

**IN THE HIGH COURT OF TANZANIA**  
**LABOUR DIVISION**  
**AT DAR ES SALAAM**

**REVISION NO. 1484 OF 2024**

*(Arising from an Award issued on 15/12/2023 by Hon. Igogo, M, Arbitrator, in labour dispute No. CMA/DSM/UBG/12/21/19/21 at Ubungu)*

**CLARENCE CHRIS MGIMBA ..... APPLICANT**  
**VERSUS**  
**FOUNTAIN OF JOY NURSERY AND PRIMARY SCHOOL ..... RESPONDENT**

**RULING**

*Date of the last Order: 23/2/2024*  
*Date of Ruling: 7/3/2024*

**B. E. K. Mganga, J.**

On 26<sup>th</sup> January 2024, Applicant filed this application seeking the court to revise an Award issued on 15<sup>th</sup> December 2023 by the Commission for Mediation and Arbitration (CMA) Hon. Igogo, M, Arbitrator, in Labour dispute No. CMA/DSM/UBG/12/21/19/21 in favour of the respondent. Applicant filed the Notice of Application supported with his affidavit. On the other hand, respondent filed the Notice of Opposition and the counter affidavit resisting this application.

When the application was called on for hearing, this court, after going through CMA record, and before the parties have argued issues raised by the applicant in the affidavit in support of the application,

asked the parties to address whether, the dispute was properly filed at CMA.

Responding to the issue raised by the court, Mr. Cosmas Maige, the personal representative of the applicant, submitted that, the dispute was properly filed at CMA. Mr. Maige submitted further that, Applicant filed the dispute at CMA on 19<sup>th</sup> May 2021 by filing CMA F1 together with an application for condonation(CMA F2). He added that, in CMA F1, applicant indicated that the dispute was relating to breach of contract and was claiming to be paid TZS 28,821,152.60. In his submissions, the applicant's personal representative conceded that, applicant also filled part B of CMA F1 that relates to termination of employment only. He went on that, by filling part B of CMA F1 did not make the said CMA F1 to be defective. To support his submissions, the personal representative of the applicant cited the case of ***DRT Auto spare Parts Limited v. Rehema Masalapa***, Revision No. 40 of 2023, HC (Unreported).

On his part, Mr. Heri Kusekwa, learned counsel for the respondent, submitted that, in filling part B of CMA F1, applicant caused the said CMA F1 to be defective because, part B relates to termination of employment only. To support his submissions, learned counsel for the respondent cited the case of ***Bosco Stephen v. Ng'amba Secondary***

***school***, Revision No. 38 of 2017, HC(Unreported). Learned counsel submitted further that, the arbitrator was supposed to strike out the dispute. He added that, it was not proper for the arbitrator to proceed to record evidence of the parties based on a defective CMA F1. He went on that, since CMA F1 was defective, the dispute was incompetent and that proceedings were a nullity.

Learned counsel for the respondent argued that, ***Masalapa case*** (supra) cited by the applicant's personal representative is distinguishable because, in the said case, the court did not discuss the effect of filling part B of CMA F1 while the dispute does not relate to termination. He added that, the said case was decided based on evidence and not filing of CMA F1. Mr. Kusekwa concluded his submissions praying this court to nullify CMA proceedings, quash and set aside the award arising therefrom.

I have considered submissions made on behalf of the parties and it is undisputed that, at the time of filing the dispute at CMA, applicant indicated that the dispute relates to breach of contract. It is further undisputed by the parties that, in the Referral Form(CMA F1), applicant also filled Part B that relates to termination of employment only. It is common ground to the parties that, the dispute that was mediated is

breach of contract and not both breach of contract and termination of employment. It is my view that, by indicating that the dispute relates to breach of contract and then proceed to fill Part B of CMA F1, made the said CMA F1 to be defective. I am of that view because, the words in Part B of CMA F1 that **"ADDITIONAL FOR TERMINATION OF EMPLOYMENT DISPUTES ONLY"** were inserted with a purpose and not to beautifying the said CMA F1. In my view, the said part B of CMA F1, is specifically intended to help the complainant to state with clarity, the date termination occurred, how termination was communicated, reasons for termination as advanced by the employer, whether employer had a valid reason for termination or not and whether, the employer followed procedures of termination of employment or not. Mores so, part B of CMA F1 is intended to help the parties and the arbitrator to be focused on what complainant was aggrieved with. I am of that view because, sometimes the complainant may have no issue with the reason for termination but aggrieved with the procedure only or vice versa. It is my further view that, filling part B of CMA F1 is an alert that there is no longer employment relationship between the parties unlike to other disputes, such as claim of unpaid salaries, breach of contract, etc. where employment relationship between the parties may still exist. I am of

that view because, for instance, not every breach of contract may result into termination of contract.

I have carefully read the case of *Stella Lyimo vs CFAO Motors Tanzania Limited* (Civil Appeal 378 of 2019) [2022] TZCA 742 (24 November 2022) relied on by this court in the case of *DRT Auto Spare Parts Limited vs Rehema Masalapa* (Revision No. 40 of 2023) [2023] TZHCLD 1333 (16 June 2023) cited by the personal representative of the applicant and find that, in ***CFAO's case***(supra), the Court of Appeal did not discuss the effect of filling Part B of CMA F1 that relates to termination of employment only when the dispute filed is breach of contract hence distinguishable. Counsel for the respondent relied on the decision of this court in the case of *Bosco Stephen vs Ng'amba Secondary School* (Revision 38 of 2017) [2020] TZHC 390 (20 March 2020) wherein it was held by indicating that the dispute relates to breach of contract and then fill part B of CMA F1 made the said CMA F1 to be defective and the whole dispute incompetent. I associate myself with the reasoning in the said case. I am of that view because, CMA F1 is not just a sample but a pleading and all reliefs must come from the said Form. In my view, by indicating that the dispute relates to breach of contract and then filling part B of CMA F1 that

relates to termination of employment only created confusion as to what dispute was to be mediated. In fact, the dispute that was mediated is only breach of contract and not part B of CMA F1 that applicant filled. In short, part B of CMA F1 that relates to termination of employment only was not mediated. In terms of section 86(3), (4), (5), (6), (7) and (8) of the Employment and Labour Relations Act[Cap. 366 R.E. 2019] and Rule 4(2) of the Labour Institutions(Mediation and Arbitration Guidelines)Rules, GN. No. 64 of 2007, mediation is compulsory.

It is for the foregoing, I find that the dispute was improperly filed at CMA because CMA F1 was defective. I therefore nullify CMA proceedings, quash, and set aside the CMA award. If applicant is still interested to pursue his rights, may, subject to the provisions of Rule 10(1) and (2) and Rules 11 and 29 of the Labour Institutions(Mediation and Arbitration)Rules, GN. No. 67 of 2007, file a proper dispute at CMA.

Dated in Dar es Salaam on this 7<sup>th</sup> March 2024.



B. E. K. Mganga  
**JUDGE**

Ruling delivered on this 7<sup>th</sup> March 2024 in chambers in the presence of Cosmas Maige, Personal Representative of the Applicant and Boneventure Dunda, Advocate for the Respondent.



A handwritten signature in black ink, appearing to read "B. E. K. Mganga".

B. E. K. Mganga  
**JUDGE**

Labour Court-TZ.