IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: WAMBALI, J.A., MAIGE, J.A. AND MDEMU, J.A.)

CIVIL APPLICATION NO. 282/1 OF 2024

LUCY MANDARA ....APPLICANT

VERSUS

TANZANIA CIGARETTE COMPANY LIMITED ....RESPONDENT

(Application for Review of the Judgment of the Court of Appeal of Tanzania at Dar es Salaam)

(Mwambegele, Maige and Mdemu, JJA.)

Dated the 26th day of February, 2024

in

Civil Appeal No. 187 of 2021

RULING OF THE COURT

7th May & 29th July, 2026

WAMBALI, J.A.:

The applicant, Lucy Mandara, was employed by the respondent on 11th December, 1979 as a Quality Controller. She worked for the respondent until 5th September, 2016 when she was terminated on allegations of gross negligence and insubordination which were confirmed by the Disciplinary Committee.

The respective termination prompted the applicant to lodge Labour Dispute No. CMA/DSM/TEM/418/2016 at the Commission for Mediation and Arbitration (the CMA) for Dar es Salaam against the respondent. Having heard the parties and considered the evidence on record, the CMA found that the termination of the applicant was substantively fair but procedurally unfair.

The CMA therefore awarded the applicant six (6) months' salary, that is, TZS. 45,634,710.00 as compensation and a certificate of service. It is noteworthy that, at the CMA, the applicant had through CMA Form No. 1, claimed a total of TZS. 904,864,473.00. The claims, among other benefits, included, the salaries for the remaining four years and four months before her retirement in December 2020.

The applicant was not pleased with the Award issued by the CMA; hence, she lodged Labour Revision No. 185 of 2020 before the High Court. At the conclusion of the revisional proceedings, though the High Court confirmed the findings of the CMA that the termination was procedurally unfair, it also found the same substantively unfair. To this end, the High Court noted that though the applicant would have been entitled to reinstatement, she did not pray for such remedy in CMA Form No. 1. In the result, the High Court granted the applicant all claims of retirement benefits for thirty-seven years of service, that is, TZS. 904,864,473.00 stated above. Particularly, the following benefits were granted:

(i) *Twelve months basic Salary for one to 10 years, TZS. 91,269,420.00.*

(ii) *Eleven years and more to 37 years TZS. 337,696,854.00.*

(iii) *Computation of truncated four years to compulsory retirement TZS. 27,380,826.00.*

(iv) *Computation of salaries for the truncated four (4) months and four (4) years to compulsory retirement TZS. 395,500,820.00.*

(v) *Annual salary increments at 6% per annum as custom TZS. 35,268.733.00.*

(vi) *Severance pays TZS. 17,746,820.00.*

The High Court justified the revised award on the reasoning that, since the applicant would have retired by the year 2020, she was entitled to the retirement benefits indicated in the CMA Form No. 1. The High Court further reasoned that the said benefits were not disputed by the respondent during the CMA proceedings as testified by Derick Stanley (DW6).

The dispute between the parties did not end at the High Court as the respondent appealed to the Court in Civil Appeal No. 187 of 2021 to challenge the decision.

The Court heard the parties' arguments for and against the appeal and in the end, while it agreed with the High Court that the termination of the applicant was substantively unfair, it decided that the procedural aspects were untainted. More importantly, the Court set aside the award of TZS.

904,864,473.00 and in substitution thereof, in terms of section 40 (1) (c) of the Employment and Labour Relations Act (the ELRA), it awarded the applicant twelve months salary as a minimum compensation. The Court further declared that the respective compensation was in addition to the terminal benefits provided to the applicant in the termination letter as per section 40 (2) of the ELRA.

The Court justified its decision by holding that the High Court wrongly awarded the disputed amount to the applicant as a retiree because: **one,** the applicant's legal regime was on disciplinary matters and not retirement benefits. **Two,** the applicant was not retiring from service. **Three**, in the voluntary agreement there is no clause dealing with compensation on grounds of disciplinary matters upon which the entitlement would have been based. **Four**, the complaint of the applicant to the High Court regarding compensation was not pegged on the voluntary agreement. **Five**, the reasons which led the High Court not invoking the provisions of section 40 (1) and (2) of the ELRA in full were not apparent in its judgment. Further, the Court observed that the circumstances of the parties' dispute could not permit the invocation of the provisions of section 71 (5) of the ELRA by the CMA or the High Court.

