

TANZANIA / JUDGMENT

20100319 TZHC Mwanza

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. iii . . 1I)), -LPI 0 .. IN THE HIGH C . IJRT OF TAJANJA ~ABOUR ~IVISIO~ 'I' I AT M~ANZA ; , I ' I I
 ~ ' i . . . \REV,SION NO. 19 QF 2:07 . . • ii EDNA PENDAEL TENGA:..... APPLICANT . I t I ; .. r
 • \ VERSUS PAROKIA YA BUGANDO RESPONDENT I {Original CMA/MZ/292/2007) " . . . II
 i 7 • i , ... • (, . . Ru'ling . I • 1 ' I . . ! . ' ! • r . \1'6/3/2010 & 19/3/2010 I • . l < . - . . \ .. ' I ' I ' :
 R.M. Rweyemamu J.; j .. : I l - ; , ' I r - I ' . ' . ; , The appli9ant/employ~er se ks revision of
 the Co((lmission of Mediation 1 ; , ' . . r : ~t~: : a~:~:tJ:h:r:h:ar:li: ~~~(e~:~; i~:tr~r~:~i~r~:ed her 1 • 0 I
 employerirespondent to pay "twenty days salary worked by the applicant before in ' . . . : , ; ..
 term_,inaUon" ~nd "salary ~ymeht deducte~ from 1992 to 2005 after deducting 10% ' ! ,
 mentioned in-ground 6 (iiv) oft e affidavit'(- ground? contained in ground 6 (iii) : r • • , _ 1J' . 1 '
 j\anqJiv) of her affida1it. Shf adopte~ the said 9ff u,nds at the hearing , l : . ~-... . where: , - she •
 appeared . - in person. _ . : ' , II - : . . _ ' \ • I , ' I I i I I i I : r . • I r " • I

- I i - i
- • I ----- ; : a.ffdavi,t filed in opposition, grounds of whi wer~ elaborated on by Mr. " ; ' • I . . • I I
 t : . Malango, advocate who app~ared for 'the respondent at the hearing. He : 'stJbrnitteij that
 the applican~ failed to substantiate her claims during I , arbitration and further that ayment
 ~f salary un~erpayments for the : claimed 21 years was time ,arred, sh~ could only claim
 payments for 6 : • I ' l . , . 1 j i . l I . \ : In reply,the applicant subiitted that the CMA failed to
 condclct arbitration : proceedings according to la:w; that there was no arbitration hearing,
 I ,, , instead, ' she was only instructed I to give a breakdown of h.er clcims and did ! . not
 know how the final figure was arrived at. ' . . I , I ' I : I . ' . I h~v~ checked the CMA r~cord of
 arbitration proceedings; they indeed fall ; , ' . ' 1 sho:rt:of qualifying as arbitjtation
 pro~eedings as required by rule 32 of the k Labour Institutions (Mediation and Arbitration)
 Rules, GN 64/2007 (M&A rules!, The record d9es n+ show how the caSe 'commenced, what
 issues were'UP for arbitrati/n; wrt evidence wasJea~ and the like. It would • t • appe:r tne
 parties Were orly requested to file• s~atements- themselves not indicated to be part of the
 record. In short, there was no record of l
- I proceedings properly so qilled .
- ~ i I i II ,

- f. I i i', I i. I, : 2 •, -, ,,, ' . ' •, i' _ •, (• 0 ri: •, : • i i: ~ i: 1 • . I ~ { 0 I 3 / 1. - »! D \; r h i s ~ ~ ~ r): 19 ~, giV ~ Q d rectio ~ s in a n y m b e r o f c a s o n t h e J J c e f s i t y t o , . . . • " • . ' i ' ! k e e p a ' p r o p e r r e c o r d o f p r o c e e d i n g s . _ F o r t u n a t e ! , m o s t s u c h r e c o r d s n o w) e m a n a t i n g f r o m t h e C M A c o ~ p l y w i t h t h e r e q u i r e m e n t s , a n d i t h a t t h i s I' . I ; d e c i s i o n w ~ s m a d e w a y b a c k i n 2 0 0 7 , : b e f o r e t h e c o u r t h a d e x t e n s i v e l y ; ' : _ i ' \ d i s c u s s e d - t h ~ i s s _ u e ! . F o r b e n b l f i t o f t h ~ a r b i t r a t o r i n q u e s t i o n h o w e v e r , I L . ' I ' , . I . ; : s : ' i : i s h ~ l l q ~ , o ~ e t h i s c o u r t : ' s . d i s c _ u f s i o n o n t i s s u e i n r n e s u c h d ~ c i s i o n . I n t h a t / ' i • • . . \ c a s e , • P r o l e c t J ' J l a n a g e r B a r r i c k G o l d M m e { B u l y a n h ~ l u } _ V s . A d r i a n o r ' . • 1 p c l h i i l , J ° b o , R e v i S i o ; 2 9 0 / 2 0 d s , t h e . c o ~ r t o b s e r v e d a m o n g o t h e r s t h a t : t . I . ' I . . " I h a v e c h e c k e d t h e C M A ' a r b i t r a t i o n I r e c o r d ~ t h e a p p l i c a n t ' s s u b m i s s i o n t h a t t h e . I I I . a r b i t r a t o r f a i l e d t o i k e e p r e c o r d o f , p r o c e e d i n g s ~ s p r e s c r i b e d u n d e r r u l e 3 2 o f . . ! . - t h e L a b o u r I n s t i t u t i o n s , I e d i a t i o n a n d A r b i t r a t i o n R u l e s G N 6 4 / 2 0 0 7 { M & A : . . . r ~ J ~ S / i s f o u n d e d . \ T h e r c o r d b e a r ~ t h e a p p l i c a ~ t ' s s u b m i s s i o n o u t i n t h a t t h e : . i . • • , P ~ ? c e ~ d i n g s a _ r e s ~ a n t y , F n d m i x e d \ . S e c o n d , i t / S n ~ t c l e a r w h e r ~ _ m e d i a t i o n 1 . e n d e d a n d a r b i t r a t i o n s t a r t e d a n i s s u e I a d d r e s s h e r e i n a f t e r . " ; , : • ' . \ I I I . " ! h i s ; c o u r t h a s s t r e s s e d a l n u m b e r o f \ t i m e s i n c l u d i n g t h e c a s e c i t e d b y c o u n s e l o f i B I D C O O I L S O A P v s A B D U S A I D \ A N D 3 O T H E R S , R e v i s i o n 1 1 / 2 0 0 8 w h e r e 1 . . M . a n d i a l , a s h e t h e n w a s \ m a d e a n u m b e r o f o b s , e r v a t i o n s w h i c h a r e a p p l i c a b l e 1 . : : t o , t h e f a c t s . . ! . , • o f t h i s c a s e . l j h e H o n . . . J u d g e n o t e d a l l , l o n g . • . . . I . . o t h e r s t h a t i n c o n d u c t i n g a r b i t r a t i o n , p r o c e e d i n g s ; t . I . ' I . I I " . . . e m p h a s i s . (i s) o n r e g u l a r a n d o r d e r l y p r o g r 8 s s i n . l a w a n d . 1 I I : • p r o c e d u r e _ \ f r o m c o m m e n c e m e n t o f a n a c t i o n t o e x e c u t i o n o f . ' . ' f I I I • I . j u d g e m e n t . . ~ t h e f u n c t i o n s o ~ a r b i t r a t i o ~ : a r e q u a s i - j u d i c i a l , s o a r b i t ~ a t o r s : ' : 1 . - : \ 5 . h o u l d • i n s i 4 t o n b a s i c c h a r c ; c t e r i s t i c s o f , o r d e r l i n e s s a n d r e g u l a r i t y i n • , , • . • 1 • : e x e c u t i o n ; , i f t h e i r d u t i e s . ! ; c k i / y t h e C o m m i s s i o n . h a s m a d e e l a b o r a t e ' F , < I . • , ! • I , . ' . i • • I . • • . ; l 1 : • • . ' r u l e s _ o f p r d c e d u r e (p u b l i s h e 9 a s G N _ 6 4 / 2 9 0 7 a n d G N 6 7 / 2 0 0 7) . . . T h e s e I 1 I I I 3 ' . . ' 1 . 1 ' ~ V 1 ~ ' 4 ? r u l e s ~ f p r o c e d u r e a r e s u b s i d i a r y l e g i s l a t i o n n d a r b i t l a t o i a b o u n d t o . I f o l l o w r u l e s s e t t h e r e i n " ; , I . I I I 1 • , I n t h a t c a s e , t h e c o ~ r t h e l j t h a t f a i l u r e t o k e e p a p r o p e r r e c o r d v i t i a t e d t h e : ~ ; h o l e p ~ o c e e d i n g s i n ? l u d i n g t h e r e s u l t a n t a w a r d , _ w h i c h i t p r o c e e d e d t o q u a s h . , . ~ u i l ~ i n g o ~ t h a t p r i n c i p l e , t h i s c o u r t o b s e r v e d i n G r a c e W a n n a v s . A l l T e r r a i n , . . • ~ e r y i c e t A p p l i c a t i o n N o _ 1 6 / ? 0 0 l t h a t : i' ! • . . . ; : 1
- . . . 1 . - " T ; a r r i y e a t a p r o p e r r e c o r d o f p r o c e e d i n g s p r e s c r i b e d u n d e r r u l e 3 2 o f t h e { M & A r u l e s } , t h e C M A , u s i n g i t s p o w e r s u n d e r s e c t i o n 1 5 (1) (f) o f t h e o f t h e L a b o u r I n s t i t u t i o n s A c t 7 o r ' 2 0 0 4 , i s s u e d t h e L a b o u r I n s t i t u t i o n s { M e d i a t i o n a n d , . I A r b i t r a t i o n G u i d e l i n e s } R u l e s , G N 6 7 0 (2 0 0 7 , (h e r e i n a f t e r t h e G u i d e l i n e s) w h i c h a d c : 1 / s e e k s I . ' I . s p ~ ~ i f i e s s t a g e s a n d c o n t e n) f o f a r b i t r a t i o n p r o c e . e d i n g s a n d i f I m a y ' I t o g i v e a r b i t r a t i o n p r o c e e d i n g s a t t r i b u t e s o f l e g a l p r o c e e d i n g s . T h e s t a g e s t o b e 1 • . r . 1 , " ; ; • ; ' • ' i • I , ' . c o v e r e d
- t a r : e c o n t a i n e d
- . i n R u l e 1 8 t d 2 6 ' o r t h e g u i d e l i n e s . I . I . • \ I I . I I ; I I I P r o c e e d i n g s c o m p l y i n g w i t f , t h e g u i d e l i n e s w i l l c l e a r l y s h o w i s s u e s t o b e (1 , ' t a r b i t r a t e d u p o n , e v i d e n c e l e d b y e a c h s i d e t o p r o v e o r d i s p r o v e t h e i s s u e s , w h i c h ' e v i l e n c e i s r e c e i v e d , a s p f . R u l e 2 5 / i t w i l l c o n t a i n e d a r g u m e n t s b y w a y o f w r i t t e n ~ u b m i s s i o n s w h i c h s h o u l d b ~ i n d i c a t e d i n t h e p r o c e e d i n g s , ~ r

