

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

REVISION APPLICATION NO. 256 OF 2023

*(Arising from an Award issued on 08/09/2023 by Hon. G.M. Gerald, Arbitrator, in Labour Dispute No.
CMA/DSM/ILA/84/42/2021 at Ilala)*

CAR & GENERAL TRADING LTD APPLICANT

VERSUS

WILLIAM MBATILO RESPONDENT

JUDGMENT

*Date of last Order: 08/02/2024
Date of Judgement: 16/02/2024*

B. E. K. Mganga, J.

Brief facts of this application are that, on 22nd November 2016 applicant and respondent commenced their employment relationship. On the said date, applicant employed the respondent in a position of field Service Engineer. Unfortunately, 29th April 2021, employment relationship between the two turned into sour soup because applicant terminated employment of the respondent allegedly, due to gross misconduct.

Dissatisfied with termination of his employment, respondent filed Labour Dispute No. CMA/DSM/ILA/84/42/2021 before the Commission for

Mediation and Arbitration henceforth at Ilala. Having heard evidence of the parties, on 8th September 2023, Hon. G.M. Gerald, Arbitrator, awarded respondent to be paid (i) TZS. 9,484,800/= being 12 months compensation (ii) TZS. 790,400/=being notice, (iii) TZS. 1,064,000/= being severance pay and (iv) TZS. 790,400/= being leave pay all amounting to TZS. 12,129,600/=.

Aggrieved with the said award, applicant filed this application seeking the court to revise and set aside the said award. In the affidavit of Haroub Suleimani Juma, her Principal Officer in support of the notice of application, applicant raised six (6) issues namely:-

1. *Whether the trial arbitrator erred in laws and facts by his failure to state which procedure of the laws was violated by the applicant so as to term the respondent's termination un-procedural.*
2. *Whether the trial arbitrator erred in laws and facts by holding that the applicant failed to advance valid reasons for termination of the respondent contrary to the evidence and testimony given thereto.*
3. *Whether the arbitrator erred in laws by failure to specifically point out how the applicant failed to comply with provision of the laws so as to term the termination of the respondent unlawful.*
4. *Whether the arbitrator erred in laws by holding that it was mandatory to the applicant to show the evidence of the previous misconduct or warning before the termination of the respondent.*
5. *Whether the arbitrator erred in laws by ordering the payment to the respondent based on the salary other than the one provided by the later during the institution of his dispute and opening statement.*

6. *Whether the arbitrator erred in laws and facts by his failure to analyze evidence submitted by the applicant and hence made an award which is unlawful, illogical and irrational.*

After being served with the application, respondent only filed a notice of representation showing that he appointed Adelbera J. Nyakiriga, as his personal representative.

On 13th December 2023 this court issued an order that the application shall be argued by way of written submissions.

In her submissions in support of the application, applicant enjoyed the service of Aninduni Jonas Semu, learned advocate while respondent enjoyed the service of Adelbera John Nyakiriga, Advocate.

In his submission even though did not raise it as one of his grounds for revision, applicant submitted that exhibits were not properly tendered as there was no prayer to tender them as exhibits. To support his point, he referred the court to the Judicial Manual and Exhibit Management Guidelines of September 2020.

Arguing the 6th issue, counsel for the applicant submitted that the arbitrator did not address the reason for termination advanced by the respondent namely insubordination rather, addressed only the provisions of section 37(1) and (2) of the Employment and Labour Relations Act[Cap.

366 R.E 2019]. Counsel submitted further that arbitrator did not analyze evidence that was adduced.

Arguing the 4th ground, counsel for the applicant submitted cited the case of ***Pascal Bandiho vs. Arusha water Supply & Sewerage Authority***, Civil Appeal No. 04 of 2020, CAT(unreported) and submit that investigation depends on each institutional mechanism and that, investigation was conducted according to the company's mechanism. Counsel further cited the case of ***Geita Gold Mining v. Patrick William***, Labour Revision No. 84 of 2019, HC(Unreported) that employer is not compelled to comply with all what is stipulated under Rule 13 of the Employment and Labour Relations(Code of Good Practice) Rules, GN. No. 42 of 2007. Counsel added that, what is important is not application of Rule 13 of GN. No. 42 of 2007(supra) in a checklist fashion rather, to ensure that the process used adhered to the basics of a fair hearing in labour context depending on the circumstances of the parties so as to ensure that termination is not reached arbitrarily. He cited the case of ***Sharifa Ahmed vs. Tanzania Road Haulage Ltd***, Revision No. 299 of 2014, HC(unreported) to support his submissions.

