

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

**REVISION APPLICATION NO. 323 OF 2022**

*(Arising from an Award issued on 31/8/2018 by Hon. Lucia Chrisantus, Arbitrator, in Labour dispute No. CMA/DSM/ILA/R.440/15 at Ilala)*

**TITUS MAEGA ..... APPLICANT**

**VERSUS**

**NATIONAL INSURANCE CORPORATION (T) LTD ..... RESPONDENT**

**RULING**

*Date of last: 13/3/2023*  
*Date of Ruling: 21/3/2023*

**B. E. K. Mganga, J.**

Brief facts of this application are that, Titus Maega, the applicant, was an employee of the National Insurance Corporation (T) Ltd, the respondent. The position of the applicant was branch Accountant stationed at Life House branch. It happened that on 20<sup>th</sup> July 2015, respondent terminated employment of the applicant for gross misconduct. Aggrieved with termination, applicant filed the dispute before the Commission for Mediation and arbitration (CMA) at Ilala. On 31<sup>st</sup> August 2018, Hon. Lucia Chrisantus, Arbitrator, having heard evidence of the parties issued an

award that respondent had valid reason for termination and further that she followed procedures for termination. Consequently, the arbitrator dismissed the dispute.

Further aggrieved, but being out of time, applicant filed Miscellaneous Application No. 165 of 2021 seeking extension of time within which to file an application for Revision. On 17<sup>th</sup> August 2022, this court(Hon. Katarina Revocati Mteule, J) allowed the application and granted applicant seven(7) days within which to file an application for revision. Applicant complied with the said order hence this application.

The application was scheduled for hearing on different dates but it was adjourned due to absence of the CMA record. On 13<sup>th</sup> March 2023, I asked the parties to address the court as whether, they are in a position to reconstruct the record because all attempts to obtain the CMA record has proved failure and if not, what is the available remedy.

Responding to the issue raised by the court, Mr. Godfrey Ngassa, learned Advocate for the applicant submitted that applicant is not in a position to reconstruct the record because parties were not supplied with CMA proceedings. He submitted further that since the parties are unable to reconstruct the record, the only remedy available is for the court to nullify CMA proceedings and order trial *de novo*.

On his part, Mr. Abeid Buzohela, learned State Attorney for the respondent, concurred with submissions made on behalf of the applicant that parties were not supplied with certified proceedings and that they are unable to reconstruct the record. But the learned State Attorney was not ready for the prayer of nullification of CMA proceedings and order retrial. On his part, he prayed that this application be dismissed.

Due to conflict remedies prayed by the parties, I was forced to compose this Ruling.

It is undisputed by the parties that the CMA record is untraceable. Normally when the record cannot be found, parties are asked to reconstruct the record as an attempt to avoid retrial. See [Robert S/O Madololyo vs Republic](#) (Criminal Appeal 486 of 2015) [2018] TZCA 346. In the application at hand, both counsel submitted that they are unable to reconstruct the record because they were not supplied with certified CMA proceedings. That being the position, the learned State Attorney submitted that the application be dismissed. With due respect to counsel for the respondent. Dismissal of this application will cause injustice to the applicant because he is not the one who caused the CMA record to go missing. Applicant has a right to be heard by this court and that right cannot be taken away simply someone at CMA made the record to be

missing. Applicant cannot be punished for a wrong that he has not done. It was therefore correctly, in my view, submitted by counsel for the applicant that the only remedy available is for the court to nullify CMA proceedings, quash and set aside the award and order trial *de novo*. I agree with that submission and hereby nullify CMA proceedings, quash, and set aside CMA award and order trial *de novo* before a different arbitrator without delay if the parties are still interested to pursue their rights.

It is so ordered.

Dated at Dar es Salaam on this 21<sup>st</sup> March 2023.



B. E. K. Mganga  
**JUDGE**

Ruling delivered on this 21<sup>st</sup> March 2023 in chambers in the presence of Godfrey Ngassa, Advocate, for the Applicant but in the absence of the Respondent.



B. E. K. Mganga  
**JUDGE**