

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA

MISC. LABOUR APPLICATION NO. 31 OF 2021

(Arising from Revision Application No. 13 of 2020 Original CMA/GTA/02/2019)

CHAMA CHA WALIMU TANZANIA APPLICANT

versus

LIVINGSTONE K. WILLIAM RESPONDENT

RULING

13th & 10th Dec 2021

RUMANYIKA, J.:

The application is for extension of time within which, with respect to award of the Commission for Mediation and Arbitration for Mwanza at Mwanza (the CMA) of 03/01/2020 one to lodge a notice of appeal against a decision of this court.

When, by way of audio teleconference the application was called on 26/10/2021 for hearing, Messrs E. Hezron and Abel Rugambwa learned counsel appeared for Chama Cha Walimu Tanzania (the applicant) and Livingstone K. William (the respondent). I heard them through mobile number 0767 545 654 and 0623 483 532 respectively.

Having had adopted contents of the supporting affidavit of Ruhumbika Francis and those of two advocates more so in paragraphs 3, Mr. Elias Hezron learned counsel submitted that looking at the CMA's proceedings of 21st August and 18th September, 2019 witnesses were not sworn in or affirmed before they testified hence a nullity proceedings therefore suffices the point of illegality to dispose of the application such that whether or not each day of the delay was accounted for it was immaterial. That is all.

In reply Mr. Abel Rugambwa learned counsel adopted contents of the respondent's counter affidavit and submitted that the alleged point of illegality was afterthought and strangely raised much as actually the witnesses were sworn in.

The central issue is whether the impugned award was tainted with illegality(s) namely witnesses not sworn in a sufficient point to warrant extension of time within which the applicant to lodge a notice of appeal much as once it was established and proved, it is trite law that in order to keep the records right sufficed a point of illegality to dispose of the application because such evidence was worth the name no evidence it therefore it vitiated the proceedings (cases of **Catholic University of Health and Allied Sciences (CUHAS) v. Epiphania Mkunde**

Athanase, Civil Appeal No. 257 of 2020 and **Kabula Luhende v.R**, Criminal Appeal No. 281 of 2014 CA, unreported

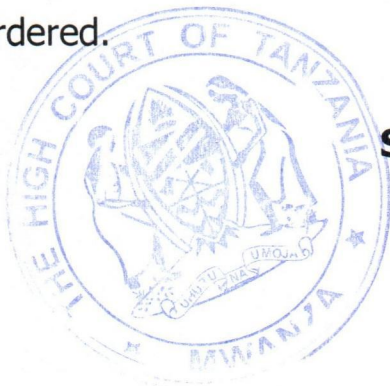
At least with exception of a Christian respondent who, according to records on 6th November, 2019 he sworn in, the Christian applicants Pasiyan Siayi and Oscar Magori did not swear when they testified on 21/08/2019. According to the rule in such a broken chain of authorities, not only the said witnesses' evidence was, worth the name no evidence, but also the two witnesses were so prejudiced that the omission vitiated proceedings. It follows therefore, should, for that reason the evidence be discounted as it is now happening and ordered, the impugned award shall not stand any more suffice the point, in the applicant's favour to dispose of the application.

Without running risks of jumping into merits of the intended appeal however, it also tasked my mind why it was, with respect to the termination letter Ref. No. CWT/004/PF/509/42 of 5th September, 2017 interpreted as teacher's substantive (not duty post) having been terminated. Actually in black and white the title of the letter read: - KUONDOLEWA KWENYE UTUMISHI WA CHAMA CHA WALIMU TANZANIA. It appears for avoidance of doubts the concluding paragraph 4 of the letter reads: kwa barua hii unataarifiwa rasmi kuwa **umeondolewa katika**

utumishi wa chama kuanzia tarehe ya kikao hicho. Aidha unatakiwa kukabidhi ofisi ya chama kwa Mweka Hazina wa Wilaya. Meaning that since only with respect to CWT the respondent had ceased being the applicant's office the latter was obliged to hand over to the National Treasurer District. Essentially there was no mention of one being terminated as a teacher or something essentially.

Without prejudice to the foregoing now that for some reasons the respondent was only with respect to duty post (not substantive post) terminated, if anything, in my considered opinion the former should have only by way of judicial review (certiorari) challenged the applicant's decision. In other words therefore, the CMA had no jurisdiction in the first place. Whether or not from the very start the respondent held a secondary school education certificate or a copy of certificate he presented actually belonged to him or not it may not be subject of this application.

Having said it all the application is meritorious and it is granted. It is so ordered.

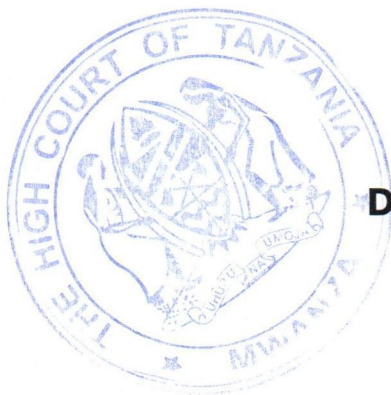


S. M. RUMANYIKA

JUDGE

21/11/2021

The ruling delivered under my hand and seal of the court in chambers this 10/12/2021 in the absence of the parties.



C.TENGWA

DEPUTY REGISTRAR

10/12/2021