



**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

(CORAM: MUGASHA, J.A., LEVIRA, J.A. And MAKUNGU, J.A.)

CIVIL APPEAL NO. 202 OF 2021

RANGER SAFARIS LIMITED..... APPELLANT

VERSUS

HELEN SAUL MOLLELRESPONDENT

(Appeal from the Judgment and Decree of the High Court at Arusha)

(Gwae, J.)

dated the 20th day of July, 2019

in

Revision No. 68 of 2019

.....

JUDGMENT OF THE COURT

5th & 8th July, 2024

MUGASHA, J.A.:

The appellant is challenging the judgment and decree of the High Court of Tanzania (Labour Division) at Arusha in Labour Revision No. 68 of 2019 delivered on 20/7/2020. The High Court partly dismissed the appellant's revision application and partly sustained and reduced the award by the Commission for Mediation and Arbitration (the CMA). Aggrieved, the appellant has preferred the present appeal.

The respondent was an employee of the appellant as a reservation officer with effect from 31/10/2002 until 8/10/2015 when her employment was terminated on ground of gross negligence. Aggrieved by the termination, the respondent referred the dispute to the CMA

which having heard the parties found that the respondent's termination was both substantively and procedurally unfair. In the award, the CMA ordered the appellant to pay the respondent a total of TZS. 35, 539,200/= as compensation for 36 months' salaries as prayed in the CMA F1.

Undaunted, the appellant applied for revision of the award before the High Court (Labour Division). After hearing the application, the High Court found that indeed the respondent's termination was unfair both in substance and procedure given the ambiguous reasons for termination, the lacking investigation against the respondent who was in addition, not accorded her right of mitigation. However, the High Court was satisfied that the award of compensation for 36 months' salaries was unjustified because the respondent was awarded the terminal benefits immediately after termination. In that regard, the compensation was reduced to 18 months' salary making the gross amount to be 17,769,600/=. The appellant was not happy with the decision of the High Court and has lodged the present appeal. In the Memorandum of Appeal, the appellant had fronted a five point grievance as hereunder:

- 1. That, the honourable Judge grossly erred in law in awarding the respondent compensation for 18 months to the tune of 17,769,600/= without justification.*

2. *That, the honourable Judge misconceived the order of the High Court (A.C. Nyerere as she then was) dated 26th May 2016 in Revision No.87 of 2016 between the parties herein regarding the issue of misconduct of the Arbitrator.*
3. *That, the honourable Judge grossly erred in law and fact by making a finding that his hands were tied to open up a matter that has already been dealt with by another High Court Judge, without considering that the same was not determined on merit.*
4. *That the honourable Judge erred both in law and fact in failure to address and determine the issue of procedural irregularities and how the same affected the proceedings of the Commission for Mediation and Arbitration.*
5. *That, the honourable Judge erred both in law and in fact in affirming the decision of the CMA that there was no fair reason for termination and further that the procedures were not followed.*

Parties filed written submissions for and against the appeal which were adopted by the respective learned counsel at the hearing of the appeal. In appearance was Ms. Neema Mtayangulwa alongside Ms. Rehema Kitaly, both learned advocates for the appellant and learned advocate Salvatory Moshia for the respondent.

At the outset, Ms. Mtayangulwa abandoned grounds 1 and 5 of the appeal and proceeded to adopt the written submissions on the remaining respective grounds. On being probed if the remaining grounds

relating to complaint on the misconduct of the arbitrator were initially brought to the attention of the High Court in the Revision Application which is a subject of this appeal, she maintained the same to have been raised given that the revision application was sought on among others, the misconduct of the arbitrator. In this regard, she argued that, this Court has jurisdiction to entertain the complaint against the arbitrator because which though raised, was not determined by the High Court.

In relation to the 4th ground of appeal it hinges on the complaint against the High Court on failure to address and determine procedural irregularities and how they vitiated the proceedings of the CMA. Ms Mutayangulwa as well, argued this to be misconduct on the part of the arbitrators on account of omission to insert the dates in some occasions when the dispute was scheduled for hearing. She added that, in the written submissions, argument were presented on some other reasons relating to the misconduct of the arbitrator but all the same the High Court did not make any determination. She added that, the arbitrator's misconduct did affect the outcome of the award. However, as earlier stated, the appellant's counsel had already abandoned the complaint against the *quantum* of the compensation as determined by the High

Court and she urged us not to disturb the same. With this submission Ms. Mutayangulwa urged us to entertain and allow the appeal.

On the other hand, Mr. Mosha opposed the appeal arguing the same to be misconceived. He pointed out that, the appellant's complaint in the revision application before the High Court was on the refusal by the arbitrator to recuse himself from the conduct of adjudication of the labour dispute in question. On his part, and correctly so, Mr. Mosha was of the view that, refusal to recuse is not a ground of misconduct. He added that, other factors on the alleged misconduct of the arbitrator contained in the appellant's affidavit, completely departed from what was stated in the notice of application for revision and the accompanying affidavit which is not proper.

