IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 250 OF 2023

BETWEEN

COCA COLA KWANZA LTD ..... APPLICANT

VERSUS

INNOCENT WILLIAM MLAY ..... RESPONDENT

JUDGEMENT

Date of last Order: *22/11/2023*
Date of Judgement: *12/12/2023*

MLYAMBINA, J.

The brief fact of the matter is that; the Respondent was employed by the Applicant from 10/09/2018 as a Regional Sales Manager Adjacent Category and Zanzibar. On 03/09/2020, the Respondent was terminated from employment on the ground of gross dishonesty and tarnishing company image. The facts of the misconducts in question will be apparent in due course. Aggrieved by the termination, the Respondent referred the matter to the Commission for Mediation and Arbitration (herein CMA). He strongly claimed that the termination was unfair. Therefore, he prayed to be awarded compensation for unfair termination of employment contract with reasonable expectation of 96 months equal to TZS 671,630,880.00, notice pay of TZS 6,996,155.00 as well as

compensation for 11 years developed carrier ruined and character assassination amounting to TZS 160,000,000.00.

After considering the evidence of the parties, the CMA reached to the conclusion that the Respondent was unfairly terminated from employment both substantively and procedurally. Therefore, the Respondent was Awarded a total of TZS 848,171,252/= being 84 month's salary as compensation of the alleged unfair termination, notice pay, severance payment of two years as well as TZS 250,000,000/= as nominal damages.

Unhappy with the CMA's decision, the Applicant filed the present application on the following grounds:

i. That, the Arbitrator erred in law and fact by failing to evaluate evidence adduced by the Applicant who proved the fairness of Respondent's termination on the balance of probability which is the standard required by the law.

ii. That, the Arbitrator erred in law and fact in disregarding all documentary evidence in support of Applicant's case and relied on mere words of the Respondent which had no any supporting documentary evidence.

iii. That, the Arbitrator erred in law and in fact in holding the Applicant failed to prove the reason for termination of the Respondent because the Applicant based only on circumstantial evidence to terminate the employment contract of the Respondent.

iv. That, the Arbitrator erred in law and facts in holding that the use of symbol /= is not collaborative evidence to prove that the message was used to solicit extra money from the customer.

v. That, the Arbitrator erred in law and fact in holding the allegations levelled against the Respondent was cooked by the Applicant in order to bully the Respondent.

vi. That, the Arbitrator erred in law and fact in holding that it was procedural irregularity for the initiator/complainant in the disciplinary hearing meeting to participate in the investigation of the allegations of the Respondent.

vii. That, the Arbitrator erred in law and fact in holding that the investigator was the one who took the position of the Respondent without any evidence to support that hence procedural irregularity.

viii. That, the Arbitrator erred in law and fact in holding that the termination letter was written before the recommendation of termination of employment of the Respondent by disciplinary hearing committee.

ix. That, the Arbitrator erred in law and facts in misinterpreting the evidence of DW5 hence ending up in erroneous conclusion that the Respondent was charged without/before investigation conducted hence investigation was a mere rubber stamp.

x. That, the Arbitrator erred in law and facts in holding that the principles of natural justice were violated during the disciplinary hearing meeting.

xi. That, the Arbitrator erred in law and fact by ordering payment of nominal damage equal to Tanzania Shillings Two Hundred and Fifty Million (TZS 250,000,000/=) without justifiable reasons.

xii. That, the Arbitrator erred in law and fact by ordering payments of compensation of 84 month's salary which is too excessive without justifiable reasons.

xiii. That, the Arbitrator erred in law and in fact to the extent that after holding that the termination was unfair, ordering compensation for

unfair termination and payment of general damage which is contrary to the law.

xiv. That, the Arbitrator erred in law and in fact in not considering appropriate relief to the Respondent if at all the termination was unfair depending on nature of dispute.

The application was argued by way of written submissions. Before the Court, the Applicant was represented by Mr. Godfrey Tesha, learned counsel whereas Mr. Amos Paul appeared for the Respondent.

I appreciate the comprehensive submissions of the parties which shall be taken on board in due course of constructing this judgement. After considering the rival submissions of the parties, CMA and Court records as well as relevant laws, I find the Court is called upon to determine the following issues: One; *whether the Applicant proved the misconducts levelled against the Respondent*. Two, *whether the Applicant followed procedures in terminating the Applicant*. Three, *what reliefs are the parties entitled to*.