The findings and conclusion of the Court is spiritedly contested by the applicant in the instant application for review. The application is essentially premised on the provisions of rule 66 (1) (a) of the Tanzania Court of Appeal Rules, 2009 (the Rules). The applicant strongly contends, both in the notice of motion and the affidavit in support of the application that, the judgment of the Court is based on a manifest error on the face of record resulting in the miscarriage of justice in that:

> "(a) *The Court having decided that there were no justifiable reasons for terminating the Applicant and the Applicant was entitled to either of the remedies awardable under section 40 (1) of the Employment and Labour Relations Act, Cap 366 R.E. 2019 including the remedy for re-reinstatement and compensation; failed to consider that the Applicant actually prayed for reinstatement in monetary form under item 4 (ii) (b) and (c) of the outcome of mediation in CMA Form No. 1 apart from other benefits. Thus, the Court proceeded to grant the minimum compensation without looking at other remedies prayed under CMA Form No. 1 which has led to miscarriage of justice to the Applicant who was terminated without justifiable cause.*
>
> *(b) That the judgment in Civil Appeal No. 187 of 2021 is based on irregularities to the extent that it has caused injustice and confusion to the Applicant in that the Court having decided that*

there were no justifiable reasons for terminating the Applicant, failed to consider that the Applicant was at the verge of retiring when she was unfairly terminated and therefore was entitled to reinstatement or all remuneration for the remaining four years of compulsory retirement as prayed under Form No. 1".

The application is supported by the affidavit deposed by the applicant which essentially under paragraph 8 reiterates the alleged manifest error on the face of the judgment of the Court stated in the notice of motion.

The applicant also lodged a written submissions which were adopted entirely by Mr. Reginald Martin, learned counsel who appeared to represent her during the hearing of the application. The learned counsel also made some few additions to the written submissions.

On the other hand, the application is strongly contested by the affidavit in reply deposed by Mr. Godson Kiliza, the respondent's principal officer together with the written submissions lodged by Mr. Paschal Kamala, learned counsel who also appeared to represent the applicant during the hearing of the application.

Submitting in support of the application, basically, Mr. Martin reiterated what was stated in the notice of motion and the affidavit of the applicant regarding the alleged manifest error on the face of the judgement. He emphasized that since the Court found that the applicant was unfairly terminated substantively and thus opted for an award of compensation, the same ought to have been in terms of monetary reinstatement stated in CMA Form No. 1. To be precise, the learned counsel stated that the applicant was entitled to the renumeration equivalent to the remaining four years and four months of retirement that she would have been entitled had she not been unfairly terminated. Besides, he stated, the applicant would have been entitled to the retirement benefits provided in the Voluntary Agreement.

It was further submitted for the applicant that, though the Court in its judgment alluded to its decision in **Flavio Ndesanyo v. Serengeti Breweries Limited** (Civil Appeal No. 357 of 2020) [2023] TZCA 17665 (27 September 2023, TANZLII) and held that there was no justification for the High Court Judge to award a huge amount of money, it failed to consider the other factors stated therein regarding the extent of compensation. He added that, in that decision, the Court held that compensation beyond twelve month's salaries can be granted by the arbitrator or the High Court by considering several factors peculiar to the dispute between the parties. The learned counsel also made reference to the decision in **Felician Rutwaza v. World Vision Tanzania** (Civil Appeal No. 213 of 2019) [2021] TZCA 2 (2 February 2021, TANZLII) in which reference was made to the decision of the High Court in **Sodetra (SPRL) Limited v. Njelu Mezza and Another,** Labour Revision No. 207 of 2008 (unreported) which was cited with approval to the effect that the remedies awarded under substantive unfairness termination are higher than those granted under the procedural unfairness termination.

In this regard, Mr. Martin submitted that since the Court had resorted to the provisions of section 40 (1) (c) of the ELRA in awarding the compensation, it would have considered other factors, including the fact that, the applicant had four (4) years and four (4) months remaining before retirement when she was unfairly terminated and order compensation beyond the 12 months which was the minimum. It was strongly argued that, the Court was enjoined to order compensation for the remaining period of employment as prayed in the CMA Form No. 1 and confirmed by the High Court.

In the end, the applicant's counsel urged the Court to find that the failure to consider the relevant factors in awarding compensation as provided by law is an error on the face of the record and as a result miscarriage of justice was caused on the part of the applicant. He thus urged the Court to allow the application and review its judgment by awarding the applicant the entitlement prayed for at the CMA which was confirmed by the High Court.

On the adversary side, Mr. Kamala, learned counsel who appeared for the respondent, strongly opposed the applicant's counsel submissions. He argued that the Court's jurisdiction to review its judgement under rule 66 (1) (a) of the Rules are limited to its decision only and does not extend to the proceedings, evidence, submissions or admitted exhibits. That, the other condition is that the alleged error must be apparent in the face of the record. To support his assertion, he made reference to the decision of the Court in **Saul Henry Amon and Another v. Hamis Bushiri Pazi and 7 Others** (Civil Application No. 264 of 2022) [2024] TZCA 275 (22 April 2024, TANZLII).

The learned counsel further argued that the applicant cannot contest the judgment of the Court merely on being dissatisfied with the view expressed therein. To support the contention, he made reference to the decision in **Mirumbe Elias @ Mwita v. The Republic** (Criminal Application No. 4 of 2015) [2016] TZCA 275 (28 October 2016, TANZLII).

In the circumstances, Mr. Kamala argued that having scrutinized the notice of motion and the affidavit in support of the application, there is no indication that the applicant has managed to point out an obvious and patent error in the Court's judgment which has led to miscarriage of justice in the outcome of the judicial proceedings. He maintained that since the Court gave five reasons for not awarding the terminal benefits outlined in item 4 (ii) (b) and (c) of the CMA Form No. 1, as was the stance of the High

Court, the applicant cannot contest that holding in an application for review as that will amount to an appeal in disguise which is not allowed by the law.

On the other hand, upon being prompted by the Court, Mr. Kamala acknowledged that the Court has a mandate and discretion to order a reasonable compensation for unfair termination on substantive reasons in terms of section 40 (1) of the ELRA by considering several factors relating to the parties' dispute. However, he was content that a party cannot challenge the Court's exercise of discretion or the extent of the amount of award to be given by the Court. He thus maintained that in the circumstances of the case at hand, the Court properly exercised its discretion to award the applicant a minimum compensation of 12 months salaries. However, the learned counsel conceded that in accordance with the previous decisions, in a fit case, the Court can consider several factors in case of substantive unfair termination and grant an amount of compensation beyond the minimum set by the law.

Mr. Kamala concluded his submission by urging the Court to dismiss the application.

Having scrutinized the parties' arguments, the notice of motion and the affidavits, we gather that the applicant seems to point two errors on the face of the judgment. One, that the Court failed to order reinstatement of the applicant on monetary terms as claimed in items 4 (ii) (b) and (c) of the

CMA Form No. 1 in which the applicant had claimed retirement benefits which were granted by the High Court. We note from the impugned judgment that the issue of reinstatement, which the applicant's describes at this stage of review as "monetary reinstatement" was adequately considered by the Court. It is apparent that the Court acknowledged that even the High Court failed to order reinstatement because it was not prayed for by the applicant in her claims before the CMA. The Court in its judgment explicitly reproduced the reasoning of the High Court Judge on this issue and stated as follows:

> *"We note in the foregoing passage that, the learned Judge intended the respondent be reinstated in her employment, a remedy awardable under section 40 (1) (a) of the ELRA. She however refrained from doing so for two reasons,* ***one*** *that the respondent never prayed for the remedy in CMA F1, and* ***two,*** *that in CMA F1, the respondent prayed for retirement benefits. This in our view, was wrongly underscored. We are saying so because, besides reinstatement, the remedy of reengagement and compensation awardable under section 40 (1) (b) and (c) of the ELRA were still open to the learned High Court Judge for consideration. Again, assuming that it was right for her to do so, yet there was no justification for just granting such compensation simply it was prayed without any analysis to justify the prayer".*

As intimated earlier, the Court gave five reasons for differing with the High Court judge's stance of treating the applicant as a retiree when she granted the compensation of TZS. 904,864,473.00.

In this regard, since the issue of reinstatement and retirement benefits were adequately dealt by the Court in its judgement as demonstrated above, the same cannot be the basis of the application for review. At this juncture, we wish to reiterate what the Court started in **Mirumbe Elias @ Mwita v. The Republic** *(supra)* that:

> *"In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction".*

Moreover, in **Angelo Amando v. The Secretary General of the East African Community**, Civil Application No. 4 of 2015 (unreported), the Court cited with approval the decision of the Supreme Court of India in **Ariban Tuleshwar Sharma v. Ariban Ashak Sharma** (1979) (ii) UJ 300 SC, with regard to the distinction between a manifest error on the face of record and an erroneous view on the evidence on record, where it was stated that:

> *"There is clear distinction regarding the effect of an error on the face of record and an erroneous view of the*

evidence or law. An error on the record justifies a review, while an erroneous view on the evidence justifies an appeal. Therefore, the power of review may be exercised on the ground that the decision was erroneous on merit."

In the circumstances, we hold that the applicant's complaint on this issue cannot be treated as an apparent error on the face of the judgment capable of an application for review under rule 66 (1) (a) of the Rules. We thus dismiss the first limb of the ground of review.

The other limb of the alleged manifest error is the complaint that, though the Court invoked the provisions of section 40 (1) (c) of the ELRA to grant a minimum 12 months salaries compensation for substantive unfair termination, it did not consider the other factors relating to the parties' dispute. It was submitted that the respective factors which are apparent in the record includes the fact that, the applicant had worked for the respondent for almost 37 years and had only four years and four months before she retired when she was unfairly terminated.

We note that parties' counsel had no dispute both during the hearing of the appeal and the application for review on the application of section 40 (1) (c) of the ELRA regarding compensation for unfair termination. They were also not in dispute on the discretion of the Court in awarding compensation beyond the 12 months salaries depending on the circumstances of each case. It is noted that, section 40 (1) of the ELRA was later renumbered as section 41 (1) under the Law Revision of 2023 and the amendment which followed, that is, the Labour Laws (Amendments) Act, 2025, Act No. 4.

It is acknowledged that, since the Court had found that the applicant's termination was substantively unfair and thereby stepped into the shoes of the High Court regarding the application of section 40 (1) (c) of the ELRA, it had the power and discretion to consider the relevant factor on the parties' dispute and determine the extent of a reasonable compensation beyond the statutory minimum of twelve months' salaries. It is noted that, in **Flavio Ndesanyo v. Serengeti Breweries Ltd** (supra), which the Court made reference to, it was stated that:

> *"The CMA, it would appear, justified the award of compensation beyond the 12 months salaries on account of the appellant's loss of renumeration. That is one of the factors which may be considered in determining the appropriateness of compensation under rule 32 (5) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, G.N. NO. 67 OF 2007. Other factors include; the extent to which the termination was unfair; any prescribed minimum or maximum compensation; the amount of renumeration; the amount awarded in previous similar cases; proceedings and any other relevant factors. We entertain no doubt, therefore that,*

the reasons assigned by the CMA to justify an award beyond twelve months was within the legally acceptable parameters."

In the case at hand, the Court had the power and discretion to consider the circumstances of parties' dispute apparent on the record, among others, the extent of the termination and the duration of the applicant's employment with the respondent amid the framework of section 40 (1) (c) of the ELRA in determining the extent of the compensation.

Thus, having found that the termination of the applicant was substantively unfair, the issue is whether the Court judiciously exercised its discretion to award the applicant a minimum in compensation of twelve (12) months' salaries. Admittedly, considering the circumstances of the case, we find that the Court omitted to judiciously exercise its discretion in assessing a reasonable compensation beyond the prescribed minimum under the stated provisions.

In the event, we find merit in this complaint and accordingly allow it. In the result, we allow the application in respect of the extent of compensation and dismiss it on the complaint of the so-called monetary reinstatement as we have held in respect of the first limb of the complaints.

Consequently, taking into account the circumstances of the case and pursuant to section 40 (1) (c) which is currently section 41 (1) (c) of the

ELRA, we vacate the award of 12 months salaries minimum compensation and substitute thereof with a 24 months salaries compensation.

In the end, considering the circumstances, we make no order as to costs.

DATED at **DODOMA** this 27th day of July, 2026.

F. L. K. WAMBALI
JUSTICE OF APPEAL

I. J. MAIGE
JUSTICE OF APPEAL

G. J. MDEMU
JUSTICE OF APPEAL

Judgment delivered virtually this 29th day of July, 2026 in the presence of Mr. Reginard Martin, learned counsel for the Applicant, Mr. Erick Kanga learned counsel for the Respondent, and Mr. John Banene Court Clerk; is hereby certified as a true copy of the original.

THE COURT OF APPEAL OF TANZANIA

C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL