

**IN THE HIGH COURT OF TANZANIA**  
**LABOUR DIVISION**  
**AT DAR ES SALAAM**

**REVISION APPLICATION NO. 26172/2023**

*(Arising from an Award issued on 13/10/2023 by Hon. Makanyaga A.A, Arbitrator in Labour Dispute No. CMA/DSM/472/21)*

**FADHIL SAID MBELWA..... APPLICANT**  
**VERSUS**  
**ULTIMATE SECURITY TANZANIA LIMITED ..... RESPONDENT**

**RULING**

*Date of Last Order: 07/02/2024*  
*Date of Ruling: 13/02/2024*

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

Facts of this application are that, applicant was an employee of the respondent. It happened that on 5<sup>th</sup> November 2021, respondent terminated employment of the applicant. Aggrieved with the said termination, applicant filed Labour dispute No. CMA/DSM/472/21 before the Commission for Mediation and Arbitration henceforth CMA complaining that respondent terminated his employment unfairly. On 9<sup>th</sup> September 2023, Hon. Makanyaga, A. A, arbitrator, issued an award dismissing the claim by the applicant after finding that termination was fair both substantively and procedurally.

Aggrieved with the said award, applicant filed this application raising three issues namely:-

1. *Whether the Arbitrator's award is unlawful, illogical and (or) irrational?*
2. *Whether it was improperly procured?*
3. *Whether the award of the CMA at Dar es Salaam Zone issued on 13<sup>th</sup> October 2023 in the Labour Dispute No.CMA/DSM/472/21 had illegality, irregularity and was improperly procured.*

When this application was called for hearing on 7<sup>th</sup> February 2024, Mr. Lusaka Mwakasege, advocate, appeared for the applicant while Mr. Elipidius Philemon, advocate, appeared for the respondent. Before allowing the parties to address the court on the issues raised by the applicant, I perused the CMA record and find that, when Ally Athuman Masense was testifying, the Arbitrator marked exhibit R1 as the contract of employment between the parties but there was no prayer for the said contract to be admitted as exhibit. More so, the applicant in this application was not asked whether he has objection or not. When Atufugegwe Andrew Mwakamulwe(DW2) was testifying, the arbitrator received investigation report and marked it as R2 in absence of the prayer from DW2 to tender the said report as exhibit and without asking the herein applicant whether he has objection or not. When Tatu Mwita Elias (DW3) was testifying, the arbitrator received and marked exhibit R2, R4, R5, R6, R7, R8 & R9, and R10 but there was no prayer for those documents to be admitted as exhibits and the herein applicant was not asked to comment on. When Fadhili Said Mbelwa (PW) the herein

applicant was testifying, he prayed and tendered exhibits F1 and F2 without objection. I also noted that, in the award, the arbitrator considered exhibits R1 to R10. With those observations, I asked counsel for the parties to address the Court whether, proceedings were properly recorded and whether, exhibits were properly admitted and the effect thereof.

Responding to the issues raised by the court, Mr. Mwakasege, learned counsel for the applicant submitted that, the procedure for reception of exhibits was not complied with, because, there was no prayer by the respondent to tender them as exhibits and the applicant was not asked to comment. He strongly submitted that, those exhibits were illegally received hence they have no evidential value. He added that, at page 14 of the award, the arbitrator indicated that those exhibits were received without objection. He went on that, the procedure adopted by the arbitrator occasioned injustice to the parties. He therefore prayed the whole CMA proceedings be nullified and order trial *de novo*. To support his submissions, counsel for the applicant referred the court to the case of [\*\*Mhubiri Rogega Mong'ateko vs Mak Medics Ltd\*\*](#) (Civil Appeal 106 of 2019) [2022] TZCA 452 (20 July 2022).

On the other hand, Mr. Elipidius Philemon, advocate for the respondent, concurred with submissions by counsel for the applicant that proceedings were not properly recorded because, documents were received without a prayer to tender them and that, the other party was not asked to comment whether he has objection or not. He added that, those documents were improperly received but were considered by the arbitrator at the time of composing the award. He concluded that, the award is invalid and prayed the court to nullify CMA proceedings, quash the award and order trial *de novo* before a different arbitrator.

I have considered submissions by both counsel and it is my considered opinion, that they correctly submitted that exhibits were not properly received at CMA because there was no prayer by the witnesses to tender them as exhibits. More so, the other party was not asked to comment whether he has objection or not. In short, by failure to ask the herein applicant to comment whether he has objection for the said documents to be admitted as exhibit or not, the arbitrator deprived applicant right to be heard properly. In short, the said exhibits were illegally admitted in evidence and cannot be acted upon by this court as it was correctly submitted by the parties. In fact, that is the correct position of the law as it was held by the Court of Appeal in the case of **Mhubiri Rogega Mong'ateko vs Mak Medics Ltd** (Civil Appeal 106

of 2019) [2022] TZCA 452 (20 July 2022). The said irregularity vitiated the whole CMA proceedings. Worse, in the award, the arbitrator indicated that the said exhibits were received without objection. Statement in the award that the said exhibits were received without objection, in my view, has raised a serious issue of authenticity and reliability of the whole proceedings.

For the foregoing, I hereby nullify the CMA proceedings starting from evidence of the parties to the conclusion, quash the Award arising therefrom and order trial de novo before a different arbitrator as it was prayed by learned counsel for the parties. I order that the said trial should be done without delay.

Dated at Dar es salaam this 13<sup>th</sup> February 2024



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

Ruling delivered on 13<sup>th</sup> February 2024 in chambers in the presence of Neema Ndossi, Advocate for the Respondent but in absence of the applicant.



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