

**IN THE HIGH COURT OF TANZANIA  
(ARUSHA SUB-REGISTRY)**

**AT ARUSHA**

**REVISION NO. 456026 OF 2022**

*(Arising from an Award issued on 23/9/2022 by Hon. O. Mwebuga, Arbitrator, in Labour Dispute No.  
CMA/ARS/ARS/307/21/141/2021 at Arusha)*

**GENESIS TARIMO ..... APPLICANT**

**VERSUS**

**PIUS MALLYA ..... RESPONDENT**

**EXPARTE – JUDGMENT**

*Date of Last Order: 21/06/2024  
Date of Judgement: 25/06/2024*

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

Facts of this application briefly are that, Genesis Tarimo, the herein applicant was employed by Pius Mallya. On 05<sup>th</sup> August 2021, applicant filed Labour complaint No. CMA/ARS/307/21/141/2021 before the Commission for Mediation and Arbitration(CMA) at Arusha complaining that 25<sup>th</sup> July 2021 respondent terminated his employment unfairly. Based on that complaint, applicant indicated in the referral form(CMA F1) that he was claiming to be paid (i) TZS 2,400,000/= being compensation for unfair termination, (ii) TZS 100,000/= being unpaid salary, (iii) TZS 538,462/= being severance pay, (iv) TZS 200,000/= being notice pay and (v) TZS 200,000/= being leave pay all amounting to TZS 3,438,462/=. He further indicated that he was

claiming to be paid undisclosed amount being NSSF and be issued with a certificate of service.

On 23<sup>rd</sup> September 2022, Hon. O. Mwebuga, Arbitrator, having heard evidence of the parties issued an award in favour of the respondent that applicant failed to prove that he was terminated by the respondent. Aggrieved with the said award, on 21<sup>st</sup> October 2022, applicant filed the Notice of Application supported by his affidavit seeking the court to revise the said award. In the said affidavit, applicant raised one ground that the arbitrator erred in law and facts for failure to consider evidence adduced hence reached erroneous decision. Applicant further filed "statement of legal issues" showing that the same was made under Rule 24(3) of the Labour Court Rules, GN. No. 106 of 2007.

I should point out that, on 28<sup>th</sup> October 2022, this court(Hon. A.Z. Bade,J) issued an order that respondent should file the Notice of Opposition and the counter affidavit by 16<sup>th</sup> November 2022 and that the application will be mentioned on 17<sup>th</sup> November 2022. No counter affidavit was filed by the respondent. It was only on 7<sup>th</sup> December 2022 when Sheck Mfinanga, advocate for the respondent when appeared in court and notified the court that respondent has passed away but without disclosing the date he died. Based on that information, this

court adjourned this application from time to time hoping that the administrator of the estate of the said Pius Mallya will be joined as the respondent. From that time up to now, that has not been done. Being aware that, the period that was available for the respondent expired before filing the notice of opposition and or the counter affidavit but before a report that he was dead, I decided to proceed hearing this application exparte hence this exparte judgment.

In arguing this application, applicant simply submitted that, termination was unfair both substantively and procedurally and prayed to be paid his entitlements.

I have examined evidence of the parties in the CMA record and wish to point out that, it was the duty of the applicant to prove that respondent terminated his employment because, sections 110(1) and (2) and 111 of the Evidence Act [Cap. 6 R.E. 2022] are clear that, he who alleges must prove. See the case of *Oliva James Sadatally vs Stanbic Bank Tanzania Limited* (Civil Appeal 84 of 2019) [2022] TZCA 388 (17 June 2022) and *Tryphone Elias @ Ryphone Elias & Another vs Majaliwa Daudi Mayaya* (Civil Appeal No. 125 of 2020) [2023] TZCA 18014 (21 December 2023). Unfortunately, in his evidence, applicant did not prove that he was terminated. While at CMA, applicant (PW1) gave two paragraph evidence as quoted hereunder:-

*"Nilianza kazi tarehe 25/08/2004 na baada ya kuanza kazi aliniahidi nifanye kazi kwa bidii. Mwaka 2015 alinituma niende TRA kukadiliwa mapato ya biashara. Aliniambia kuwa biashara ikikuwa nitakuwa na manufaa mwaka huo pia nikamkumbusha juu ya maendeleo yangu na akaniambai nisijali. Nilirudishwa kwenye duka la awali baada ya kuonekana ninadai maendeleo yangu. Naomba Tume inisaidie kulipwa stahiki zangu sijawahi Kwenda likizo miaka 17, NSSF, kiinua mgongo ni hayo tu."*

It is clear that, that being the only evidence adduced by the applicant at CMA, he said nothing relating to termination of his employment. As pointed out shortly a while, applicant had a duty to prove that respondent terminated his employment in order the onus of proof that termination was fair to shift to the respondent. In fact, in their evidence, Pius Mallya (DW1) and Lucy Pius Mallya(DW2) testified that they did not terminate the applicant. Since applicant did not prove that respondent terminated his employment, I find that the arbitrator was right to dismiss the complaint by holding that there was no termination of employment. I therefore find that the application is unmerited.

I have pointed out herein above that, applicant filed a separated document titled "statement of legal issues" showing that the same was made under Rule 24(3) of the Labour Court Rules, GN. No. 106 of 2007. It is my considered view that, the said document was wrongly filed in court. I am of that view because, the guiding Rule is Rule 24(1) and (3)

of GN. 106 of 2007(supra) which provides that an application before this court shall be by Notice supported by an affidavit. Rule 24(3) (a), (b), (c) and (d) of GN. No. 106 of 2007(supra) clearly sets out the content of the affidavit in support of the notice of application. The said affidavit should contain (a) names, description and address of the parties, (b) a statement of material facts in chronological order on which the application is based, (c) a statement of legal issues that arise from the material facts and (e) reliefs sought. In short, there is no requirement of filing a separate document containing legal issues.

For all what I have pointed hereinabove, I hereby dismiss this application for want of merit.

Dated at Arusha on this 25<sup>th</sup> June 2024.



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

Judgment delivered on this 25<sup>th</sup> June 2024 in Chambers in the presence of Genesis Tarimo, the Appellant but in the absence of the Respondent.



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