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LEGAL NEWS

23 July 2024



Court of Appeal of Tanzania Rules on Arbitrators' Recusal vis-à-vis Misconduct in Labour Matters

Recently, the Court of Appeal of Tanzania (the Court) delivered its remarkable ruling in Civil Application No. 202 of 2021 between Ranger Safaris Limited vs. Helen Saul Mollel and dismissed an application for revision which aimed at challenging the conduct of an arbitrator at the Commission for Mediation and Arbitration (CMA) in Arusha. In this ruling, the Court held that complaints against the misconduct of an arbitrator in a labour matter does not qualify to be a ground for revision before the High Court or revision or an appeal before the Court.

Background of the Case

The Respondent was an employee of the Appellant as a reservation officer for 13 years before 8 October 2015 when her employment contract was terminated by the Appellant on ground of gross negligence. Aggrieved by the termination, the Respondent referred the dispute to CMA in Arusha which decided that, the Respondent's termination was both substantively and procedurally unfair. The CMA then ordered the Appellant to pay the Respondent a total of TZS 35.5M as compensation for 36 months' salaries. The Appellant applied for revision against the award before the High Court (Labour Division). The High Court found out that indeed the Respondent's termination was unfair both, in substance and procedure given the ambiguous reasons for termination as contained in the record of appeal, but the High Court reduced the awarded compensation to 18 months' salary to the tune of TZS 17.8M because the Respondent was awarded the terminal benefits immediately after termination. The Appellant being dissatisfied with the decision of the High Court, lodged the present appeal to the Court.

Arguments Raised by the Parties

During the hearing of the appeal, the Appellant argued that the Court has jurisdiction to entertain the complaint against the arbitrator and

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ECRA Attorneys is a modern and full-fledged law firm based in Dar es Salaam, Tanzania. It is comprised of qualified legal hulks with professional experience of more than a decade in a range of areas of their expertise.

ECRA Attorneys offers professional services in various areas of the law ranging from Taxation (both tax litigation and tax advisory); Corporate; Employment; Immigration; Intellectual property; Litigation, Arbitration and Regulatory; Engineering, Procurement and Construction (EPCs-related Services); Banking and Project Finance, Real Estate; Capital Market and Securities; Oil and Gas, Mining Law; Competition Law; Telecommunications and ICT Law; Payment Systems Law; Insurance Law and International Trade Law and Financing.

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that the High Court failed to address and determine procedural irregularities and vitiated the proceedings of the CMA such as the omission to insert various dates when the dispute was scheduled for hearing. The Appellant added that, in the written submissions, arguments were presented relating to the misconduct of the arbitrator, but all the same the High Court did not make any determination on them.

On the other hand, the Respondent opposed the appeal arguing that the same was misconceived. The Appellant's complaint in the revision application was on the refusal by the arbitrator to recuse himself from the conduct of adjudication of the labour dispute in question. At this juncture, the Respondent added that refusal to withdraw from the conduct of a matter is not a ground of misconduct. The Respondent, therefore, prayed for dismissal of the appeal before the Court.

Determination of Issues and Decision of the Court

The Court in determining the matter raised a question as to whether the High Court (Labour Division) and the Court of Appeal are clothed with jurisdiction to entertain complaints against the misconduct of an arbitrator. Acknowledging that all conduct of arbitrators in labour disputes are governed by the Labour Institutions (Ethics and Code of Conduct) Rules, the Court proceeded to state that, it has no power to entertain the Appellant's complaint against the arbitrators since section 57(1) of the Labour Institutions Act, 2004 provides that any party to the proceedings in the Labour Court may appeal against the decision of that court to the Court of Appeal on a point of law only.

Based on the foregoing, the Court ruled that the matter neither qualified for revision before the High Court nor for appeal before the Court. Thus, the appeal was held to be misconceived and the Court dismissed it and ordered each party to bear their own costs.

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