IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION APPLICATION NO. 47 OF 2023

(Arising from an Award issued on 13/01/2023 by Hon. Chacha L.C, Arbitrator in Labour Dispute No. CMA/DSM/ILA/R.561/15/1009 at Dar es Salaam)

WINFRED NG'ITU..... APPLICANT

VERSUS

KIMANI MINERALS LTD..... RESPONDENT

JUDGEMENT

Date of last Order: *29/05/2023*
Date of Judgement: *16/06/2023*

MLYAMBINA, J.

The facts of this application are that, on 1st December 2011, the Respondent employed the Applicant as a storekeeper for unspecified term work contract and his duty station was at Dar es Salaam. It is said that, on 10th October 2015, the Respondent terminated the employment relationship with the Applicant allegedly for absence from duty. The Applicant was aggrieved with termination of his employment, as a result, on 28th September 2018 filed Labour Dispute No. CMA/PWN/BAG/131/2018 before the Commission for Mediation and Arbitration (henceforth CMA). In the Referral form (CMA F1), the Applicant indicated that the dispute arose on 10th October 2015 and that he was claiming to be compensated

according to the law. On fairness of reasons and procedure for termination, he indicated that he was neither given valid reasons for termination nor accorded fair hearing, hence he was unfairly terminated for absenteeism while he was performing duties outside workstation which justified his absence.

On 13th January, 2023, Hon. Chacha L. C, Arbitrator having heard evidence and submissions of the parties, concluded that the termination was substantively and procedurally fair. As a result, the Arbitrator dismissed the said Labour Dispute. The Applicant was aggrieved by the said Award, hence filed this revision application by raising seven (7) grounds, namely:

a) That the Hon. Arbitrator erred in holding that the termination of the Applicant was based on a valid and fair reason;
b) That the Hon. Arbitrator erred in Law and facts in deciding that the procedure before termination was observed as required by the Law;
c) That the Hon. Arbitrator erred in Law and facts by introducing evidence not adduced during hearing in deciding the dispute against the Applicant;
d) That the Hon. Arbitrator erred in law in shifting the burden of proof to the Applicant;
e) That the Hon. Arbitrator erred in Law and facts for not awarding terminal benefits to the Applicant;

f) That the Hon. Arbitrator erred in Law and facts for not awarding repatriation and subsistence allowance to the Applicant;

g)That the Award is unlawful, illogical and irrational.

In opposing the application, the Respondent filed counter affidavit sworn by Dustan Kiluwa, Principal officer.

By consent of the parties, the application was disposed by way of written submissions. The Applicant enjoyed the service of Mr. Juma Maro, personal representative while the Respondent enjoyed the service of Mr. Saulo Jackson Kusakalah, Advocate.

The first issue was that the Arbitrator erred in holding that the termination of the Applicant was based on a valid and fair reason. It was submitted on behalf of the Applicant that the Applicant was charged for absence from duty and the only proof tendered was the attendance register (exhibit D1). It was further submitted that; since PW1 testified under oath that he was not absent as alleged, more proof was required from the Respondent other than the attendance register which was not consistently applied to other staff.

It was submitted by the Applicant's Representative that; according to DW1, at page 4 paragraph 1 of the Award, Human Resource Manager himself was not signing the attendance register which was used as exhibit

to terminate the Applicant unfairly. Mr. Maro argued that the inconsistent application of the policy was contrary to *Rule 12(1)(b)(iv) of GN No. 42/2007* which requires a policy or rule to be consistently applied by the employers (Double Standard).

Mr. Maro submitted further that; according to *rule 12(1)(b)(v) of GN. No. 42/2007,* fairness of the reason for termination requires that the sanction imposed be appropriate to the rule contravened. He argued that, the Applicant was charged for absence from duty which was not an offence for which the Respondent could terminate for first breach and there was no evidence tendered to show that there was any previous offence committed by the Applicant to justify termination.

It was Mr. Maro's submission that; the fact that action against the Applicant for the alleged absence was not taken in July and August 2015 but rather towards the end of September 2015 as testified by DW1 at page 3 paragraph 2 of the Award, it clearly shows that absence did not make any continuous employment intolerable.

