

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION**

AT DAR ES SALAAM

REVISION NO. 281 OF 2022

(From the decision of the Commission for Mediation and Arbitration at Kinondoni In
REF: CMA/DSM/ILA/130/21/75/21, Kiangi, N.: Arbitrator, Dated 29th July,
2022

USANGU LOGISTICS LTD..... APPLICANT

VERSUS

DEOGRATIUS KAPUFI..... RESPONDENT

JUDGEMENT

16th – 6st April, 2023

OPIYO, J

The applicant asked this Court to revise and set aside the proceedings and award of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/DSM/ILA/130/21/75/21 by Hon. Kiangi, N. arbitrator dated 29th July, 2022. Briefly, the respondent was employed by the applicant as a driver in 2017. In year 2021 the respondent was reported to the police for theft allegations and later on taken to Temeke Primary Court charged with the offence.

The respondent filed for the Labour Dispute at CMA claiming for constructive termination with the reason that his working environment was

made intolerable by the applicant by instituting a criminal case against him which led to his resignation.

The CMA determination was that the respondent's working conditions was not intolerable and that he also failed to prove specific damages claimed. At the end the CMA gave the order to the applicant to pay the respondent TZS. 2,000,000/= as general damages.

The application was supported by the applicant's affidavit sworn by Aneth Kevin, Principal Officer for the applicant on the ground that the trial arbitrator erred in law by issuing an award entitling the respondent to payment of Tanzania Shillings Two Million (2,000,000 TZS) as general damages, which was not proved in merit during the hearing of the complainant.

The hearing proceeded orally. Both parties were represented by Learned Advocates. Moses Mwitete was for the applicant and Deogratius Kibasa represented the respondent.

In support of the application, Mr. Mwitete submitted that CMA in its award stated that the Respondent did not prove the difficult condition leading to

his resignation, it however awarded the Respondent TZS. 2,000,000/= as general damages without proof of any damage being done to him.

He contended that, when general damages are awarded there should be reasons. Backing up his point he referred to the case of **Salum Salum Khamis v. Helgoni Kiungu, Pc Civil Appeal No.17/2016 at page 5, High Court at Shinyanga**. Mr. Mwitete submitted further argued that having found that the respondent failed to prove his case, the CMA failed to assign reasons for award of general damages. He also referred the case of **TBL v. Nancy Muhenje** cited at page 17 of the case of **TPA v. Edrick Katano, Labour Revision No. 670 of 2019** to support his point. He submitted that in granting such general damages, CMA did not meet the requirement for awarding general damages as respondent failed to prove his case. That, CMA failed to give a reasons for such grant. He then prayed to the Court to set aside the award.

Mr. Kibasa submitted that the respondent have no dispute about what has been submitted by the advocate for the applicant. He stated that the arbitrator indeed failed to give reasons for awarding general damages. He continued that in going through the award, there is nowhere the arbitrator stated why he awarded the respondent TZS. 2,000,000/= as general

damages. He stated that in that regard he sails on the same path with Applicant.

Mr. Kibasa submitted further that in the respondent's counter affidavit he has wrongly the arbitrator for failing to make careful analysis of the records which led him to determine that the respondent has failed to prove constructive termination. He supported his point by referring to the case of **Katavi Resort v. Munira Rashid, Labour Revision No. 174/2013 LCCD 2013.**

He proceeded that as per the evidence on record, the respondent was accused of stealing car accessories from the motor vehicle he was assigned to drive. He stated that he was then arrested and arraigned in court charged with offence of theft, but later on the charge was dismissed for want of prosecution. He stated as per the cited authority the Court had to look at the whole conduct of employer to determine whether the conduct created intolerable environment that forced the respondent to resign.

Mr. Kibasa further argued that he has raised three reasons that led the respondent to resign. He stated that, after the theft allegation the truck was taken by the applicant and it was never given back to the respondent.

He continued that he was also not given another working tool, he was not assured any work irrespective of the fact that he was attending work place continuously. He stated that the respondent was not paid his salaries and all those happened after the theft allegation. That, irrespective of all that submitted that the arbitrator did not state the reason to why constructive termination was not established. He stated that the arbitrator agreed with the respondent that there were intolerable environment at working place, but the only thing that made her to find otherwise is that respondent failed to show the measures he took to show how he dealt with the said difficulties. He was of the view that the respondent after noticing that there was intolerable environment he kept asking but there was no positive response from the applicant and that is why he was forced to write resignation letter.

That, the Arbitrator failed to consider that the employer was aware of the respondent's claims but did not want to act upon them. In his view the arbitrator erred in reaching conclusion that the respondent did not take any measure against intolerable working condition. He then prayed to the Court to the revise award and set it aside.

In rejoinder, Mr. Mwitete submitted that the respondent has not disputed what the applicant submitted. That, the advocate for the respondent challenged the award that CMA was wrong in holding that respondent did not prove constructive termination. He was of the view that if the respondent was aggrieved by the award he could have taken step to challenge the same by filing for revision application raising that ground. He further submitted that the application at hand has only one ground, which the advocate for the respondent does not dispute.

Following the ground for revision, parties' submissions and the award therein, I have been called to determine: -

- 1. Whether the arbitrator assigned reason for the award of general damages and*
- 2. Whether respondent's prayers can be dealt with at this revisionary stage*

On determination of the first ground, both Learned Advocates submitted that the arbitrator did not state reasons when awarding general damages of the tune of TZS. 2,000,000/= to the respondent. It is settled in law that when granting general damages one has to state reason for it. This was held in many cases, one being the case of **Vidoba Freight Co. Limited**

V. Emirates Shipping Agences (T) Ltd and Another, Civil Appeal No. 12 of 2019, Court of Appeal of Tanzania at Dar es Salaam at page 10, it held that: -

"It is a trite law that when awarding general damages, the trial Court must provide the reason to justify the award."

The arbitrator determined that constructive termination was not proved but still continued to grant general damages to the respondent. In going through the award at page 12 shows clear that the arbitrator granted general damages to the respondent just because the respondent asked for it. No any justifiable reason was assigned. That means, as admittedly agreed by both sides in this matter the award does not show any reason assigned that made the arbitrator to award to the respondent TZS. 2,000,000/= as a general damages to the respondent. As the law provides for the general damages to be awarded reasons must be assigned, this ground is found to have merriits.

In determination of the the second ground, Whether respondent's prayers can be delt with at this revisionary stage? the law under section 91(1) of the Employment and Labour Relations Act [CAP. 366 R.E. 2019] states clear that the party aggrrieved on the CMA award has to file for a revision application at the Labour Court. For easy reference: -

"91(1) Any part to an arbitration award made under section 88(10) who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for a decision to set aside the arbitration award-"

In the application at hand the respondent is not the one applying for the revision of the CMA award. It is the revision application filed by the applicant. The advocate for the respondent did not apply for the revision which means the respondent was satisfied with the decision made and award granted by CMA. Respondent advocate's submission and prayers relating to respondents dissatisfaction with the decision at this level are contrary to the ground set for revision in this particular application. For easy reference the ground for this application is: -

"That the trial arbitrator erred in law by issuing an award entitling the respondent to payment of Tanzania Shillings Two Million (2,000,000 TZS) as general damages, which is not proved in merit during the hearing of the complainant."

The Advocate for the respondent wanted this Court in this application to determine whether the respondent did not prove constructive termination at CMA. The approach used by the Learned Advocate is inappropriate. What he is doing is to put forward respondent dissatisfaction without

following proper channel usually followed when one is aggrieved by such decision of CMA. His attempt is nothing but a mere an unfruitful afterthought. The same was held in the case of **Melchiades John Mwenda V. Gizelle Mbaga (Administratrix of the Estate of John Japhet Mbaga - deceased) & 2 Others**, Civil Appeal No. 57 of 2018, Court of Appeal of Tanzania at Dar es Salaam at page 25 that: -

"Clinging on the appellant's prayers be refused was inappropriate and the trial Court erred in granting such a relief."

I therefore find this application to have merit. I quash and set aside the general damages of TZS. 2,000,000/= awarded to the respondent at CMA. The application has been revised to such extent. This being a labour matter I order no costs.



M. P. OPIYO

JUDGE

6/4/2023