IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION APPLICATION NO. 24 OF 2023

(Arising from an Award issued on 16/12/2022 by Hon. Mkoba A.S, Arbitrator in Labour dispute No. CMA/PWN/BAG/131/2018 at Bagamoyo)

MUSTAFA S. WAMBALI..... APPLICANT

VERSUS

BAHARI EAGLES FOUNDATION LIMITED..... RESPONDENT

JUDGMENT

Date of last order: 29/03/2023
Date of Judgment: 25/05/2023

B. E. K. Mganga, J.

Facts of this application are that, on 21st April 2014, Mustafa S. Wambali, the herein applicant entered three years fixed term contract of employment with Bahari Eagles Foundation Limited, the herein respondent to teach form V and vi Chemistry and Mathematics subjects at Eagles secondary school. It is said that applicant was recruited from Kalya area within Kigoma region. It is said that after expiry of the said fixed term contract of employment, on 07th December 2016, the parties signed another three-year fixed term contract of employment. The parties

continued to enjoy their employment relationship up to 29th August 2018 when the Headteacher of Eagle Secondary school wrote a letter terminating employment of the applicant allegedly, due to absenteeism. It is undisputed by the parties that applicant collected the said termination letter on 03rd September 2018 from the Headteacher of Eagle Secondary School.

Applicant was aggrieved with termination of his employment, as a result, on 28th September 2018, he filed Labour dispute No. CMA/PWN/BAG/131/2018 before the Commission for Mediation and Arbitration henceforth CMA at Bagamoyo. In the Referral Form (CMA F1), applicant indicated that his employment commenced on 30th April 2014 but it was terminated on 29th August 2018. In the said CMA F1, applicant also indicated that, respondent did not consider that applicant was sick and had ED and further that, applicant was residing in respondent's compound. On fairness of procedure, applicant indicated that disciplinary procedures were not adhered to. Based on that, applicant indicated in the said CMA F1 that he was claiming to be paid (i) TZS 1,875,000/= being salary arrears for the days worked for in August 2018, (ii) TZS 1,875,000/= being one month salary in lieu of Notice, (iii) TZS 187,500/= being salary for three days for

September 2018, (iv) TZS 7,000,000/= being leave pay for outstanding 112 days, (v) TZS 5,625,000/= being leave allowance pay to June 2020, (vi) TZS 2,630,000/= being responsibility allowance as HOD Chemistry and Ag. DHOD, (vii) 2,625,000/= being severance pay, (viii) TZS 510,000/= being repatriation expenses from Bagamoyo to Kalya Kigoma, (ix) TZS 150,000/= fare from Bagamoyo to Kalya Kigoma for himself and his family, (x) TZS 3,000,000/= travel allowance and cost for transportation of 3 tones luggage from Bagamoyo to Kalya Kigoma, (xi) TZS 41,250,000/=being 22 months' salary compensation for the remaining period of the contract, (xii) TZS 37,500,000/= being salary compensation for 20 months' all amounting to TZS 104,227,500/=.

On 16th December 2022, Hon. Mkoba A. S, Arbitrator, having heard evidence and submissions of the parties, made findings that applicant breached the contract by abandoning his job and join another employer. Arbitrator also found that, termination of the applicant was on 29th August 2018 and that, applicant was entitled to be paid salary for the month of August 2018. The arbitrator, therefore, awarded applicant to be paid TZS 1,870,450/= as salary for August 2018. On repatriation costs and other claims related thereto, the arbitrator quoted the contract that the parties

entered on 26th December 2016 showing that the address of the applicant is P.O. Box 66 Bagamoyo and concluded that place of recruitment is Bagamoyo not Kalya Kigoma. In the final analysis, the arbitrator dismissed all other claims except payment of August 2018 salary as pointed hereinabove.

Further aggrieved, applicant filed this revision application seeking the court to revise the said award. In the affidavit in support of the Notice of Application seeking to revise the award, applicant raised four (4) grounds namely: -

1. *Whether it was proper for the arbitrator to entertain the matter of contractual dispute between the applicant and the respondent while termination was issued by Eagles Secondary school while the later was not joined in the dispute.*
2. *Whether it was proper for the arbitrator at the time of composing the award to raise suo motu the issue as who was paying salary between Bahari Eagles Foundation Limited and Eagles Secondary School and answered the issue that it was Eagles Secondary School without availing the parties an opportunity to address that issue.*
3. *Whether the arbitrator evaluated properly evidence relating to absenteeism and non-adherence of the respondent to fair procedure of termination.*
4. *Whether the arbitrator was right in holding that applicant was on employment with Baobab at the time when respondent issued termination letter.*
5. *Whether the arbitrator was right not to award the applicant repatriation cost from Bagamoyo to Kalya Kigoma.*

In opposing the application, respondent filed the counter affidavit of George Fumbuka, her Principal officer.

When the application was called on for hearing, Mr. Hamza Rajabu, Personal Representative, appeared and argued for and on behalf of the applicant while Mr. Adam Mwambene, Advocate, appeared and argued for and on behalf of the respondent.

Submitting in support of the 1st ground of the application on behalf of the applicant, Mr. Rajabu submitted that in the CMA F1, applicant filed the dispute against the respondent. Mr. Rajabu submitted further that applicant prayed, in terms of Rule 24(1),(2), (3), (4), (6), (7) and (8) of the Labour Institutions (Mediation and Arbitration) Rules, GN. No. 64 of 2007, Eagles Secondary School to be joined as the 2nd respondent but the arbitrator wrongly dismissed the application. He argued further that Eagles Secondary School was supposed to be joined to give her a room to testify of the validity or power to terminate the applicant. He went on that in the award, arbitrator held that applicant was an employee of Eagles Secondary School without affording applicant right to be heard. Based on that, Mr. Rajabu prayed that CMA proceedings be nullified and order trial de novo before a different arbitrator.

On the 2nd issue, Mr. Rajabu submitted that the arbitrator raised suo motto as to who was paying salary to the applicant and answered that issue that it was Eagle Secondary School without affording parties right to submit thereon. Mr. Rajabu submitted further that evidence shows that applicant was paid salary by the respondent and not Eagle Secondary School. He added that in his evidence, applicant(PW1) testified that he was paid salary by the respondent. He went on that it was not disputed that applicant was employee of the respondent and referred the court to contract of employment (exhibit M1) but, was terminated by the Headteacher Eagles Secondary school (exhibit M2). Mr. Rajabu submitted further that, respondent is the owner of Eagle Secondary School and that applicant was working at Eagle Secondary School as Chemistry teacher. He went on that, there was no reason disclosed for termination of employment of the applicant and that applicant was not afforded right to be heard in the disciplinary proceedings. When probed by the court, Mr. Rajabu conceded that, CMA F1 is pleading and that, in the said CMA F1, applicant did not indicate that he was not afforded right to be heard.

Submitting in support of the 3rd issue, the personal representative of the applicant submitted that Rule 8 of the Employment and Labour

Relations (Code of Good Practice) Rules, GN. No. 42 of 2007, requires termination of employment to be fair. Mr. Rajabu further submitted that, in his evidence, applicant(PW1) testified that he was sick for 4 working days and was sent to hospital where he was given ED.

Mr. Rajabu submitted further that, respondent did not give reason for termination of applicant's employment and no disciplinary proceedings were conducted. He concluded that, that was unfair and cited the case of *Dew Drop Co. Ltd v. Ibrahim Simwanza*, Civil Appeal No. 244 of 2020 CAT (unreported) and *Jimson Security Service v. Joseph Mdegela,* Civil Appeal No. 152 of 2019 CAT (unreported) to support his submissions. He went on that, the arbitrator erred to hold that an employee with fixed contract cannot be called to attend disciplinary proceedings and cited the case of *St. Joseph Kolping Secondary School v. Alvera Kashushura*, Civil Appeal No. 377 of 2021 CAT (unreported) to fault the arbitrator.