Mr. Maro argued that, from the evidence, since the Applicant (PW1) testified that there was a dispute with the Respondent on salary payment as reflected at page 6 paragraph 4 of the Award and tendered exhibit P1

which was not disputed by the Respondent;(Cyprian Kibogoyo) it was clear that the alleged absence was only used as a mere pretext to terminate the Applicant unfairly (Discrimination). Mr. Maro in supporting his submissions on the issue of absenteeism, refereed this Court to the case of **Elias Naligia v. Mbezi Beach Secondary School,** Rev No.206/2020, LC, DSM.

On the issue that the Hon. Arbitrator erred in Law and facts in deciding that the procedure before termination was observed as required by the Law, it was submitted by Mr. Maro that; the Applicant was denied the right to be heard properly contrary to *Article 13(6)(a) of the Constitution of the United Republic of Tanzania 1977* and the charges against the Applicant were not clear. Also, he was denied the right to appear with a representative to assist during the hearing, as the invitation letter to the hearing was silent on representation (exhibit D3).

Mr. Maro submitted further that; when the Applicant wrote a letter (exhibit D4) requesting clarification on the charge and the right to appear with a representative, the same was received by the Respondent but never responded to, and as a result, the hearing proceeded ex-parte and the Applicant was terminated in his absence. It was argued that *Rule 13(2) of GN No. 42/2007* requires that charges to the employee should be clear.

Hence, the Applicant was right to seek clarification for the unclear charges. Mr. Maro went on to submit that; the law requires that when an employee fails to appear for a hearing in the circumstances like in the instant case, the only viable option was to adjourn the hearing. Mr. Maro cited the case of **Kiboberry Limited v. John Van Der Voort,** Civil Appeal No. 248 of 2021, Court of Appeal of Tanzania at Moshi (unreported), pp 10 and 11.

According to Mr. Maro, DW1 testified that it was useless to carry out investigation. That means, investigation was never conducted. Hence, the Respondent violated *Rule 13(1) of GN No. 42/2007* which requires investigation to be conducted prior hearing.

Mr. Maro submitted further that; Applicant was also denied the right to an internal appeal because when the ex parte hearing was concluded, the outcome was never shared to him in order to file internal appeal as testified by DW3 at page 6 paragraph 1 of the Award. Thus, the witness of the Respondent including the Human Resource person who initiated the charge against the Applicant, were the same people who constituted the panel which decided the termination of the Applicant as testified by DW2 at page 5 paragraph 1 of the Award and exhibit D2- disciplinary hearing minutes.

On the issue that the Arbitrator erred in Law and facts by introducing evidence not adduced during hearing in deciding the dispute against the Applicant, it was submitted that at page 12 paragraph 2 of the Award, the Arbitrator stated that the Respondent issued a letter of explanation before calling the Applicant to attend the hearing which was not adduced by any witness and no exhibit tendered to that effect (Arbitrator Credibility, No New Evidence).

Mr. Maro added that, the Arbitrator stated that the charges to the Applicant were clear on the attendance register whereas the same was not sent to the Applicant at the time of inviting him to the hearing. Mr. Maro argued that, it was that new evidence tendered by witnesses which made the Arbitrator to conclude that the Applicant unreasonably refused to appear for hearing.

On the issue that the Arbitrator erred in law in shifting the burden of proof to the Applicant, it was submitted that it was reflected at page 9 and 10 of the Award where the Arbitrator stated that the Applicant was supposed to bring evidence to show that he was assigned outside duties. Mr. Maro argued that, in dispute of unfair termination, the burden of proof squarely lies on the Respondent as required under *section 39 of the*

Employment and Labour Relations Act [Cap 366 Revised Edition 2019] [herein ELRA].

On the issue that the Arbitrator erred in law and facts for not awarding terminal benefits to the Applicant, it was submitted by Mr. Maro that *Section 44 of ELRA (supra)* clearly provides for payment of terminal benefits upon termination of employment. Mr. Maro added that; such terminal benefits include remunerations up to the last day worked, accrued leave not taken, notice and severance pay as claimed by the Applicant on CMA F1 which initiated this dispute.

Mr. Maro submitted that; the testimony of DW2 as reflected at page 2 paragraph I of the Award showed that the disciplinary hearing recommended to the Respondent that the Applicant be paid terminal benefits according to the law. However, the Applicant testified that terminal benefits were not paid and the Respondent did not bring any evidence to show that terminal benefits were paid. Mr. Maro argued that it was not clear as to why the Arbitrator failed to order payment of terminal benefits to the Applicant.

On the issue that the Arbitrator erred in Law and facts for not awarding repatriation and subsistence allowance to the Applicant, it was submitted

that Applicant testified at page 6 paragraph 2 of the Award that he was recruited from Lindi and this evidence was not challenged by the Respondent. Mr. Maro added that; the contract of employment (exhibit D6) under the annual leave clause shows that costs of land travel to and from home District will be borne by the Respondent but the Applicant was never paid neither repatriation nor subsistence allowance.

Mr. Maro argued that, there was no statement of particulars tendered to show any other place of recruitment as required under *Section 15 of the ELRA (supra).* There was no evidence from the Respondent to show that repatriation expenses were paid. Mr. Maro added that; *Section 43 of the ELRA (supra)* clearly provides for payment of transportation to the place of recruitment upon termination. Mr. Maro argued that; the Arbitrator erred for not awarding repatriation expenses and subsistence allowance to the Applicant from the date of termination up to the date of repatriation.

On the issue that the Award was unlawful, illogical and irrational, it was submitted by Mr. Maro that the Arbitral Award issued was not consistent with the law and evidence adduced during the hearing of the dispute before the CMA and consequently the same was unlawful, illogical and irrational.

Mr. Maro concluded by praying for this Court to allow this Revision and set aside the Arbitral Award of the Arbitrator and declare that the Applicant's employment was unfairly terminated.

Resisting the application on the first issue, Mr. Saulo Jackson Kusakalah, Advocate for the Respondent, submitted that; employer in terminating the Applicant considered *Rules 12(1)(a), (b),(2) and(3) of Employment and Labour Relations (Code of Good Practice) Rules, G.N No.42 OF 2007,* hence the employer proved that the Applicant contravened such rules which regulate conduct relating to employment. It was argued that the Applicant was absent for more than two 2 months consecutively as it was proved by DW1 and the Attendance Registry (Exhibit D1). He added that; the Applicant's working station was at Gongolamboto while Human Resource working station was at Ubungo. Wherefore, it was not possible for Human Resource to sign in the attendance register at Gongolamboto while he was working at Ubungo as it was stated in CMA Award at page No.3.

Mr. Saulo submitted further that; PW1 tendered exhibit P1 which was a copy of the email, but the same did not prove if the Applicant was communicated with the company through email. He also submitted that

PW1 on 7th page of the Award last paragraph stated that he received the notice from the employer (Exhibit D3) and reply by refusing to attend the Disciplinary hearing which is unethical to refuse the summons of his employer, as it is proved by Exhibit D4. Thus, the meeting was conducted exparte against him, while he contended to had wrote the email/ communicated with Samwel Mafwenga. Hence, the email not belonged to the company as he alleged, and he has never been in dispute of salary with Gwamaka.

Mr. Saulo went on to reply that the case of **Elias Naligia** *(supra)* cited by the Applicant is distinguishable because the Applicant in that case was absent for 6 days only and not more than 1 month as the Applicant. Again, at page No.6 of that cited case, the Applicant advanced mitigating factors as to why he was absent while the Applicant herein did not advance any reason. He even refused to attend at the disciplinary hearing and answering the notice given by the employer to explain as to why he was absent for more than 2 two months. Counsel Saulo insisted that it was impossible for employee to be absent for more than two months and to regard it as a 1st absenteeism, as it will provide a bush to hide for unfaithful employee.

Counsel submitted on the second ground that, it is trite law under *Section 37(4) of ELRA (supra)* that in deciding whether a termination by employer is fair, an employer, Arbitrator, or Labour Court must take into account any Code of Good Practice published under *Section 99* read together with *Rule 9 (1) of Employment and Labour Relations (Code of Good Practice) GN .No 42 of 2007.*

Counsel Saulo submitted that the procedure was properly followed and the Applicant denied himself his right to be heard as he was given letter to attend disciplinary hearing but he did not attend intentionally as it was proved at page No. 5 of the impugned Award last paragraph whereby DW3 tendered Exhibit D3 to prove that the Applicant was summoned to attend the meeting but denied it. This was proved by DW2 (who tendered Exhibit D2) and the Applicant refused to attend by sending a letter to employer dated 28/09/2015 which is marked as Exhibit D4. In support, Counsel Saulo cited the case of **Mohamed Ramadhani Kibwana v. Ultimate Security (T) Ltd,** Labour Revision No.132/2011, DSM, LCCD 2013, pg.94.

Counsel Saulo argued that the procedure for terminating the Applicant on ground of absenteeism as provided by the law was properly followed

and adhered by the Respondent herein. He added that the burden of proof was not shifted, as it was argued by the Applicant.

According to Counsel Saulo, the charge was clear, even in cross-examination, the Applicant agreed that he understood the charge, not only that but also the procedure under *Rule 13 of Employment and Labour Relations (Code of Good Practice) GN. No. 42 of 2007*. It is requirement of the law under *Rule 13(6) of GN.42/2007* to proceed with hearing in the absence of employee. Further, it was not necessary to conduct investigation while the Applicant denied to appeal elsewhere.

Counsel Saulo submitted on the 3rd ground that there was no new evidence introduced by Arbitrator and if the Applicant thought there was an error in the award, the only remedies was to make an application to correct the errors, as per *Rule 33 of the Labour Institutions (Mediation and Arbitration Guidelines) Rules 2007*, hence this will not be amounted as the ground for revision.

As regards the 4th ground, Counsel Saulo disputed the fact that the burden of proof was shifted. He maintained that it was duty of the employer to prove if the termination was valid and fair and procedures

were adhered to. The same was properly done by DW1, DW2 and DW3, as per *Section 39 of ELRA (supra).*

On the 5th ground, Counsel Saulo submitted regarding the terminal benefit to the effect that, the Arbitrator was right when she decided not to grant terminal benefit to the Applicant. Thus, according to *Section 42(3)(a) of ELRA,* read together with *GN. No.42 part II(C), rule 26(2)(b),* No severance is payable to an employee terminated on misconduct.

On the 6th ground, Counsel Saulo submitted that the Applicant was employed at Dar es Salaam. Under *Section 43(1)(a)(b)(c) of ELRA* where an employee's contract of employment is terminated at place other than where the employee was recruited, the Arbitrator can award it. But in this case, the Applicant was employed at Dar es Salaam as it is shown in his contractual agreement. Therefore, he was neither supposed to be paid with costs for land travel nor costs for repatriation.

On the final point of seeking for revision, Counsel Saulo submitted that the Applicant's main intention was to mislead the Court process, to argue their submission basing on the personal view without showing the law which makes the award to be unlawful, illogical and irrational. He added that, the award of CMA shows clearly the reason to reach the said decision

by Arbitrator was only about Absenteeism whereby fair termination and procedure were followed. He concluded by praying that this Court to dismiss the application.

In rejoinder, Mr. Maro reiterated submission in chief and added that, that at page 12 of the Award paragraph 2, the Arbitrator introduced new evidence of her own making that the Respondent issued a letter requesting explanation from the Applicant prior to calling the Applicant to attend the hearing however the Respondent failed to show in their reply as to who gave that testimony which the Arbitrator used in making the Award.

I have considered the submissions of both parties and read the CMA record, I will deal with three nagging questions, namely: *One*, whether the Respondent had valid reason to terminate the Applicant's employment. Substantive fairness/fairness of the reason. *Two*, whether the Respondent/employer followed the fairness of procedure before terminating the Applicant on absenteeism (procedural fairness), *Three*, what relief (s) are the parties entitled?

In determining the fairness of employment termination, it is important to consider the provision of *Section 37(2) (a) (b) and (c) of the ELRA (supra)* which requires the employer to prove that the reason for

termination is valid and fair and the termination is in accordance with fair procedures. The burden to prove that the employee was fairly terminated lies on the Respondent who is the employer.

To start with the first issue on fairness of the reasons, *the Employment and Labour Relations (Code of Good Practice) Rules, GN. 42 of 2007,* gives guidance on the fairness of the reason for termination on absenteeism that; any employer, Arbitrator or Judge who is required to decide as to whether termination for absenteeism is unfair shall consider:

> Rule 12(1) (a) whether or not the employee contravened a rule or standard regulating conduct relating to employment;
> (b) If the rule or standard was contravened, whether or not
> (i) It is reasonable
> (ii) it is clear and unambiguous
> (Hi) the employee was aware of it or could reasonably be expected to have been aware of it
> (iv) it has been consistently applied by the employer, and
> (v) termination is an appropriate for contravening it (the rule).

