent attained compulsory age of retirement in 2013 as a result, she retired on 19th September 2013 and was paid TZS 134,718,255.88 as gratuity for the period she worked with the applicant from 1977 to September 2005 when she was employed under unspecified period. Respondent was aggrieved with calculations that led her to be paid TZS 134,718,255.88 based on her last salary in 2005. Upon retirement, respondent claimed to be paid gratuity amounting to TZS 370,723,085.27 based on her last salary i.e., September 2013. Respondent was unhappy with TZS 134,718255.88 she was paid as gratuity upon attainment of compulsory retirement age, claiming that she was under paid TZS 236,004,829.39.

It happened that applicant did not heed to the demand of the respondent to be paid TZS 236,004,829.39 as under paid gratuity. Because of that, respondent filed Civil case No. 266 of 2017 before the Resident Magistrate's court of Dar es Salaam at Kisutu, but applicant successfully raised a preliminary objection based on pecuniary jurisdiction as a result, the suit was struck out. In another attempt, respondent filed Civil case No. 72 of 2018 before the High Court, but the said case was also struck out after respondent has conceded to the preliminary objection raised by the applicant that the Court has no jurisdiction to determine the said suit that was purely a labour matter.

On 9th August 2019 respondent filed Labour dispute No. CMA/DSM/ILA/636/19 before the Commission for Mediation and Arbitration henceforth CMA at Ilala. In the Referral Form (CMA F1), respondent indicated that she was claiming to be paid TZS 286,824,225.48 being interest of the paid gratuity for the duration the same remained unpaid. In the said CMA F1, respondent indicated further that, the dispute arose in August 2016. Being aware that she was out of time, respondent filed the application for condonation (CMA F2) wherein she indicated that she was out of time for three(3) years. Together with CMA F2, respondent filed her affidavit in which she stated that she retired on 19th September 2013 and that she was entitled to be paid gratuity amounting to TZS 3670,723,085.27 based on her last monthly salary but she was paid TZS 134,718,255.88 based on her last salary in 2005 before entering fixed term contracts of employment. In the said affidavit, respondent deponed further that she was underpaid TZS 236,004,829.39. Respondent also deponed that, after several correspondence with the herein applicant, in March 2015 she was paid TZS 236,004,829.39 to settle the underpayment done in 2013. She deponed further that, in paying TZS 236,004,829.39, the herein applicant did not include interest of the paid gratuity for the duration the same remained unpaid between 2013 and 2015 that is a total of three (3) years. In the said affidavit, respondent narrated how Civil case No. 266 of 2017 and 72 of 2018

that she filed before the Resident Magistrate's Court of Dar es salaam at Kisutu and the High Court respectively, were struck out after applicant has successfully raised preliminary objections. On 20th May 2020, Hon. Lemwely, D, mediator, granted the application for condonation filed by the respondent.

On 15th December 2020, the herein applicant raised two preliminary objections that, (i) CMA had no jurisdiction because respondent was a Public Servant, and (ii) the dispute was prematurely filed at CMA because respondent filed it prior exhausting remedies provided for under the Public Service Act. On 17th February 2021, Hon. Faraja Johnson, Arbitrator, having heard submissions of both sides, delivered his ruling dismissing the two preliminary objections raised by the applicant, as a result, the dispute proceeded to arbitration stage. On 10th March 2022, Hon. Faraja Johnson L, Arbitrator, having heard evidence and submissions of the parties issued an award that respondent is entitled to be paid 22% on the delayed gratuity and that payment of interest will be as follows:-

> *Interest at the rate of 22% per annum as from 2013 to 2015 is calculated from Tshs. 236,004,829.39 (sic) being the delayed gratuity as per exhibit P-11, thus making the interest accrued as on 2015(sic) to be TShs.115,264,785.67 (sic).*
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> *Then from 2015 the interest of 22% per annum is calculated from the said accrued Tshs. 115,264,785.67(sic) and up to 2021 the accrued interest at 22% per annum on the said Tshs. 115,264,785.67 (sic) (being the unpaid interest on delayed gratuity) has reached Tshs. 380,062,945.12 (sic)."*

The arbitrator concluded by ordering the herein applicant to pay the herein respondent Tshs. 380,062,945.12 being accrued interest on the delayed paid gratuity up to the end of the year 2021.

Applicant was aggrieved by the above award hence this application for revision. In the affidavit sworn by Frank Mgeta, applicant raised the following grounds of revision:-

1. *The Commission erred in law and facts in entertaining the dispute without jurisdiction.*
2. *The Commission erred in law and facts in entertaining the complaint prematurely from a public servant, who had not exhausted statutory internal mechanism.*
3. *The Commission erred in law and facts for awarding reliefs which the respondent never claimed in CMA Form No. 1.*
4. *The Commission erred in law and facts by granting interest of 22% without any justifiable evidence.*
5. *The Commission erred in law and facts by misapprehending the facts of the nature of the dispute and failed to consider the foundation on which the claim for interest ought to have stood.*
6. *The Commission erred in law and facts by holding that the respondent was entitled for commercial interest of 22% while there was proof that the respondent was paid over and above on what she was entitled under the collective Bargaining Agreement.*
7. *The Commission erred in law and facts by disregarding the evidence of DW1 and DW2 and Exhibits P-3, P-4 which is the foundation on which respondent claims for interest out to have stood.*
8. *The Commission erred in law and facts and totally misdirected himself on principles of law by holding that the respondent was supposed to be fully paid TZS 360,000,000/= in 2012 but she was paid fully in 2015 and*

consequently awarded the respondent the amount of TZS 380,062,945.12 as accrued interest at 22%.

9. *The Commission erred in law and facts by entertaining labour dispute No. CMA/DSM/ILA/636/19, which is an abuse of court process and res judicata to Labour dispute No.CMA/DSM/ILA/R524/14.*

Respondent filed her counter affidavit and the Notice of Opposition resisting the application.

When the application was called on for hearing, Mr. Frank Mgeta, State Attorney, appeared and argued for and on behalf of the applicant, while Emmanuel Ally, Advocate appeared and argued for and on behalf of the respondent.

Mr. Mgeta learned state Attorney, in arguing the application, dropped the 3rd and the 9th grounds and argued (i) the 1st and 2nd (ii) the 4th to the 8th together.

Submitting on the 1st and the 2nd grounds, that relates to jurisdiction, learned State Attorney for the applicant submitted that CMA had no jurisdiction because respondent was employed by the applicant who is a Public Office. He went on that, section 57(b) of the National Social Security Act [Cap. 50 R.E. 2018] established the applicant as a Public Institution owned by the Government and that applicant is managed by the Director General who is appointed by the President under Section 4 and 71A of Cap. 50 R.E. 2018 (supra). Mr. Mgeta submitted further that, applicant's duties is

to provide Social Security Service to the Public, formulate, implement, and review policies relating to Social Security as per Section 55(a) of Cap. 50 R.E. 2018(supra). Learned State Attorney submitted further that, funds of the applicant are allocated and approved by the Minister as per Section 67(4) to (6) of Cap. 50 R.E. 2018(supra) and that her expenditures are audited by Controller and Auditor General (CAG) as per Section 56(d) and 59(2), (3) and (4) of cap. 50 R.E. 2018.

It was further submitted by Mr. Mgeta that, Public Service is defined under Regulation A.152 of the Public Service Standing Order of 2009 GN. No. 493 of 2009 and that employees of the applicant are Public Servant as defined by the Public Service Act [Cap. 298 R.E. 2019]. Learned State Attorney cited the case of ***Sadi Shemliwa v. The Board of Trustee of the National Social Security Fund,*** Revision No. 493 of 2021 to support his submissions that employees of the applicant are Public Servants.

Learned State Attorney further cited section 31(2) of Cap. 298(supra) that servants in Public Institutions are governed by the law establishing the Institution and the provisions of the Public Service Act. He argued further that, section 32A of Cap. 298 R.E.2019 (supra) requires that, prior to seeking remedies provided for in labour laws, Public Servants must exhaust remedies provided for under the Public Service Act. Learned state Attorney submitted

further that, respondent filed the dispute at CMA on 09th August 2019 while the Public Service Act was amended in November 2016. Learned State Attorney cited the case of ***Lala Wino V. Karatu District Council***, Civil Application No. 132/02/2018 CAT, (unreported) to cement on his position that amendment that was done on the Public Service Act in 2016 is on procedure hence covers the respondent. He further cited the case of ***Tanzania Posts Corporation V. Dominic A. Kalangi***, Civil Appeal No. 12 of 2022 CAT (unreported) to support his submissions that CMA had no jurisdiction and that the dispute was filed prematurely.

When asked by the court as whether; CMA had jurisdiction over interpretation of the Collective Bargain Agreement, learned State attorney, cited the provisions of section 74(a) and (b) of the Employment and Labour Relations Act[Cap. 366 R.E. 2019 and submitted that the said section vests jurisdiction to this Court to interpret or implement the provisions of the Collective Bargain Agreements. He went on that, the matter that was at CMA was also touching interpretation and implementation of Collective Bargain Agreement on the amount of gratuity payable to the respondent. He further cited Section 71(3) of Cap. 366 R.E. 2019(supra) and submit that CMA had no jurisdiction on implementation of Collective Bargain Agreement.

Arguing the 4th to the 8th ground, learned State Attorney submitted that, it was improper for the arbitrator to award the respondent interest on delayed payment of gratuity in contravention of the Collective Bargain Agreement (exhibit P3 and P4) without justifiable evidence. State Attorney submitted further that, the arbitrator awarded respondent commercial interest while this is employer and employee relationship. He went on that; the order was also not in conformity with the Collective Bargain Agreement (exhibit P4) which at Page 15 provides a formula for calculation of gratuity. Learned State Attorney argued that the formula excludes the respondent who was employed for fixed term contract of three years renewable and that respondent was paid her gratuity for the fixed term contracts. Mr. Mgeta submitted further that; arbitrator erred to hold that salary of the respondent on the fixed term contract should be used to compute gratuity for unspecified period that ought to have been paid in 2005 prior her employment to change from unspecified period to fixed term contract. Learned State Attorney submitted that, arbitrator disregarded evidence of DW1, DW2 and exhibit P3 and P4 in awarding the respondent. Mr. Mgeta cited the case of ***Ami Tanzania Limited V. Prosper Msele,*** Civil Appeal No. 159 of 2020, CAT (unreported) to support his submissions that respondent did not plead and lay foundation for her to be paid the said interest. State Attorney concluded his submissions by praying that CMA award be quashed and set aside.

Resisting the application, Mr. Ally, learned counsel for the respondent responded to the 1st and 2nd grounds by submitting that respondent was not a Public Servant because Section 3 of Cap. 298 R.E 2019 (supra) defines a Public Servant and Public Office but excludes bodies established under any other law. Counsel for the respondent went on that, applicant was established by Cap. 50 R.E. 2018 (supra) and that, applicant who, was established under the Act of Parliament, is not a Public Office and her employees are not Public Servants. During his submissions, counsel for the respondent, conceded that top management of the applicant is appointed by the President. He was, however, quick to submit that it is not true that applicant has the role of implementing social security service within the country. He cited section 3 of Cap. 50 R.E. 2018 (supra) and submit that the said section provides that NSSF is a fund and that it does not provide that applicant is an Institution. Counsel for the respondent submitted further that **Shemliwa's case** and **Kalangi's case** cited by the applicant are distinguishable. Counsel for the respondent submitted that, in both cases, the issue was termination while in the application at hand, the issue arose from the Collecting Bargain Agreement. Counsel for the respondent went on that, in both cases cited by the applicant, Section 3 of Cap. 298 R.E 2019(supra) was not properly considered by the Court of Appeal. He, therefore, argued that, had the Court of Appeal properly construed the said

section, the findings would have been different i.e., employees are not Public Servant. But when he was further probed by the court, counsel for the respondent conceded that in **Kalangi's case**, the Court of Appeal quoted Section 3. With that, yet counsel for the respondent submitted that this court may refer the matter before the Court of Appeal if it feels that its hands are tied up by ***Kalangi's case***. He therefore maintained that CMA had jurisdiction.

Submitting in relation to what was held by the Court of Appeal in ***Wino's case***(supra), counsel for the respondent argued that the position in the said case as to application of procedural law is proper position of the law. He was however quick to submit that, since Miscellaneous Written Law No. 3 of 2016 did not amend Section 3 of Cap. 298 R.E. 2019(supra), then, the amendment did not affect the respondent hence applicant is not a Public Office and respondent is not a Public Servant. He argued further that, the law establishing the Institution is the one making an Institution to be a Public Institution. He maintained that employees of the applicant are not covered by the Public Standing Orders, 2009.

In his submissions, counsel for the respondent conceded that the issue that led to existence of the application at hand is Collective Bargain Agreement. Mr. Ally submitted further that, CMA had jurisdiction to

determine Collective Bargain Agreement issues and cited section 74(a) and (b) of Cap. 366 R.E. 2019(supra). He argued that, from that provision, CMA had exclusive jurisdiction though the section provides that CMA can deal with mediation and then the matter can be referred to the Labour Court for decision. He further cited section 86(1), (2) and (3) of Cap. 366 R.E. 2019(supra) arguing that the said section provides a procedure on how disputes can be referred to CMA for mediation. He further cited section 86(7)(b), sections 4 and 74 of Cap 366 R.E. 2019(supra), and argued that, if the mediator fails to mediate a complaint as defined in Section 4, shall refer a complaint to arbitration or to a Labour Court. He also cited section 88(2)(a), (b) and (c) of Cap. 366 R.E. 2019 and argued that if mediation fails, the Commission shall appoint the Arbitrator. He concluded that, the Labour Court has no original jurisdiction on labour issues because its jurisdiction is on revision only.

Responding to submissions made on behalf of the applicant on the 4th to the 8th grounds, Mr. Ally counsel for the respondent submitted that, it is not true that there was no evidence justifying respondent to be awarded interest. Counsel submitted that; evidence of respondent (PW1) is clear that there was delay of payment of gratuity because respondent was supposed to be paid gratuity in 2013 but she was paid in 2015. Counsel argued that

respondent filed the dispute in 2019 because there was technical delay. He submitted further that, in the dispute that was filed at CMA, respondent was claiming to be paid interest. When probed further by the Court as to whether; the Collective Bargain Agreement(exhibit P4) had a provision relating to payment of interest, counsel for the respondent conceded that it had no provision relating to payment of interest. He further conceded that respondent was awarded interest. He was, however, quick to submit that exhibit P5 to P11 shows that there were arrears and eventually were paid. Counsel conceded that respondent was initially employed under permanent terms and that, later changed to fixed term contracts and further that, after every expiry of the fixed term contract, she was paid gratuity.

Counsel for the respondent went on to submit that, respondent was claiming gratuity before her employment changed to fixed term contract. He argued further that, respondent's claim was in accordance with exhibit P1 and Collective Bargaining Agreement (exhibit P4). He also submitted that, the formula that was applied to pay gratuity of the respondent in exhibit P16 is similar to the one stated in exhibit P4. Counsel for the respondent conceded further that, according to exhibit P16, respondent was paid gratuity from 1977 to 2005 immediately after retirement.

Mr. Ally submitted further that, the basis of awarding interest to the respondent was delay of payment that denied respondent right to invest that money in the business she chose. Counsel cited the case of ***Robert Scheltens V. Sudesh Kumari Varma & 2 Others,*** Civil Appeal No. 203 of 2019 CAT (unreported) to support his submissions that respondent was unfairly denied by the applicant an economic opportunity to invest the money in any other interest generating ventures. Counsel went on that; respondent was depositing money on fixed term as evidenced by exhibit P14. During submissions, counsel for the respondent conceded that, there was no commercial arrangement between applicant and respondent and that in ***Kumari Varma's case*** (supra), there was commercial arrangement between the parties.