Arguing the 5th ground, counsel for the applicant submitted that the arbitrator erred to calculate the amount awardable to the respondent

based on monthly salary of TZS 7900,000/= instead of TZS 450,000/=. Counsel for the applicant concluded his submissions praying that the application be granted.

On the other hand, Ms. Nyakiriga, advocate for the respondent before submitting on the issues raised by the applicant, raised a preliminary objection and submitted that the application is incompetent for want of the Notice to seeking Revision(CMA F1). Learned counsel for the respondent submitted that the application was filed in violation of the provisions of Regulation 34(1) of the Employment and Labour Relations(General) Regulations, GN. No. 47 of 2017. She submitted that the said form is mandatory as it initiates Revision and cited the case of ***Amina Sangali & 200 Others vs. St. John's University of Tanzania***, Labour Revision No. 100 of 2023, HC(unreported).

Responding to the issue relating to tendering of exhibits, learned counsel for the respondent submitted that, exhibits were properly tendered and admitted in evidence.

On procedural fairness, counsel for the respondent submitted that applicant did not conduct investigation hence did not comply with the provisions of Rule 13(1) of GN. No. 42 of 2007 (supra). She added that, that failure amounted to unfair termination procedurally. To support her

submissions, learned counsel for the applicant cited the case of Tanzania international Container ***Terminal Services(TICS) Vs. Fulgence Steven Kalikumtima and Others***, Revisions No. 471 of 2016, HC(Unreported), ***Perfect Silvester Mosha v. RC Trucking (T) Ltd***, Revision No. 94 of 2019, HC(unreported), ***Un Lodge en Afrique Ltd v. Salehe Sharif Burhani***, Revision No. 69 of 2020, HC(Unreported) and the case of ***Kibobery Limited v. John Van Der Voot***, Civil Appeal No. 248 of 2021, CAT(Unreported).

Arguing the 2nd and 6th grounds, counsel for the respondent submitted that arbitrator considered the reason for termination and find that applicant had no valid reason for termination of employment of the respondent.

On the complaint relating to investigation, counsel for the respondent submitted that applicant did not conduct investigation and referred the court to ***Kibobery's case*** (Supra) that it was mandatory for the applicant to conduct investigation.

Responding to submissions relating to respondent's monthly salary, counsel for the respondent submitted that, respondent's monthly salary was TZS 790,000/= according to respondent's evidence at CMA.

I have considered evidence of the parties in the CMA record and their rival submissions. It is clear that during submissions, applicant raised a new ground that was not contained in the affidavit in support of the application. Again, in reply submissions, counsel for the respondent raised a preliminary point of law touching competence of this application. I should point out that, though served with the said reply submissions, applicant did not file rejoinder submissions or counter the preliminary point of law relating to competence of this application. Since applicant was served and did not file a rejoinder, she cannot complain that she was denied right to be heard. In fact, by her failure to file a rejoinder in which she could have responded to the said preliminary point of law, applicant forfeited her right to be heard, I will therefore, proceed to determine first the preliminary objection before discussing the grounds raised by the applicant.

I have examined the CMA record and find that applicant did not file at CMA the mandatory Notice to seek Revision(CMA F10). In absence of the said CMA F10, this application becomes incompetent before this court. See the case of [**Anthony Massoy vs China Dasheng Bank Limited**](#) (Revision No. 51 of 2023) [2023] TZHCLD 1313 (8 June 2023), [**Anthony John Kazembe vs Inter Testing Services \(EA\) Pty Ltd**](#) (Revs Appl No. 391 of 2021) [2022] TZHCLD 45 (25 February 2022), [**Arafat Benjamin**](#)

411 (13 September 2021) to mention but a few. I therefore find that this application is incompetent.

What I have discussed hereinabove has disposed the whole application. I will therefore not consider submissions by the parties on the grounds raised by the applicant.

For the foregoing, I hereby strike this application for being incompetent.

Dated in Dar es Salaam on this 16th February 2024.



B. E. K. Mganga

JUDGE

Judgment delivered on this 16th February 2024 in chambers in the presence of Adelbera Nyakiriga, Advocate for the respondent but in the absence of the Applicant.



B. E. K. Mganga

JUDGE