It was submitted by Mr. Maro that there was no sufficient reason disclosed for termination of employment of the Applicant and that the Applicant was not afforded right to be heard in the disciplinary

proceedings. I have examined evidence of the parties and found that; the Applicant's employment was terminated due to absenteeism.

Therefore, the reason was given by DW1 and DW2 and reflected in termination letter (exhibit D5) dated 10th October 2015. In fact, in his evidence, the Applicant (PW1) testified that he was served with termination letter showing that he absconded from duty. In his evidence, the Applicant also testified that; he was performing other duties outside his workstation. It is my view that the reason for termination was given and the Arbitrator found that the said reason was valid.

I entirely agree with the Arbitrator. The Applicant testified that he was not in the office for a long period of time as he was attending outside/site duties where there was no attendance register to sign and when probed on the evidence of the same during cross examination, the Applicant conceded that he had no any proof of the site duties.

More so, it is undisputed by the parties that the Applicant did not attend at work for the alleged days. On his side, the Applicant suggests that he was attending outside work but the evidence of both DW3 and DW2 who are the employer and responsible in assigning duties to Applicant, suggests to the contrary.

It is the opinion of this Court that when the Applicant conceded to his absence from work, that was sufficient proof of the Respondent's case. I see no logic as to why, the Applicant did not bring any proof of his absence as required by the law. I have even perused the employment contract (Exh. D6) and found that the Applicant was employed as a storekeeper and there is nowhere showing that he was to attend site works.

It is a trite law that he who alleges must prove, the same principle has been held in multiple of the Court of Appeal decisions including the cases of **Hemed Said v. Mohamed Mbilu [1984] TLR 113, Jaluma General Suppliers Limited v. Stanbic Bank (T) Limited,** [2013] T.L.R. 269 and **Barelia Karangirangi v. Asteria Nyalwambwa,** Civil Appeal No. 237 of 2017, Court of Appeal of Tanzania, at Mwanza, (unreported).

I am, therefore, convinced that the 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 the Applicant was performing outside duties, as he alleged in his evidence, then, he was supposed to obtain permission from the Respondent and provide proof to that effect. It is not open for employee to just claim performing outside duties without permission of the employer. The logic is that the employees who without permission, for reasons best known to them, including laziness, or while secretly working with another employer, may not attend at work and claim performing outside duties as excuse. It is a general rule on dispute based on termination that the employers must prove fairness of termination. However, 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, if not paid will run to file labour dispute. 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. Any absence from work must be by a permission or justifiable reason.

I further share the same holding with the Arbitrator that the Applicant conceded in his evidence to his absenteeism and DW3 testified that Applicant was never permitted on site duties.

On fairness of procedure, it was submitted by personal representative of the Applicant that the Respondent terminated the Applicant without conducting disciplinary procedures. While the Respondent submitted that disciplinary proceedings proceeded in the absence of the Applicant (ex parte) as Applicant was served notice to attend (exh. D3) but refused on grounds that the notice was not clear to the alleged charges and the right to call representative was not stipulated (exh. D4).

I hold that termination was procedurally unfair. The reason is that, after being informed about the disciplinary hearing, the employee was supposed to be informed the consequences of nonappearance.

In other words, the letter summoning the Applicant on the disciplinary committee (Exh. D3), ought to state clear that if the Applicant couldn't appear, then the matter would proceed ex parte/in his absence. Upon perusal of the said letter (Exh. D3), there is no clause with such information embedded therein. Without specifically expressing to the Applicant the consequences of non-appearance, it is my opinion that, the

Respondent denied the Applicant his right to be heard. Considering the nature of the said allegations and the outcome thereof, if Applicant was made aware of the ex-parte hearing would proceed in his absence, he could have done the needful before the disciplinary committee.

It is my further view that the Respondent wrongly conducted ex-parte disciplinary hearing against the Applicant without notifying him, hence he was not aware. That means, the Applicant was not given opportunity to be heard and defend himself by the employer as required in law. The right to be heard is a constitutional right as rightly submitted by the Applicant's Counsel. The same position is reflected in numerous decisions by this Court and the Court of Appeal. In the case of **Mbeya - Rukwa Auto parts and Transport Ltd. v. Jestina Mwakyoma** [2003] TLR no. 251, it was held that:

> In this country natural justice is not merely a principle of common law; it has become a fundamental constitutional right. Article 13 (6) a) includes the right to be heard amongst the attributes of the equality before the law.

Also, in the case of **Abbas Sherally & another v. Abdul S.H.M Fazalboy,** Civil Application No. 33 of 2002, the Court held that:

> The right of a party to be heard before adverse action or decision is taken against such a party has been stated and emphasized by the Courts in numerous decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified, even if the same decision would have been reached had the party been heard, because the violation is considered to be a breach of natural justice.
>
> It has long been settled that a decision affecting the individuals rights which is arrived at by a procedure which offended against principles of natural justice, is outside jurisdiction of decision-making authority.

On the basis of the above discussion, I have no hesitation to hold that the Applicant was condemned unheard by the Respondent. Therefore, the Applicant's termination was procedurally unfair. As such, I differ with the CMA award on procedural aspect on the reason that the termination was substantively fair but procedurally unfair.

As regards reliefs to the parties, At the CMA, the Applicant prayed for compensation of 12 months salaries, terminal benefits (notice, leave, severance allowance, transportation and subsistence expenses) and unpaid salaries for August/2015, September/2015 and 10 days October/2015. I have examined the evidence of the Applicant (PW1) and found that he testified that he was recruited from Lindi.

I have examined the contract of employment (exhibit D6) that was tendered by the Respondent and never objected by the Applicant. In the said exhibit D6, there is no clause on the place of recruitment of the Applicant and according to contra proferentem rule of contract interpretation, an ambiguous contract term should be construed against the drafter of the contract. PW1 stated in his evidence that he was recruited from Lindi and that evidence was unshaken. As such, that is the truth of fact. In the case of **Bashiri John v. Republic,** Criminal Appeal No. 486/2016, Court of Appeal of Tanzania which reiterated the decision in the case of **Cyprian Athanas Kibogoyo v. Republic**, Criminal Appeal No. 88/1992 by holding that:

> It is trite law that failure to cross- examine a witness on an important matter implies the acceptance of the truth of the witness's evidence.

The basis of awarding the subsistence allowance has been addressed in various cases, including the case of **Paul Yustas Nchia v. National Executive Secretary CMM and Another,** Civil Appeal No. 85 of 2005 (unreported) where the Court held that:

> Employee is entitled to repatriation cost, and subsistence allowances only if he was terminated on the place other

than place of Domicile; and employee remained on the place of recruitment, entitled with subsistence for the period of remain.

As regards to the reliefs claimed by the Applicant, since the termination was procedurally unfair, I find worthy to borrow the wisdom from the Court of appeal in the case of **Felician Rutwaza v. World Vision Tanzania, Criminal Appeal No. 213 of 2019** (unreported) citing the case of **Sodetra (SPRL) Ltd v. Mezza & Another Labour Revision No. 207 of 2008** (unreported) referred to by Mr. Mkumbukwa, the High Court (Rweyemamu, J as she then was), interpreted *Section 40 (1) (c) of ELRA* thus *at page 10* :

> ...a reading of other sections of the Act gives a distinct impression that the Law abhors substantive unfairness more than procedural unfairness, the remedy for the former attracts a heavier penalty than the latter...

From the above authority, as the Applicant's termination being substantively fair but procedurally unfair, attracts lesser compensation. I therefore award the Applicant six month's salary as a compensation basing on his monthly salary of TZS 600,000/= as per employment contract.

In the premises, the application for revision is partly allowed with no order as to costs. It is so ordered.

Y.J. MLYAMBINA

JUDGE

16/06/2023

Judgement pronounced and dated 16th day of June, 2023 in the presence of Juma Maro, Personal Representative of the Applicant and Oliver Thomas, Legal Officer of Counsel Saulo Kusakalah for the Respondent. Right of Appeal fully explained.

Y.J. MLYAMBINA

JUDGE

16/06/2023