0n the 5th issue, Mr. Rajabu submitted that the arbitrator erred for not ordering respondent to repatriate applicant to Kalya area within Kigoma Region, that is a place of engagement. He however conceded in his submissions that, in his last contract, applicant indicated that his Post

Office is 66 Bagamoyo and that there was no reference to Kalya area in Kigoma.

Mr. Rajabu, the personal representative of the applicant did not submit on the 4th issue relating to whether applicant was employed by Baobao secondary school at the time of termination. He concluded his submissions praying that the application be allowed.

In resisting the application, Mr. Adam Mwambene, counsel for the respondent submitted on the 1st and 2nd issue together that the dispute was filed by the applicant. Counsel for the respondent submitted that the contract of employment was between applicant and the respondent but the said contract was terminated by Eagles Secondary School. Counsel argued that failure of the respondent to dispute the letter by Eagles Secondary School terminating employment of the applicant means that respondent approved what was done by Eagles Secondary School. Counsel for the respondent strongly resisted the prayer for nullification of CMA proceedings and order trial *de novo*.

Counsel for the respondent submitted further that it was upon the applicant to file a dispute against a proper person and cannot now be heard complaining against the arbitrator. In his submissions, counsel for

the respondent conceded that applicant was employed by the respondent and that applicant's employment was terminated by Eagles Secondary School. Counsel for the respondent was quick to submit that the said termination letter was confirmation of Eagles Secondary School to applicant's termination of employment because applicant, knowingly that he has valid contract with respondent, left his employment and secured employment with Baobao Secondary School. He added that, applicant absconded for more than five days. Counsel for the respondent submitted further that evidence of DW2, a teacher at Baobao School, proved that applicant was an employee of Baobao Secondary School at the time he absconded from the respondent and referred the court to exhibits D1 and D4. He argued further that applicant terminated his employment which is why, disciplinary proceedings were not conducted. He strongly submitted that applicant should not be allowed to benefit from his own wrong and cited the case of **Bi. Hawa Mohamed V. Alli Seif** [1983] TLR 83 to support his submissions.

Arguing the 4th issue, Mr. Mwambene submitted that respondent proved her case against applicant. On repatriation costs, Counsel for the respondent submitted that, Section 60(2) of the Labour Institutions

Act[Cap. 300 R.E. 2019] requires applicant to prove his claims but he failed. Counsel concluded his submissions by praying that the application be dismissed for want of merit.

In rejoinder, Mr. Rajabu submitted that **Bi. Hawa's case** is not applicable to the case at hand. Mr. Rajabu conceded that DW2 testified that applicant was an employee of Baobao at the time in question but, evidence was not conclusive that applicant was employed by Baobao Secondary School.

I have examined the CMA record and considered submissions made by the parties in this application and in my view, for better disposal of this application, I will start with the 1st issue raised by the applicant. In the first issue, applicant complained that he was employed by the respondent but his employment was terminated by Eagles Secondary school and that it was not proper for the arbitrator to determine the dispute without joining Eagles Secondary school. I should point out from the start that, CMA F1, that is a pleading, was filed by the applicant himself. It was the duty of the applicant to choose a party to be joined in the dispute. I am of that view because in the CMA F1, applicant indicated that the dispute is against Bahari Eagles Foundation Limited.

It was submitted by Mr. Rajabu on behalf of the applicant that the arbitrator wrongly dismissed the application to join Eagles Secondary School as the 2nd respondent and that in so doing, applicant was denied right to be heard. I have examined the CMA record and find that on 25th October 2022, Mr. Hamza Rajabu, the personal representative of the applicant, orally prayed the arbitrator to join Eagles Secondary School as the 2nd respondent but the said application was dismissed by the arbitrator on ground that this court ordered only evidence of the witnesses that was recorded improperly be recorded properly. I should point at this stage that, the prayer to join Eagles Secondary School as the 2nd respondent was made after this court in Revision No. 45 of 2022 (Hon. Rwizile, J)has nullified evidence of the witnesses who testified not under oath and severed evidence of one witness who testified under oath and ordered another arbitrator to record properly evidence that was improperly recorded.