To start with the first issue; whether the Applicant proved the misconducts levelled against the Respondent. The termination letter indicates that the Respondent was terminated from employment for two

misconducts namely; gross dishonesty as per *Rule 12(3)(a) of the Employment and Labour Relations (Code of Good Practice) Rules, GN. No. 42 of 2007 and Schedule 17(k) of the Coca – Cola Staff Handbook.* He was also terminated for Tarnishing Company's image contrary to *Schedule 17(w) of the Coca – Cola Staff Handbook.* On the first misconduct, it was alleged that the Respondent unlawfully abused selling price of company products to different customers, an act which question his integrity. It was further alleged that during investigation it was revealed that between November, 2019 and June, 2020, the Respondent intentionally asked customers to give him extra money over and beyond the company price for him to deliver products an act which distort company image and its contrary to company disciplinary code.

On the second misconduct, it was alleged that the Respondent was expected to execute his job professionally, including displaying a good image outside and within the premises, which has not been the case as during investigation it has been revealed that on numerous occasions, customers in his market territory have been over charged for purchasing company products contrary to the selling price set by the company.

The Applicant strongly submitted that the evidence available in records proved the mentioned misconducts. That, the Arbitrator ignored

the Applicant's evidence including the investigation report (exhibit D3). Mr. Tesha added that; the Applicant's witnesses at the CMA to wit DW1, DW2, DW3, DW4, DW5, DW6 and DW7 all proved the misconducts in question. He firmly submitted that the misconducts were not cooked as found by the Arbitrator. On the other hand, Mr. Paul challenged the Applicant's evidence tendered at the CMA. He contended that PW1 testified that he was neither contacted by the Applicant nor interviewed on the issue of price abuse and dishonesty. The testimony which was contrary to the investigation report.

Mr. Paul went on to submit that witnesses for exhibit D1(B), D1(C) and D1(D) never appeared at the CMA, therefore, denying the Respondent the right to cross examine the witnesses in question was contrary to *Rule 4(6) of GN. No. 42 of 2007.* He added that; exhibit D1(A) was never tendered during disciplinary hearing hence, the Respondent was denied the right to cross examine the same.

In the case of **Pratinum Credit Limited v. Martin Joaqim**, Civil Appeal No. 138 of 2022, Court of Appeal of Tanzania at Tanga observed that: Neither the Employment and Labour Relations Act (ELRA) nor GN. No. 42 of 2007, define gross dishonesty. The Court cited Grogan, J. in

the Book **Dismissal, Discrimination & Unfair Labour Practice**, 2nd Edition, 2007 at page 300, Millulu's book at page 138 which states:

> However according to Grogan, 'Dishonesty' is a generic term embracing all forms of conducts involving deception on the part of employees. In employment law, a premium is placed on honesty because conduct involving moral turpitude by employees damage the trust relationship on which the contract is founded. Dishonesty at workplace takes two main forms, lying and stealing. Dishonesty can consist of any act or omission which entails deceit. In the case of **Labee Park Club v Garrant** (1997) 9 BLLR1137 (LAC) it was held to include withholding information from the employer, or making a false statement or misrepresentation with the intention of deceiving the employer. In **Nedcor bank v Frank & Others** (2002) 23 IU 1243 (LAC), the South African Labour Appeal Court held that dishonesty entails a lack o f integrity or straightforwardness and, in particular, a willingness to steal, cheat, He or act fraudulently.

In the matter at hand, the Court is also called upon to examine whether the Respondent's act amounted to dishonesty. I have careful examined the records. Prior termination, the Respondent was summoned before the disciplinary hearing. During hearing, the Applicant summoned various witnesses to prove his allegations against the Respondent. He also tendered documentary evidence to prove the

allegations in question. The Respondent was also afforded an opportunity to respond to the allegation thereat. He strongly denied the misconducts levelled. After the conclusion of his defence, the Respondent was cross examined. For easy of reference, I hereunder quote part of his testimony when cross examined as reflected in the disciplinary hearing minutes (exhibit D7):

> Mlalamikaji: Kwenye namba za simu zinazoonesha meseji na mteja, je hizi chati ni zako na unazitambua?
>
> Mlalamikiwa: Ndio ni namba yangu na hizo chati nazitambua.
>
> Mlalamikaji: Mbona umekubali chati zote lakini chati za tarehe 25/10/2020 umezikataa na zimejitokeza kwa mteja printout na printout ya kwako?
>
> Mlalamikiwa: Nazikataa kwasababu sikuwa na discussion yeyote. Ni kweli meseji iliingia kwenye simu yangu ila nilikuwa sina mazungumzo yeyote kuhusu bei hiyo
>
> Mlalamikaji: Meseji hii ya 25/01/2020 unakubali kuipokea
>
> Mlalamikiwa: Ndio niliipokea na ipo kwenye simu yangu.

In the above quotation, the Respondent was asked if he is aware of the conversation between him and one of the clients on 25/01/2020 (exhibit D2(A) through his mobile phone. The Respondent confirmed

that he is aware of the conversation in question. On the alleged date, they had the following conversation:

Client: Kaka inno za asubuhi

Respondent: Salama Bro

Client: Sasa kaka nina ombi kidgo kutoka kwa Mzee

Respondent: Ndio kaka

Client: Anaomba Savana mtupe kwa 63,000/= kaka Alinibana niongee na nyie kwa 62,000/= ila nikaona Tyari nilishafanya malipo ya 10ml ni bora nikuombe kwa 63,000/= Nisaidie hapo kaka.

In the above conversation, the client informed the Respondent that his boss was asking them to sell Savana at 62,000/=. However, since they have already paid 10 million in advance, they are asking for 63,000/=. On 25/01/2020 the Respondent did not reply the message in question. The conversation went on 27/01/2020 as follows:

Client: Kaka nilishamaliza ile deposit ya 1000 jmos Ila slip sijaipiga picha Kesho naomba utupakilie.

Again, in the above quotation, the client informed the Respondent that they have already deposited 1000 on Saturday but he did not take a picture of the slip. He further pleaded the Respondent to load them their purchased goods. On the same date, the Respondent referred the

message about Savana negotiation and asked them to make it 4000. He replied that as follows:

> Fanyeni 4000. Good morning.
>
> Mzigo wenyewe unakata

On the basis of the foregoing analysis, it is my view that there were suspicious conversations between the Applicant and the client in question. The Respondent maintained that the conversation was based on number of cartoons to be purchased and not what portrayed by the Applicant, corruption practice. At the CMA, the Arbitrator made the following finding:

> Tume kupitia uchambuzi na Ushahidi wa mashahidi wote kama ilivyofanya hapo juu, iliona kuwa ni sahihi kujiuliza maswali kwamba, haibishaniwi kuwa Ushahidi husika wote umejikita katika mazingira ya circumstancial evidence/Ushahidi wa jambo kuweza au kutokuweza kutendeka, nak ama ni hivyo je ni sahihi kukubaliana na hoja ya wakili msomi wa mlalamikiwa kupitia mawasilisho yao ya mwisho kuwa, kwa hisia ya alama "/=" tu, wameweza kuthibitisha kesi yao kwa kiwango cha mashaka dhidi ya PW3? Je Ushahidi huo hauhitaji accommodative/collaborative evidence? Je hakukuwa na ulazima wa kumleta mtaalamu wa alama, kujiridhisha kuwa ni kweli popote inapoonekana alama "/=" ni lazima kumaanisha pes ana sio vinginevyo? Hasa kwa kuzingatia mazingira ya

alama hiyo ilivyotumika, Je ni sahihi kuamini kuwa PW3 aliachishwa kazi kwa kosa sahihi la kukosa uaminifu kwa mazingira ya ushahidi huu mbele ya Tume kwa maana ya kwamba hakukuwa na ulazima kwa kumleta mteja na kumuuliza je kwenye alama husika PW3 alikuwa akiomba pes ana sio bali yeye mteja alikuwa akimaanisha cartoon za Savannah? Hasa ikizingatiwa kuwa bei husika ilikuwa ikifahamika sokoni na pia alitumiwa kwa WhatsApp, kama maudhui ya nyaraka husika ionyeshavyo.

The above quotation can be loosely translated as follows:

After the analysis and evidence of all witnesses as it did above, the Commission considered it appropriate to find that it is not disputed that the relevant evidence is all based on circumstantial evidence/evidence of a matter being able or not to be done. If that is the case, is it correct to agree with the argument of the Respondent's Advocate through their final submissions that with the impression of the mark "/=" only, have they been able to prove their case to the degree of doubt against PW3? Doesn't that evidence need to be accommodative/collaborative? Wasn't there a necessity to bring in a marker expert, to satisfy himself that it is true wherever it appears the mark "/=" is supposed to mean money not otherwise? Especially considering the circumstances of the mark being used, is it correct to believe that PW3 was terminated for the correct offence of dishonesty in the context of this evidence before the Commission in the sense that there

was no necessity for bringing the client in and asking him was in the relevant mark PW3 was asking for money or not what if the client was referring to the Savannah cartoon? Especially given that the price was known in the market and was also sent through WhatsApp, as the content of the relevant documents indicates.

From the above finding, it is my view that the Arbitrator shifted the standard of proof which is required in this case. The standard of proof is on the balance of probabilities as in terms of *Rule 9(3) of GN. No. 42 of 2007* which is to the effect that:

> The burden of proof lies with the employer but it is sufficient for the employer to prove the reason on a balance of probabilities.

Again, in the case of **Charles Richard Kombe T/A Building v. Evarani Mtungi & 2 Others**, Civil Appeal No. 38 of 2012, Court of Appeal of Tanzania at Dar es Salaam (unreported) the Court held that:

> ... it is dear that the learned Judge applied the standard of proof applicable in civil as well as criminal matters. We need not cite any provision of law because this being a civil matter, it is elementary that the standard of proof is always on the balance of probabilities and not beyond a reasonable doubt. Further, the two could neither co-exist nor be applied interchangeably as was done in this case. The application of

> the afore-stated standard of proof of both criminal and civil in this case is to say the least is novel and indeed puzzled us. We do not think the decision arrived at, in the circumstances, is sound in law.

Similarly, in the case at hand, the standard used was both beyond reasonable doubt and balance of probability. Therefore, the standard was wrongly applied by the Arbitrator. The above quoted conversation as they are reflected in exhibit D2(A) is sufficient evidence to prove the levelled misconducts. It is commonly known when the symbol /= is used it connotes shillings. Thus, no more evidence was needed to prove that the Respondent and the client in question were discussing about money. They were negotiating about the price of Savannah. The record reveals further that the price for each product was set by the Applicant as reflected in exhibits D9, D10 and D11. Under such circumstance, the Arbitrator should have critically examined the contents of the conversations in question. What was the Respondent's motive in negotiating product prices while the price tag list is self-explanatory? Such act justified that there were illegal conducts by the Respondent and his colleague Mr. John Dandi.

To justify the claim, the Applicant further tendered a complaint letter from a customer namely Proches Karoli Shayo (exhibit D1C). The client

complained that he was paying extra money than the price tag and that the extra money was paid to the Applicant and his colleague. To prove his claim, the client attached a ban payslip which shows that five million was paid to Mr. John Dandi's personal account. Such evidence though not directly link the Respondent with the misconduct in question, but it was crucial evidence which should have not been taken lightly by the Arbitrator. The evidence was also proved by the investigation report (exhibit D3) where the report indicated that the Respondent and his fellow, John Dandi have been asking customers to give them extra money over and above company selling price. That they handover the extra money via either cash in hand, transfer in the mobile numbers or in their personal Bank accounts.

I am not in disregard with the Respondent's allegation that the Applicant did not bring the complained client, supervisor of Mr. Proches's business to testify before the disciplinary hearing. On that regard, it is the laws' position which is also emphasized in numerous decisions that oral evidence cannot supersede documentary evidence. This is pursuant to *Section 100(1) of the Evidence Act, [Chapter 6 Revised Edition 2019]* (herein TEA). The provision was also elaborated in the case of **Hope Stiftung (Hope Foundation) v. Sisters of St. Joseph –**

Kilimanjaro Region and 2 Others, Land Case No. 3 of 2020, High Court of the United Republic of Tanzania, Moshi Sub Registry. The bank payslip proved the allegation that extra money was sent through personal accounts. Even though such account was not the Respondent's account but the evidence itself is a collaborative to the misconducts at hand.

On the basis of the foregoing analysis, it is my view that the Respondent's conducts feature within the meaning of acts amounting to dishonesty as they are well elaborated in the case of **Pratinum Credit Limited** (supra). Since the first misconduct was proved, it follows therefore that the Respondent's acts tarnished the Applicant's image. Therefore, the second misconduct was also proved by the Applicant.

Coming to the second issue as to; whether the Applicant followed procedures in terminating the Respondent. As the record speaks, the Respondent was terminated on the ground of misconduct. The termination procedures on the particular ground are stipulated under *Rule 13 of GN. No. 42 of 2007 reads together with guideline 4 of the Guidelines for Disciplinary, Incapacity and Incompatibility Policy and Procedures*. At the CMA F1 which initiates complaints at the CMA, the Respondent alleged that the termination procedures were violated by

simply stating that the procedure were highly perverted. In the opening statement, he further maintained that all legal procedures were not adhered.