Regarding the complaint on failure on the part of the arbitrator to record dates, he argued that the appellant was not in any manner prejudiced given that its witnesses were not denied opportunity to adduce evidence at the trial. He thus implored on us to dismiss the appeal.

After a careful scrutiny of the complaint before us, the record of appeal and the submissions by the respective learned counsel the issue at stake is to determine the appeal before us. We are aware that, the

conduct of arbitrators' in labour disputes is governed by the Labour Institutions the Ethics and Code of Conduct Rules. In that regard, it is our considered view that the appellant's complaint against the arbitrators is related to a question of law in terms of section 57 (1) of the Labour Institutions Act No. 7 of 2004 (now Cap, 300 R.E 2019), (the LIA) which stipulates as follows:

"Any party to the proceedings in the Labour Court may appeal against the decision of that Court to the Court of Appeal of Tanzania on a point of law only".

In the revision application before the High Court, the appellant called upon the High Court to revise among others, the refusal of the arbitrator to recuse himself in the conduct of the proceedings. This is reflected at pages 304 and 309 of the record of appeal as hereunder:

"THAT, the Arbitrator misconducted himself during arbitration hearing, however he refused to disqualify from conducting arbitration hearing when asked to do so by the Counsel for the Applicant, the fact which has affected the finding and outcome of the dispute. (copies of complaint letter, notice of application, affidavits in support, notice of opposition, counter-affidavit and ruling of the

***Commission for Mediation and Arbitration
are annexed hereto and collectively
marked RSL-4).***

The appellant invited the High Court to declare among others, that there was misconduct on the part of the Arbitrator that affected the outcome of the dispute. At the outset, it is crucial to point out that refusal to recuse from the conduct of adjudication is not a misconduct because in adjudication, the presiding officer has a right to refuse recusal given the nature and circumstances surrounding the nature of the matter.

Given the nature of the appellant's complaint before us we pondered if the High Court Labour Division and this Court are clothed with jurisdiction to entertain complaints against the misconduct of the arbitrator. Our answer is in the negative. We are fortified in that regard because as earlier stated, the conduct of arbitrators in adjudication of labour disputes is governed by the Labour Institutions the Ethics and Code of Conduct Rules made under sections 15 (1) (g) and 19 (4) of the Labour Institutions Act [CAP 300 R.E.2019]. The Code prescribes general attributes prescribed under Rule 4 (a) of the Rules, to ensure that the conduct of Mediators and Arbitrators is of highest standard.

Moreover, under rule 5 the dos and don'ts of arbitrators and mediators are prescribed as hereunder:

"5. All Mediators and Arbitrators shall in the course of discharging their duties-

(a) act with honesty, impartiality, integrity, due diligence and be independent of any outside pressure;

(b) uphold themselves in a fair manner to all parties and should not be subjected to personal interest or gain;

(c) not solicit to be appointed as a Mediator or an Arbitrator provided that, this shall not preclude Mediators and Arbitrators to indicate willingness of serving in that capacity;

(d) be reasonable by accepting appointments only where they believe that they are available and are competent to undertake the assignment;

(e) avoid entering into any financial, business or social relationship likely to affect their impartiality;

(f) not accept or be influenced by hospitality from either party or any other improper means; including gifts or other inducements even in the presence of the other;

(g) ensure that a copy of any letter received from one party is sent to the other, either by the writer, Mediator or Arbitrator;

(h) avoid having any communication except for the purpose of arranging the dates for meetings or hearing in which case the outcome of those conversations should be notified to both parties; and

(i) avoid having any meeting with a party except in the presence of the other”.

Under Rule 17 of the Ethics and Code of Conduct Rules, an arbitrator who violates any provisions of the said Rule commits an offence and may be liable for removal from the office. The authority mandated with responsibility for the control and discipline of mediators and arbitrators is the Commission as prescribed under the provision of section 19 (5) of the Labour Institutions Act which stipulates as follows:

“The Commission shall be responsible for the control and discipline of mediators and arbitrators provided that the control or discipline does not amount to interference with the independence of the mediator in any dispute”.

Thus, any complaint against the misconduct of an arbitrator in a labour matter does not qualify to be a ground for revision before the

High Court Labour Division or an appeal before the Court. In the premises, the complaint in the revision application before the High Court on the misconduct of the arbitrator was pursued in a wrong forum and so is the present appeal. Thus, the appeal before us is misconceived and we proceed to dismiss it with no order as costs.

DATED at **ARUSHA** this 8th day of July, 2024.

S. E. A. MUGASHA
JUSTICE OF APPEAL

M. C. LEVIRA
JUSTICE OF APPEAL

O. O. MAKUNGU
JUSTICE OF APPEAL

The Judgment delivered this 8th day of July, 2024 in the presence of Ms. Neema Mtayangulwa, learned counsel for the appellant and Mr. Salvatory Masha, learned counsel for the Respondent, is hereby certified as a true copy of the original.



F. A. Mtaranja
F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL