IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: WAMBALI, J.A., KENTE, J.A. And MANSOOR, J.A.)

CIVIL APPEAL NO. 188 OF 2022

MAJALIWA MUSSA KAGOMA ..... APPELLANT

VERSUS

K. K. SECURITY CO. LTD ..... RESPONDENT

(Appeal from the judgment and decree of the High Court of Tanzania, Labour Division at Dar es Salaam

(Mganga, J.)

Dated the 23rd day of August, 2021

in

Revision No. 822 of 2019

.....

JUDGMENT OF THE COURT

12th March, 2025 & 2nd April, 2026

KENTE, J.A.:

The events leading to this appeal are relatively very brief but they give us some common ground upon which we shall approach the present dispute. The appellant Majaliwa Mussa Kagoma was employed as a security guard by the respondent K. K. Security Company Limited in 2012 on a permanent and pensionable contract. He was later on promoted to the position of a Crew Commander, a senior rank in the respondent's security operations.

On or about 6th March, 2018, however, his employment contract was terminated by the respondent upon allegations of gross misconduct. It was alleged that, the appellant had failed to adhere to the respondent's code of

conduct as he was usually late to report to work and that, he was in the habit of disrespecting his seniors. Moreover, it was alleged that, the appellant was, on several occasions, found sleeping while on duty contrary to the terms and conditions of his employment contract.

Being aggrieved by the termination of his employment contract, the appellant referred his grievances to the Commission for Mediation and Arbitration (the CMA) for Dar es Salaam Region. The main claim that he launched at the CMA was for either reinstatement or compensation on the grounds that the termination of his employment contract was unfair both substantively and procedurally. Elaborating, the appellant contended before the CMA that, there was no conclusive proof that he had committed the disciplinary offences constituting the offence of misconduct with which he was accused and that, procedurally, the termination was not fair as the chairman of the respondent's disciplinary committee was the one who had initiated the disciplinary proceedings against him and he was the same person who signed two letters dated respectively 14th March and 13th September, 2017 comprising a written warning for his alleged misconducts. For those reasons, the appellant implored the CMA to find that, his employment contract was terminated without any justifiable reason and without following the required procedure.

On the other hand, the position of the respondent was that, the appellant's employment contract was terminated properly, in accordance with the applicable law. In this regard, it was the respondent's position that, the appellant had committed the disciplinary offences with which he stood charged before the disciplinary committee and that, he was accordingly punished for that transgression pursuant to the respondent's Disciplinary Rules and Procedures. What that argument translated into was that, the termination of the appellant's contract of employment was both substantively and procedurally fair and, as such, he did not deserve to be reinstated or compensated.

After hearing the parties, the CMA took the view that, the termination of the appellant's employment contract was unfair both procedurally and substantively. Proceeding on that premise, the CMA sustained the whole of the appellant's claim against the respondent and consequently ordered his reinstatement and monetary compensation equal to his nineteen (19) months' salary.

Dissatisfied, the respondent applied for revision of the CMA's award to the Labour Division of the High Court of Tanzania (the Labour Division) complaining that, the termination of the appellant's contract of employment was in no way unfair as it was carried out in accordance with the law and

upon proof that, indeed the appellant was guilty of the disciplinary offences with which he stood charged before the respondent's Disciplinary Committee. It was accordingly submitted that, reinstating or compensating the appellant as ordered by the CMA, would, in the circumstances of this case, be unjust.

In his consideration of the matter, the learned High Court Judge identified one substantive question for determination as being, whether or not, termination of the appellant's employment contract was substantively and procedurally fair? He then went on to state that, if the answer to the question posed herein-above was either in the affirmative or in the negative, then following on heels was the question as to what reliefs were the parties entitled.

Referring to section 37 of the Employment and Labour Relations Act, Chapter 366 of the Revised Laws (the ELRA), the learned High Court Judge begun by considering what under the law, constitutes unfair termination of a contract of employment. Properly guiding himself, the learned Judge held, in his interpretation of the above-cited law that, termination of a contract of employment by an employer is unfair if the employer fails to prove that the reason for the termination is valid or that, the reason is a fair reason which is either related to the employee's conduct, capacity or compatibility;

or is based on the operational requirements of the employer, and that, the employment was terminated in accordance with a fair procedure.

Referring to section 39 of the ELRA, the learned Judge was mindful that, in all cases of unfair termination, the employer bears the burden to prove that, the termination was fair both substantively and procedurally.

After analysing the evidence led before the CMA, the learned Judge concurred with the CMA that indeed, the respondent had fallen short of proving that the appellant had committed the alleged acts of misconduct as to justify the termination of his employment contract. The learned Judge premised the above finding on the fact that the appellant had given plausible explanations to account for his reporting to work behind time and for one day's non-attendance. Otherwise, the learned Judge found that the appellant had fully demonstrated that he was truly repentant for his spasmodic incredible behaviour. That being the case, the learned Judge found that the respondent had no justifiable reasons to terminate the appellant's employment contract.

Turning to the issue relating to the CMA's decision that the appellant's employment contract was terminated without regard to a fair procedure, the learned Judge took the view that indeed the termination was carried out without following proper procedures. In this regard, he referred to the

appellant's genuine complaint that the chairman of the Disciplinary Committee who had earlier on signed the two warning letters, was the one who initiated the disciplinary proceedings which he went on to chair thereby acting as a judge in his own cause.

The learned Judge took the view, rightly so that, that was clearly violative of Rule 13 (4) of the Employment and Labour Relations (Code of Good Practice) Rules, 2007 which stipulates that, the hearing shall be held and finalized within a reasonable time and chaired by a sufficiently senior management representative who shall not have been involved in the circumstances giving rise to the case. Based on this consideration, the learned Judge concluded that, the decision by the CMA that the termination of the appellant's contract of employment was unprocedural, was correct. It is worthwhile to note here that, the above finding has not been challenged and indeed, both parties to this appeal proceeded on the basis that, that finding was correct.

With regard to the reliefs to which the parties are entitled, after considering the award given by the CMA, the learned Judge held the view that, looking at the evidence in totality and taking into consideration the particular facts and circumstances of this case which showed a state of continuing aggravated animosity between the two sides, an order for the

appellant's reinstatement would not be appropriate. Giving reasons why he disagreed with the CMA's decision regarding the appellant's reinstatement, the learned Judge observed correctly so in our view that, in view of the fact that the appellant was the superintendent of the respondent's security department and that during the working time, he was invariably armed, it was incumbent upon him to work in a high trust environment a state which however, as the evidence before the CMA painted, was no longer in existence.

Upon the above finding, the learned Judge, in exercise of the Labour Court's revisionary powers, went on to vary the award by the CMA. He quashed and set aside an order for the appellant's reinstatement and sustained an order for compensation to the tune of TZS 3,097,000.00 being the appellant's monthly salary for 19 (nineteen) months.

Dissatisfied with the decision of the High Court, the appellant has now come on appeal to this Court advancing five grounds which essentially raise two fundamental grounds namely: whether the High Court was correct to overturn the order for reinstatement of the appellant despite its agreement with the CMA that the termination of his employment contract was unfair and whether it was proper for the High Court to sustain the decision of the CMA awarding the appellant nineteen months salaries as compensation for

loss of remuneration. Needless to say, the reliefs available to the appellant will depend on the outcome of the above-posed grounds.

In his rambling written submissions filed in terms of rule 106 (1) of the Tanzania Court of Appeal Rules, 2009, the appellant who appeared before us without any legal representation, contended that, after finding as did the CMA that the termination of his employment contract was both substantively and procedurally unfair, the learned Judge ought to have sustained the order for his reinstatement as of right. In this regard, the appellant contended that, where termination is found to have been procedurally and substantively unfair, as it happened in this case, the CMA and the Labour Division have no option except to order for reinstatement of the aggrieved employee.

The appellant's argument was further stretched to the effect that, the learned Judge ought to have ordered for his immediate reinstatement or else, that, after being paid TZS 3,097,000.00, he should have continued to be paid monthly salaries up to his reinstatement. Alternatively, the appellant contended that, after quashing and setting aside the reinstatement order, the learned Judge should have revised the payment order with a view to enhancing the amount awarded by the CMA and that, in addition to compensation, he ought to have been paid earned but unpaid monthly

salaries from the time of termination to payment in full satisfaction of the court decree.

Submitting in reply, and after opening his address with a brief narrative around the genesis of this appeal which we earlier recounted, Mr. Shepo Magirari, learned counsel representing the respondent said, in the first place that, in the circumstances of this case, the applicable law is section 40 (1)(a) to (c) (currently S.41 of the R.E.2023) of the Employment and Labour Relations Act (the ELRA). In so far as it is relevant to the issues herein, the above-cited law provided that:

> *"40 (1) where an arbitrator or Labour Court finds a termination unfair, the arbitrator or Court may order the employer: -*
>
> *(a) to reinstate the employee from the date the employee was terminated without loss of remuneration during the period that the employee was absent from work due to the unfair termination; or*
>
> *(b) to re-engage the employee on any terms that the arbitrator or court may decide; or*
>
> *(c) to pay compensation to the employee of not less than twelve months remuneration."*

On the basis of the preceding provisions of the law, Mr. Magirari submitted that, all the remedies prescribed thereunder are lawful and

awardable to the deserving party. Going by the appellant's pleadings with specific reference to the record of appeal, the learned counsel submitted that, before the CMA the appellant had sought either to be reinstated or compensated for unfair termination. Further that, the CMA ordered for his reinstatement and it further ordered the respondent to pay him TZS 3,097,000.00 being compensation for nineteen monthly salaries.

Turning to the legality and propriety or otherwise of the learned Judge's decision quashing the order for reinstatement of the appellant, Mr. Magirari submitted that, when regard is had to the undisputed facts and the circumstances surrounding this matter, the learned Judge was on firm ground to overturn the decision of the CMA as the dispute between the appellant and respondent had led to a strained relationship.

Obviously, what the learned counsel sought to underscore here, is the settled position of the law that, while reinstatement is generally considered the primary remedy for unfair termination under many jurisdictions including Tanzania, which is designed to restore the employee to the position they held before the termination, it is generally not desirable to order reinstatement if the employment relationship has become intolerable or broken down irreparably. In this regard, the learned counsel referred us to rule 32(2) of the Labour Institutions (Mediation and

Arbitration) Rules, G.N No. 64 of 2002 (the Guideline Rules) which is basically a replica of the aforementioned position of the law.

Reference was further made to our earlier decisions in the case of **Magnus K. Laurean v. Tanzania Breweries Limited** [2021] TZCA 578 (12 October 2021, TANZLII) with regard to the position that, remedies for unfair termination of an employment contract are governed by section 40 (1) of the ELRA and the case of **The Cooper Motors Corporation Limited v. Moshi/Arusha Occupational Health Services** [1990] T.L.R. 96, regarding the circumstances in which this Court can interfere with the discretion of the lower courts in awarding monetary compensation. All in all, Mr. Magirari implored us to dismiss the appeal for want of merit.

On our part, we must begin by observing that, at the time which is material to the occurrence of this dispute, it was settled law that, both the CMA and the Labour Division had the discretion to decide on the appropriate award to the unfairly terminated employee which could even be over and above the prescribed minimum considering the unique circumstances of each case. Further, we find it pertinent to point out here that, we are live to the principle that, while the CMA and the respective Labour Division enjoy discretion in decision-making, the said discretion is not unlimited. We also need to observe and on this we need not cite any authority to underscore

the point that, like any other court, the discretionary decisions of the CMA and the Labour Division must be based on sound legal principles and cannot be arbitrary or capricious. Accordingly, in the case of **Veneranda Maro & Another v. Arusha International Conference Centre** (Civil Appeal No. 322 of 2022) [2022] TZCA 37 (18 February 2022, TANZLII), we guided that, an appellate court like ours, may only interfere with the exercise of discretion by an inferior court or tribunal in the circumstances where, there is a misdirection, or it has reached a wrong conclusion or, the lower court has acted on matters it should not have acted or, where the lower court has failed to take into consideration matters which it ought to have considered and in so doing it has arrived at a wrong conclusion.

As we have already stated, Rule 32(2) of the Guideline Rules provides for the factors to be considered by the CMA or the Labour Division before making an order for reinstatement. These include, taking into consideration a situation where the employee does not want to be reinstated or re-engaged; if the circumstances surrounding the termination are such that a continued employment relationship would be intolerable; if it is not reasonably practical for the employer to reinstate or re-engage the employee and that the termination was unfair because the employer did not follow a fair practice.

As it will be noted at once, in the instant case, the decision not to reinstate the appellant did not come out of thin air. The learned Judge in the exercise of his discretion, quashed the award of reinstatement on the grounds that, the nature of the contract between the parties required unwavering faith in each other, a state which was however, no longer in existence in the appellant's workplace.

In relation to the above decision by the High Court, we must state that, with due respect, the appellant's spirited arguments both orally and in his written submissions cannot persuade us to find fault in the learned Judge's reasoning, looking at the circumstances of this case. As stated earlier and as the matters stood, it was incumbent upon the appellant to work in a high trust environment or else to have his contract of service terminated as it happened. That in our view, is the grim truth which the appellant had to face, willingly or unwillingly. For clearly, the learned Judge had made a decision that was tailored to the specific facts and circumstances of this particular case and, on our part, we see no reason to interfere with his sound decision. We accordingly sustain it as we simultaneously dismiss the appellant's complaint on that aspect.

With regard to compensation, we note, once again, that having quashed an award for the appellant's reinstatement, the learned Judge went

on sustaining an award for monetary compensation to the tune of TZS 3,097,000.00 being the equivalent of his salary for nineteen months. However, the appellant was not amused at the learned Judge's decision. He accordingly submitted before us that, after quashing and setting aside the reinstatement order, the learned Judge ought to have enhanced the amount of compensation awarded by the CMA and that in addition to that, he ought to have ordered for his being paid salaries from the day of termination up to payment in full satisfaction of the decree.

With unfeigned respect, we do not subscribe to the appellant's tenor of argument. The law is that, if the Arbitrator or the Labour Division finds a termination to be unfair, the Arbitrator or the Court may order the employer to reinstate or re-engage the employee. In the further alternative, the Arbitrator or the Court may order the employer to pay compensation to the employee of not less than twelve months remuneration (vide section 40 (1)(c) of the ELRA). In the case of **National Microfinance Bank v. Victor Modest Banda** [2020] TZCA 35 (20 February 2020, TANZLII), we guided that, in terms of section 40(2) of the ELRA, upon an order for compensation being made in terms of section 40 (1) (c) of the ELRA, the awarded compensation shall be in addition to, and not a substitute for any amount to which the employee may be entitled in terms of any law or agreement.

That is how the ability of the CMA and the Labour Division to award compensation is in some way tempered and regulated by the law.

Upon the above discourse, we are satisfied that the learned Judge of the Labour Divison was perfectly correct as he had no jurisdiction to award the appellant what is not provided for by the law. On the other hand, there is no doubt in our minds that the order for compensation of the appellant to the tune of TZS 3,097,000.00 an amount which was equal to his nineteen months' remuneration while leaving him to pursue any other entitlements under the law, was slightly inconsistent with section 40(1)(c) of the ELRA. We are mindful that, in a situation like the instant one where termination was held to be both substantively and procedurally unfair, it would be appropriate to order reinstatement without loss of remuneration, but only on condition that, there were no justifiable grounds for not doing so pursuant to rule 32(2) of the earlier mentioned Guideline Rules. Put in other words and in the context of the present case, since the order for reinstatement was reversed by the lower court, the appellant cannot be heard to claim for the benefit of loss of remuneration.

It is upon the foregoing reasons that, we are inclined to disturb the lower court's decision and in lieu thereof, we substitute it with an order for

compensation equal to the appellant's twelve months' salary as was stipulated under section 40 (1)(c) of the ELRA.

Having said so, we find no merit in the appeal and accordingly dismiss. This being a labour dispute, we order for each party to bear its own costs.

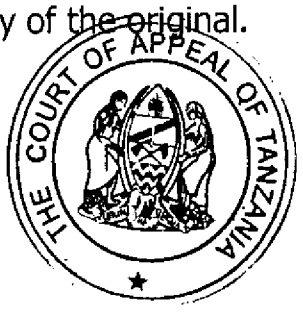
DATED at **DODOMA** this 31st day of March, 2026.

F. L. K. WAMBALI
JUSTICE OF APPEAL

P. M. KENTE
JUSTICE OF APPEAL

L. A. MANSOOR
JUSTICE OF APPEAL

Judgment delivered virtually this 2nd day of April, 2026 in the presence of Appellant in person, Mr. Elipidius Philemon, learned counsel for the Respondent and Ms. Hilda Mcharo, Court Clerk, is hereby certified as a true copy of the original.



A. S. CHUGULU
DEPUTY REGISTRAR
COURT OF APPEAL