The CMA found the following procedures have been violated as it is stated at page 58 of the impugned Award. One, the Respondent was served with the investigation report during the disciplinary hearing. Two, the Respondent was not afforded the chance to cross examine complained clients and the exhibit tendered. Three, the person who investigated the Respondent was the one who replaced his position. Thus, there was likelihood of biasness and that the charge sheet was prepared before the investigation report.

To start with the first procedure alleged top have been violated, it is the law's requirement under *Rule 13(1) of GN. No. 42 of 2007* for the employer to conduct investigation so as to ascertain whether there are grounds for a hearing. In the matter at hand, it is undisputed that the Respondent was suspended from employment pending investigation. On such circumstances, it is expected that he should have been informed about the findings of the investigation so as to adhere to the principles of natural justice. That is the Court's position in numerous decisions including the case of **MIC Tanzania Limited v. Edwin Kasanga**,

Labour Revision No. 860 of 2019, High Court Labour Division, Dar es Salaam, which was cited by the Respondent's counsel, where it was held that:

> As stated above, the law is silent on the manner in which the investigation has to be conducted; in my view, the whole process should adhere to the principles of natural justice; this further entails even that the investigator should be an impartial person. In some circumstances, it is even prudent for the investigator to question the employee involved in the incident investigated so as to afford him/her the right to be heard at such stage.

I subscribe to the above findings. Indeed, investigation should be conducted in adherence to the principles of natural justice though it is not directly stated by the law. It is my view that, if investigation is conducted in bias, it vitiates the whole disciplinary proceeding because the decision of the disciplinary committee is also expected to be grounded on the findings indicated in the investigation report. In the matter at hand, investigation was conducted by DW1, Edward Mwakabungu who was the Applicant's events Manager and Special events. The Respondent was of the strong view that the named person was not the right person to conduct investigation as he is the one who

replaced the Respondent's job position. The allegation which was agreed by the Arbitrator.

As stated above, the law is silent on the manner and who is responsible to conduct investigation but it is only expected to be conducted by an impartial person. Going through the records, there is no proof that the investigator in question replaced the Respondent's position as alleged. Under the circumstance, careful consideration of who conducted investigation should be considered. Can a fellow employee be disqualified to be involved in the investigation process? I do not think that was the intention of the legislative. The reason is that; if investigators must come from outside the company, the process will be prolonged and involve financial capacity of the employer in question which cannot be interfered by the Court.

Therefore, it is my view that whoever claims that the investigator was not an impartial person he/she has to state justifiable reasons for the Court to believe so. Short of that, any reasons stand as mere allegations which lacks proof. In the instant matter, no ill motive has been established on the party of the investigator. Thus, he was the right person to conduct investigation.

The Respondent further questioned the involvement of the investigator in question in the disciplinary hearing. The disciplinary hearing minutes (exhibit D5) indicates that the relevant person appeared as a witness and not one of the panellists. Since he was the one who conducted investigation, it is my view that he was the right person to testify on behalf of the employer.

On the claim that the investigation report was not served to the Respondent before the disciplinary hearing, such contention was not disputed by the Applicant's witnesses. Therefore, such was a procedural irregularity because an accused employee is expected to be availed with all the available evidence against him including the investigation report so as to afford him an opportunity to prepare for his defence. In absence of that, it amounts to unfair hearing even if the employer had sufficient evidence to convict the employee in question.

Regarding the contention that the Applicant was served with the charge sheet before completion of investigation, I find such contention is contrary to the records available. The investigation report (exhibit D3) indicates that the same is dated 18/08/2020, whereas the charge sheet (exhibit D5) indicates that the same is dated 18/08/2020. Under such circumstance, it is difficult to conclude that the charge sheet was

prepared before conclusion of the investigation process. It is impossible to state which began between the investigation report and charge sheet.

On the allegation that the Applicant did not bring the complained clients before the disciplinary hearing, it is my view which is also the position of the law stated under *Section 143 of The Evidence Act (supra),* that no particular number of witnesses is required to prove a certain fact. As discussed in the first issue, the evidence presented by the employer was sufficient enough to convict the Respondent with the misconducts in question. The provision is to the effect that:

> Subject to the provisions of any other written law, no particular number of witnesses shall in any case be required for the proof of any fact.

Under the circumstance, it was not mandatory to bring all clients who complained to justify the Applicant's claim. In the event, the only procedure found to have been violated is failure to avail an employee with investigation report and other documentary evidence before the disciplinary hearing to enable him to prepare for his defence. I have also observed other procedures provided under *Rule 13 (supra)* were all followed by the Applicant in terminating the Respondent.

Turning to the last issue; *what reliefs are the parties entitled to.* The Court will examine one relief after another which was Awarded by the Arbitrator. To start with, I find no justifiable reason to interfere with the Award of notice payment and severance payment since they are not disputed by the Applicant. Ras regards to the Award of 84 month's salaries as compensation of unfair termination, this Court finds the same are not justifiable to the circumstances of this case. As righty argued by Mr. Tesha under *Section 40(1)(c) of the ELRA (supra),* the law provides a minimum standard to Award in the event of the findings of unfair termination. If the Arbitrator decides to Award more than what is stipulated by the law justifiable reasons have to be stated.

In the application at hand, since it is found that the Applicant proved the misconduct against the Respondent but he only violated some of the procedures for termination, it is my view that the Award of 84 months is unjustifiable. In the case of **Felician Rutwaza v. World Vision Tanzania,** Civil Appeal No. 213 Of 2019, Court of Appeal of Tanzania at Bukoba (unreported), the Court blessed the High Court's decision that it is not mandatory that in all cases of unfair termination, the Arbitrator should order compensation of not less than 12 months' remuneration. In the context of the case in which the unfairness of the termination was

on procedure only guided by some decisions of that Court, the learned Judge reduced compensation from 12 to 3 months. The Court went on to refer to the case of **Sodetra (SPRL) Ltd v. Mezza & Another,** Labour Revision No. 207 of 2008, High Court where my learned Sister Hon. Rweyemamu, J interpreted *Section 40(1) (c) of the ELRA* thus:

> ...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...

Therefore, in the circumstances of this case, where the Applicant only violated one procedure for termination, I believe the Award of three months (3) is appropriate and will suffice justice. Thus, the Award of 84 months is hereby quashed and set aside.

As regards to the Award of nominal damages amounting to TZS 250,000,000/= when awarding the same the Arbitrator stated as follows as it is reflected at page 70 of the impugned Award:

> Kwa minajili hiyo Tume eimejiridhisha pasi na shaka kuwa wateja walipokea taarifa za PW3 kukosa uaminifu kama inavyojieleza katika examination in chief ya DW7 walipokea taarifa potofu na za kumchafua PW3. Tume imejiridhisha kuwa PW3 alifanyiwa "character assassination". Tume inamwamuru

mlalamikiwa kumlipa mlalamikaji "nominal damage" za kiasi cha 250,000,000/= kwa kuchafuliwa jina lake kwa tuhuma za kukosa uaminifu kazini. Kuhusu madai ya kuchafuliwa kwa kutolewa gazetini hakukuwa ten ana mahusiano ya mwajiri na mfanyakazi (employer employee relationship) hivyo Tume hii inakosa mamlaka kisheria kushughulikia madai yaliyo nje ya mahusiano ya ajira.

The above quotation can be loosely translated as follows:

The Commission has satisfied itself without a doubt that customers received PW3 dishonest information as stated in the DW7 investigation report which are misinformation and defamation of PW3. The Commission is satisfied that PW3 was subjected to character assassination. The Commission orders the complainant to pay the complainant nominal damages of 250,000,000/= for defamation of his name on suspicion of dishonesty at work. As regards to the alleged defamation of the newspaper, there was no employer and employee relationship. Therefore, the CMA lacks jurisdiction to determine the same.

On the basis of the above findings, since it is found that the Respondent's acts amounted to dishonesty hence tarnishing the employer's image, I find the Respondent is not entitled to any damages whatsoever. Thus, the same were wrongly awarded to him by the Arbitrator.

In the end result, I find the present application to have partly succeeded. The Award of notice pay and severance allowances are hereby upheld. The Award of 84 months salaries is hereby reduced to 3 months salaries, whereas the Award of nominal damages is hereby quashed and set aside. Thus, the Respondent is ordered to be paid a total of TZS 31,482,697/= to the extent explained above.

It is so ordered.

Y. J. MLYAMBINA
JUDGE
12/12/2023

Judgement pronounced and dated 12th December, 2023 in the presence of Counsel Flavian Kasenga John holding brief of Godfrey Tesha for the Applicant and in the presence of the Respondent and his Counsel Amos Paul.

MAHAKAMA KUU YA TANZANIA (The High Court of Tanzania) DIVISHENI YA MAHAKAMA YA KAZI (Labour Division)

Y. J. MLYAMBINA
JUDGE
12/12/2023