On argument that evidence of DW1 and DW2 were not considered, counsel for the respondent submitted that their evidence did not shake evidence of the respondent and argued further that, evidence of the parties was considered. Counsel for the respondent submitted further that ***Ami Tanzania's case*** (supra) is distinguishable because claims of interest in this case were justified. Mr. Ally maintained that evidence of DW1 and DW2 did not go to the root of the issue in dispute namely, delay of payment of gratuity that led to claims of interest by the respondent. Counsel submitted that

respondent retired in 2013 and was paid gratuity in 2013 and that the remaining claim on gratuity was paid in 2015. When asked by the court as whether; application for condonation was properly granted, counsel for the respondent submitted that respondent filed the dispute at CMA on 19th August 2019 claiming interest showing that the dispute arose in August 2016 and that she indicated in the application for condonation (CMAF2) that she was late for three (3) years. Counsel maintained that condonation was properly granted because the dispute between the parties arose in 2016 as per CMA F1. He however, conceded in his submissions that, the last gratuity payment to the respondent was made in March 2015. Counsel was of the view that, the dispute arose after negotiations between the parties failed. He went on that, after payment in 2015, respondent was making follow up to the applicant and that she only made a decision that there is a dispute in 2016 when she decided to take legal action, which is why, she indicated in CMA F1 and CMA F2 that the dispute arose in 2016. Counsel for the respondent concluded his submissions by praying that the application be dismissed for lack of merit.

In rejoinder, Mr. Mgeta learned State Attorney reiterated his submission in chief that CMA had no jurisdiction to arbitrate Collective Bargain Agreement as per Section 74 Cap 366. R.E. 2019(supra). He

submitted further that, the Collective Bargaining Agreement that was in force at the time when the gratuity from 1977 to September 2009 is exhibit P3 and not P4. Mr. Mgeta submitted that, salary which ought to be used to calculate gratuity of the respondent is salary pertinent to the service when the gratuity became due i.e., September 2005. He argued that DW1 and DW2 testified that, in computing gratuity, applicant used salary as of 14th September 2005 in compliance with exhibit P3. He added that, in order to take into consideration currency depreciation, applicant adjusted the formula under exhibit P3 instead of using 1/3 she used 1/2 as a result, respondent was paid TZS 134,718,255/= instead of TZS 80,000,000/= and concluded that respondent was paid over and above of what she was entitled.

Mr. Mgeta submitted further that, in exhibit P5, respondent requested applicant to use salary of 2013 (on fixed term) to pay gratuity that was due in 2005. He submitted further that, applicant paid respondent TZS 236,004,826/= as additional and in total respondent was paid TZS 370,723,085/= as gratuity. Learned State Attorney submitted further that, interest can only be paid if there is breach of agreement, but in the application at hand, applicant did not breach the Collective Bargain Agreement and further that there was no delay of payment. He insisted that interest was not specifically proved because there was no evidence by the

respondent proving serving after retirement to show that respondent lost business/ investment. He added that exhibit P14 shows serving that matured on 27th September 2013 and interest paid.

On condonation, learned State Attorney submitted that, in paragraph 8 of the respondent's affidavit in support of the application for condonation, respondent indicated that payment of TZS 236,004,839/= was done in March 2015 without including interest. Mr. Mgeta submitted further that; the course of action arose in 2015 hence condonation was not properly granted.

I have carefully examined the CMA record and considered evidence and submissions of the parties and find that it is undisputed that respondent filed the dispute at CMA to enforce the Collective Bargain Agreement, which is why, there was much reliance on the Collective Bargain Agreement in claiming to be paid interests on delay of payment of gratuity. Having heard submissions of the parties, in disposing of this application, I will first deal with jurisdictional issues raised by the applicant and the court when probing the parties in their submissions.

It was submitted by Mr. Mgeta State Attorney on behalf of the applicant that CMA had no jurisdiction because applicant is a public institution and respondent who was her employee, was a public servant. On his part, Mr. Ally learned counsel for the respondent submitted that applicant

is not a public institution and that respondent was not a public servant. With due respect to counsel for the respondent, his submissions are not the correct position of the law. The Court of Appeal discussed in detail in the case of ***Tanzania Posts Corporations vs Dominc A. Kalangi***, Civil Appeal No. 12 of 2022 [2022] TZCA 154 who is the public Servant and the provisions of Section 3 of the Public Service Act[Cap 298 R.E. 2019] that Mr. Ally learned counsel felt to be unhappy with its interpretation. From where I am standing, in no way, I can accept invitation of counsel for the respondent. If he feels unhappy with the said Court of Appeal decision, he knows the way how to challenge it. From the interpretation of the law and being guided by ***Kalangi's case*** (supra) I hold that respondent was a public servant. It is undisputed that respondent filed the dispute at CMA on 9th August 2019 showing that the dispute arose in August 2016. It was correctly submitted by Mr. Mgeta , State Attorney that in 2016 , by the Written Laws(Miscellaneous Amendments)(No.3) Act No. 13 of 2016 amended section 32 by adding thereto section 32A of the Public Service Act [cap. 298 R.E. 2019] to require public servants, prior to seek remedies provided for under labour laws, to exhaust all remedies provided for under the Public Service Act. The president assented to the said Act on 16th November 2016 and was published in the Government Gazette on 18th November 2016. Therefore, at the time of filing the dispute at CMA by the respondent, the

said Act was in force and she was supposed to abide by it. In order not to be covered by the said Act, respondent indicated in the CMA F1 that the dispute arose in August 2016 and prayed for condonation.

It is also undisputed fact that, respondent was paid gratuity in March 2015 and that she filed the dispute at CMA on 9th August 2019 claiming interest on delayed payment of the said gratuity since 2013. It can be recalled that respondent filed the dispute on 9th August 2019 showing that the dispute arose in August 2016 and in the application for condonation, she indicated that she was late for three years. Therefore, condonation was granted based on the said three years delay. It is my settled view that, what respondent deponed in her affidavit in support of condonation shows clearly that the dispute arose in 2013 and she was out of time for more than three years. Therefore, condonation was not properly granted. In the award, the arbitrator held that respondent would have invested her gratuity in Fixed Deposit Receipt (FRD) in 2013 and that by paying him in 2015 she lost profit. This means that the dispute arose in 2013 and not in 2016. It is my view that based on evidence of the respondent, her claim was since 2013 and that is what she was awarded. I therefore conclude that condonation was not properly granted. From 2013 to 2019 when respondent filed the dispute at CMA is more than three years indicated by the respondent in her

application for condonation. The dispute was therefore not properly condoned and heard by the arbitrator.

Again, the central issue that was before the arbitrator is payment of gratuity and reliance was on Collective Bargain Agreements (exh. P3 and P4). It was submitted by Mr. Mgeta, State Attorney for the applicant that CMA had no jurisdiction to interpret or enforce Collective Bargain Agreement. On the other hand, Mr. Ally, learned Counsel for the respondent submitted that CMA had exclusive jurisdiction over Collective Bargain Agreements. With due respect to counsel for the respondent, CMA had no jurisdiction over Collective Bargain Agreement. Section 74(a) and (b) of the Employment and Labour Relations Act[Cap. 366 R.E. 2019] vests jurisdiction to this Court to interpret or implement the provisions of the Collective Bargain Agreements. The said section provides:-

> *74. Unless the parties to a **collective agreement agree** otherwise -*
>
> *(a) a dispute concerning the application, interpretation or implementation of a collective agreement shall be referred to the Commission for mediation; and*
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> *(b) if the mediation fails, any **party may refer the dispute to the Labour Court for a decision**.*

In the application at hand the dispute was heard by the Arbitrator and there is no proof that the Collective Agreements in question provided

jurisdiction to CMA. In terms of section 74(b) jurisdiction over interpretation or enforcement of Collective Agreements is exclusively over the Labour Court. Therefore, CMA had no jurisdiction.

For the foregoing, I hereby hold that CMA had no jurisdiction over the matter. That said and done, I hereby nullify CMA proceedings, quash, and set aside the award arising therefrom.

Dated in Dar es Salaam on this 25th October 2022.

B. E. K. Mganga
JUDGE

Judgment delivered on this 25th October 2022 in chambers in the presence of Kennedy Kasongwa, State Attorney for the applicant and Emmanuel Ally, Advocate for the respondent.

B. E. K. Mganga
JUDGE