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LEGAL NEWS

30 Jan 2025



Court of Appeal Articulates the Duty of the CMA and Courts in Employment Cases

Recently, the Court of Appeal of Tanzania (the Court) delivered a notable judgment in the case of Benjamin Mazigo and Another vs. Tanzania Investment Bank, Civil Appeal No. 401 of 2021. On this judgment, the Court ruled that the CMA and the court's duty is to pronounce and/or declare the parties' statutory rights under the law and not otherwise.

Background of the Case

Benjamin Mazigo (the 1st Appellant) and Amos Mpali (the 2nd Appellant and now deceased) worked with the Respondent and held various positions before their services were terminated. The 1st Appellant was employed as Service Manager and the 2nd Appellant as Principal Officer in Project Finance (Syndicate Projects). The Appellants' termination of their services with the Respondent, according to their respective letters of termination, was based on improper appraising of the employer customer's application for credit which amounted to gross negligence. Following the disciplinary hearing conducted by the Respondent, the Appellants were found guilty and were issued with termination letters. The Appellants challenged the termination before the Commission for Mediation and Arbitration (the CMA) which held in their favour holding that termination was both substantively and procedurally unfair. However, on revision at the High Court Labour Division (the High Court), the CMA's award was overturned, quashed and set aside, hence the appeal to the Court.

Arguments Raised by the Parties

At the Court of Appeal, two grounds of appeal were raised, namely: (i) the revisional Judge erred in law in holding that termination was procedurally fair; (ii) the revisional Judge erred in law and facts in holding that the termination was substantively fair despite the fact that the employer did not comply with the Employment and Labour Relations (Code of Good Practice) Rules, G. N. No. 42 of 2007 (the Code).

The Appellants argued that the Respondent's letters served on the Appellants (dated 8 July 2016) required the Appellants to account for discounting by 20%, 10% and 20% the machineries, to which the Appellants provided explanations through their letters dated 13 July 2016. According to the Appellants, the Respondent's letters did not measure up to the requirements of rule 13(2) of the Code read together with paragraph 4(3) of the Schedule to the Code (the Guidelines for Disciplinary, Incapacity and Incompatibility Policy and Procedures). The Appellants concluded that the procedure for conducting a disciplinary hearing was flawed, hence the Appellants were not charged or heard on the grounds of termination. The Appellants' prayer was, therefore, that the High Court's decision be quashed and the CMA award be upheld.

The Respondent initially resisted vehemently the Appellants' arguments and sought for the appeal to be dismissed. However, when the Respondent was allowed time to reappraise the express requirements of rule 13(2) of the Code as compared to the contents of the letters addressed to the Appellants (dated 8 July 2016), the Respondent conceded to the absence of a formal charge

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About ECRA Attorneys

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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against the Appellants. As such, the Respondent admitted that the letters had no bearing with a legally anticipated charge. Having taken that stance, the Respondent agreed that the learned revisional Judge was in error to hold, as he did, that the termination was procedurally fair.

Determination of Issues and Decision of the Court

The Court, after a thorough analysis and review of the law, was satisfied that there were no formal charges levelled against the Appellants and the meeting did not qualify to be a formal disciplinary meeting. Further, it was observed that it was a one-sided case in which only the Appellants were crucified without the accusations being made clear to them by the Respondent who initiated the disciplinary meeting. To add up, the allegations stated in the termination letters were not proved by evidence. Legally, the allegations ought to have been formulated in a charge and the respondent ought to have led evidence to substantiate them. Under such circumstances, the Court was unable to see how the Appellants were found guilty of a substantive allegation of gross negligence and declared the termination to be both, substantively and procedurally unfair.

Having ruled that the termination was unfair, the Court suo motu queried the propriety of the CMA awarding compensation equal to 24 months' salary to each Appellant while the Appellants had prayed for reinstatement. Specifically, the Court questioned whether it was proper for the CMA to depart from the Appellants' prayer for reinstatement; whether the basis of the award discussed above came from the Appellants or whether the parties were heard on them; and finally, whether it was upon the CMA to come up with quantum of compensation for each Appellant.

The Court noted that the considerations founding the CMA's award were not a subject of the dispute and the Appellants were not heard on them but was the CMA's own formulations. Worse still, the CMA acted in violation of the settled principle that parties are bound by their own pleadings and courts will only grant reliefs to the extent pleaded. Further, the Court held that since in the circumstances of the present case the Appellants were unfairly terminated from employment and they preferred reinstatement, the Appellants deserve an order of reinstatement without loss of remuneration. Consequently, the Court noted that the CMA strayed into error to order payment of compensation alone.

Finally, the Court clarified on the duty of the CMA and courts in employment cases by insisting that, under the law, the CMA and the court's duty is to pronounce/declare the parties' statutory rights. Proceeding further to determine the actual amounts (figures) to be paid to the unfairly terminated employee may result into a mathematical error. The determination of the quantum of benefits (figures) payable to an unfairly terminated employee is a matter governed by law and this task is a matter to be determined during execution of the CMA or court's order by the employer or by the executing court where assistance of the court is required.

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