It is my view that arbitrator cannot be faulted, though for a different reason, in dismissing the oral application made on behalf of the applicant to join Eagles Secondary School. I am of that view because, there was no application to join Eagles Secondary School so to speak. I am of that

conclusion because though in terms Rule 24(3)(b) of the Labour Institutions (Mediation and Arbitration) Rules, GN. No. 64 of 2007, applicant had a right to make an application to join Eagles Secondary School, he did not comply with the provisions of Rule 24(5) of GN. No. 64 of 2007 (supra). Rule 24(5) of GN. No. 64 of 2007 clearly provides:-

"*An application in terms of this rule shall be made in terms of rule 29.*"

On the other hand, in terms of Rule 29(1)(a), (2),(3), (4)(a),(b)and(c) of GN. No. 64 of 2007, in an application to join the said Eagles Secondary School as 2nd respondent, applicant was supposed to file the notice of application containing *inter-alia* the address for service and delivery of documents. The said notice was supposed to be supported by an affidavit setting clearly and concisely the names, description and address of the parties, statement of facts in a chronological order and stament of legal issues. It is my view that since the above cited rules were not complied with, legally speaking, there was no application to join Eagles Secondary School as the 2nd respondent. I therefore decline the invitation by Mr. Rajabu, the personal representative of the applicant to nullify CMA proceedings and order trial *de novo.*

If applicant wanted to challenge termination of his employment by Eagles Secondary school, he was supposed to include Eagles Secondary school in the CMA F1 as the 2nd respondent or he was supposed to file a proper application as pointed hereinabove. Had he filed a proper application, and upon being granted, he was supposed to amend the CMA F1 to include the said Eagles Secondary School. Therefrom, the dispute would have proceeded to hearing subject to the provisions of Rule 10(1) of GN. No. 64 of 2007 (supra).

In his evidence in chief, applicant testified that he was employed by Bahari Eagles Foundation Limited who sent him to teach at Eagles Secondary School that is owned by Bahari Eagles Foundation Limited. Applicant testified further that his termination letter was written by the Headmaster Eagles Secondary School. I have carefully examined evidence of the applicant (PW1) and find that he did not testify that the said Headmaster or Eagles Secondary School had no power to terminate his employment. While under cross examination, applicant(PW1) testified that respondent has not distanced herself from the letter terminating his employment. On the other hand, Adam Myombe(DW1) the headmaster of Eagles Secondary School, who wrote termination letter, testified while

under cross examination that he had power to terminate employment of the applicant. It is my view that, with that evidence, respondent accepted what was done by DW1 and that the said termination was done on her behalf.

In addition to the foregoing, none-joinder of Eagles Secondary school was not amongst the issues that were raised and determined at CMA. The CMA record shows that, on 27th October 2022, the arbitrator drafted memorandum of undisputed matters and issues to be determined. Matters that parties agreed that were undisputed are (i) that on 7th December 2016, respondent employed the applicant, (ii) that applicant had a fixed term contract of employment and (iii) that applicant was terminated by Eagles Secondary school. On the same day, three issues were drafted namely (i) whether the respondent breached the contract of employment, (ii) if the answer is in affirmative, whether there were reasons for breach of contract and (iii) what relief(s) each part is entitled to.

I have examined CMA F1 and find that, applicant did not file the dispute relating to breach of contract, rather, termination. Therefore, it was an error on part of the arbitrator to draft the first issue relating to breach of contract. In drafting the issue relating to breach of contract while the

dispute filed by the applicant was termination of employment, arbitrator departed from pleadings filed by the applicant. It is well established principle that, parties are bound by their own pleadings and that they are not allowed to depart from those pleadings. The court itself is not allowed to depart from pleadings of the parties as it was held by the Court of Appeal in the case of ***James Funge Ngwagilo vs the Attorney General*** [2004] T.L.R. 161, ***Astepro Investment Co. Ltd vs Jawinga Co. Ltd*** (Civil Appeal 8 of 2015) [2018] TZCA 278 -Tanzlii, ***YARA Tanzania Limited vs Ikuwo General Enterprises Limited*** (Civil Appeal 309 of 2019) [2022] TZCA 604 -Tanzlii, ***Ernest Sebastian Mbele vs Sebastian Sebastian Mbele & Others*** (Civil Appeal 66 of 2019) [2021] TZCA 168-Tanzlii, ***Salim Said Mtomekela vs Mohamed Abdallah Mohamed*** (Civil Appeal 149 of 2019) [2023] TZCA 15 -Tanzlii, ***Charles Richard Kombe T/a Building vs Evarani Mtungi & Others*** (Civil Appeal 38 of 2012) [2017] TZCA 153-Tanzlii and ***Barclays Bank T. Ltd vs Jacob Muro,*** Civil Appeal No. 357 of 2019 [2020] TZCA 1875-Tanzlii, to mention but a few. In the ***Mtomekela's*** **case,** (supra) the Court of Appeal held that: -

"As the parties are adversaries, it is left to each one of them to formulate his case in his own way ***subject to the basic rules of pleadings…for the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he as to meet and cannot be taken by surprise at the trial.***

The court itself is as well bound by the pleadings of the parties as they are themselves. It is not part of the duty of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings…"

As pointed hereinabove, it was not proper for the arbitrator to draft the issue as to whether there was breach of contract or not while applicant filed the dispute complaining that he was unfairly terminated. Guided by the above authorities, the complaint by the applicant for none-joinder of Eagles secondary School cannot be accepted at this stage. see the case of *Mohamed Abood vs D.F.S Express Lines Ltd* (Civil Appeal 282 of 2019) [2023] TZCA 57-Tanzlii and *Hood Transport Company Limited vs East African Development Bank* (Civil Appeal 262 of 2019) [2022] TZCA 383-Tanzlii, to mention but a few.

It was argued by Mr. Rajabu, Personal Representative of the applicant that, the arbitrator considered extraneous matters as to who was paying salary to the applicant and answered that issue that it was Eagle Secondary School without affording parties right to submit thereon. It was further submitted by Mr. Rajabu that, evidence shows that applicant was paid salary by the respondent and not Eagle Secondary School. I have examined evidence of the parties in the CMA record and find that, neither applicant(PW1) nor DW1 or DW2 testified, either that, applicant was being paid salary by the respondent or by Eagle Secondary School. In the award, at page 12, the arbitrator held that "when the complainant was receiving salaries from Eagles Secondary School he was not objecting or questioning its legality by arguing that he was not employed by that school". That holding is not supported by evidence on record. I therefore agree with Mr. Rajabu on behalf of the applicant on that complaint.

Submissions by Mr. Rajabu that applicant was being paid salary by the respondent is not valid as it is not supported by evidence on record. The only undisputed evidence available is that applicant was working at Eagles Secondary School where DW1 was the Headteacher, teaching and manning employees thereat. There is no evidence on record showing that

applicant was not under control of Eagles Secondary School or Bahari Eagles Foundation Limited, the respondent. From where I am standing, I cannot do a guess work as who, between Eagles Secondary School and Bahari Eagles Foundation Limited, the respondent, was paying salary to the applicant.

It was submitted by Mr. Rajabu that, there was no reason disclosed for termination of employment of the applicant and that applicant was not afforded right to be heard in the disciplinary proceedings. I have examined evidence of the parties and find that; applicant's employment was terminated due to absenteeism. Therefore, reason was given as it was testified by Adam Myombe(DW1), the headteacher of Eagles Secondary School where applicant was teaching as also reflected in termination letter (exhibit D1) 29th August 2018. In fact, in his evidence, applicant(PW1) testified that he was served with termination letter showing that he absconded from duty. In his evidence, applicant also testified that, he was sick, which is why, he was not attending at work. It is my view that, reason for termination was given and the arbitrator found that the said reason was valid. I entirely agree with the arbitrator. I have arrived at that conclusion because applicant testified that he fell sick on 19th August 2018 and

attended at Kwakopa Health Centre where he was diagnosed and found that he had Hypertension. Applicant testified further that he was treated as outpatient and was exempted from duty and tendered consultation form exhibit M3. In his evidence, applicant(PW1) testified further that, he reported to Emmanuel Kilabuko, head of academic, that he was sick.

On the other hand, it was unshaken evidence of Samwel John (DW2), the second master Baobao secondary school, who testified that on 14th August 2018, applicant applied for employment at Baobao Secondary School as chemistry and Mathematics teacher. The said job application by applicant was tendered by DW2 as exhibit D2. It was evidence of DW2 that on 18th August 2018, the application by applicant was accepted, as a result, applicant's employment with Baobao Secondary School commenced on 20th August 2018 with three months' probation. DW2 testified further that, the said probation period was extended after three months' after poor performance. It was evidence of DW2 that an inquiry was made to the respondent to know the problems applicant had, and tendered exhibit D3 to that effect. It was also evidence of DW2 that, applicant's employment with Baobao was terminated on 29th January 2019. While under cross

examination, DW2 testified that, he was the one who received the applicant at Baobao Secondary School.

It is my view that, it is undisputed by the parties that applicant did not attend at work for the alleged days. On his side, applicant suggests that he was sick, but evidence of both DW1 and DW2 suggests to the contrary. It cannot be a coincidence that the dates applicant alleges that he was sick, is the same dates he was teaching at Baobao secondary school. It is also undisputed that applicant was staying in the house he was allocated by Eagles Secondary School in the said school's compound. I see no logic as to why, applicant did not call the said Emmanuel Kilabuko to confirm that he reported to him that he was sick. Applicant had that chance because he was the last to testify. I, therefore, draw adverse inference against applicant for his failure to call the said Emmanuel Kilabuko as his witness because, he knew that the said witness would have given evidence contrary to his interest. see the case of ***Hemed Said v. Mohamed Mbilu*** [1984] TLR 113, *Jaluma General Suppliers Limited vs Stanbic Bank (T) Limited* [2013] T.L.R. 269 (CA) also Media neutral citation [2013] TZCA 320 -Tanzlii. I am therefore convinced that, applicant was absent from work for more than five days without permission and that

termination was fair substantively. I am of that view because, guideline 9(1) of the Guidelines for Disciplinary, Incapacity and Incompatibility Policy and Procedures issued under the Employment and Labour Relations (Code of Good Practice) Rules GN. No. 42 of 2007, makes it clear that, absence from work without permission or without acceptable reason for more than five working days, is a misconduct entitling the employer to terminate employment of the employee. If applicant was sick as he alleged in his evidence, then, he was supposed to obtain sick leave or notify the respondent. It is not open to the employee who is sick to stay at home without notifying the employer. The logic and reason are that, if the room is so wide open such that employees are not required to notify their employers, then, employees who are not sick, for reasons best known to them, including laziness, or while secretly working with another employer, may, not attend at work and use sickness as excuse. Definitely, that will be done to the detriment of the employer, who, will not enjoy the service of the said employee at that particular time, though at the end, the said employee will demand to be paid salary. That state of affairs, if allowed, may, enable unscrupulous employees, to benefit from their own wrongs. It is my view that, the drafters of guideline 9 to GN. No. 42 of 2007(supra)

anticipated that possibility, which is why, required any absence from work be by permission or by justifiable reason.

That said, I also hold that the arbitrator did not error in holding that applicant was working with Baobao Secondary school, because evidence of DW2 was unshaken during cross examination.

On fairness of procedure, it was submitted by personal representative of the applicant that, respondent terminated the applicant without conducting disciplinary procedures. In fact, counsel for the respondent, correctly in my view, conceded that no disciplinary proceedings were conducted against applicant. I therefore, hold that termination was procedurally unfair.

In the 5th issue, the arbitrator is being criticized for not awarding applicant to be paid subsistence allowance and repatriation cost o from Bagamoyo to Kalya Kigoma. I have examined evidence of the applicant(PW1) and find that he testified that he was recruited from Kigoma and that, at the time of recruitment, respondent paid his transport costs from Kigoma to Bagamoyo. I have examined the contract of employment (exhibit M1) that was tendered by applicant and find that, home address of the applicant is Bagamoyo. In the said exhibit M1, there is

no indication that applicant was recruited from Kigoma. I should point out that, the contract that was terminated is the one reflected in exhibit M1. Whether the previous contract provided that applicant was recruited from Kigoma or not, cannot, in my view, be a subject of this application because, after expiration of that contract, everything came to an end. It was upon the parties, if they so wished, to indicate in the new contract that applicant was recruited from Kigoma and not Bagamoyo. It is my considered opinion therefore, that, applicant is neither entitled to be paid repatriation cost nor subsistence allowance because according to the contract of employment place of recruitment and termination is the same namely Bagamoyo. Since termination of employment of the applicant occurred at the place of his recruitment, then, the provisions of section 43 of the Employment and Labour Relations Act[Cap. 366 R.E. 2019] that provides how subsistence allowance and repatriation costs is awardable, cannot apply. My afore conclusion is also fortified by the decision of the Court of Appeal in the case of ***Paul Yustas Nchia vs National Executive Secretary CMM and Another,*** Civil Appeal No. 85 of 2005 (Unreported) wherein it was held *inter-alia* that:-

> *"Employee is entitled to repatriation cost, and subsistence allowances only if he was terminated on the place other than place of domicile…"*

For the foregoing, the arbitrator cannot be faulted for not awarding applicant subsistence allowance and repatriation costs.

I have held hereinabove that there was valid reason for termination of employment of the applicant hence termination was fair substantively. I have also held hereinabove that respondent did not follow procedures at the time of termination of applicant's employment hence termination was unfair procedurally. I therefore partly allow the application.

Now, the issue is, what relief is the applicant entitled to. In answering this issue, I will be guided by the decisions of the Court of Appeal in the case of *Felician Rutwaza vs World Vision Tanzania* (Civil Appeal 213 of 2019) [2021] TZCA 2, *Veneranda Maro & Another vs Arusha International Conference Center* (Civil Appeal 322 of 2020) [2022] TZCA 37 and *Pangea Minerals Ltd vs Gwandu Majali* (Civil Appeal 504 of 2020) [2021] TZCA 414 wherein it was held that, it is settled law that substantive unfair termination attracts heavier penalty as opposed to procedural unfairness which attracts lesser penalty. I have considered circumstances of the application at hand, namely that, applicant deserted Eagles Secondary School Form V and VI students he was teaching

Chemistry and Mathematics subjects and entered employment arrangements with Baobao Secondary School. I am also alive that applicant filed the dispute at CMA after his employment with Baobao Secondary School was terminated at the time he was still a probationer. All these factors cumulatively show that applicant has no clean hands and cannot be allowed to benefit from his wrong deeds. I therefore hereby order respondent to pay applicant TZS 3,740,900/= being 2 months' salary compensation for procedural unfair termination.

Dated at Dar es Salaam on this 25th May 2023.

B. E. K. Mganga
JUDGE

Judgment delivered on 25th May 2023 in chambers in the presence of Mustafa Wambali, the Applicant and Adam Mwambene, Advocate for the Respondent.

B. E. K. Mganga
JUDGE