made part of the record where they are received orally/ also :where the arbitrator allows
 '... dosing arguments, they should be systematically included in the record. Further, if I
 where there were preliminary issues, evidence and arguments by each side

- , I should be indicated in the record. Final proceedings should contain the award
 which should indicate the decision and reasons thereof on each issue raised
- and a summary on matters itemized under guideline 27 (a) to (f) . . . ! I , , . . To make such
 proceeding orderly would by necessity require numbering the
- . f ' ' ' I I : ' i ' ' pages in the cause of proceedings sequential it : would require that
 the written . .) I : . ' I . ' notes be kept in a retrievable form and although Rule 32 (2) of the
 {M&A rules} . 4 • , ; , , ' , ' • R.M.Rweyem Judge . 18/3/2010 ! , , I r • , 1 , , 1 . I I I : 5 i I . L l l • . I -
 • I ... I j , J ... Date: 19/03/2010 I • Coram: I Hon. R. . Rweyemamu, J. Applicant: For Applicant:
 Absent • Respondent: . ! I For Respondent: Pius Mrkelele Secretary to the Parish for
 Respondent C.C. Josephine Mbasha .: Court: • This matter is for ruling,; • the Ruling delivered
 this 19 March, 2010 in presence of the parties as 1 above. R/A explained. Order: Applicant to
 check_ knew copy of the decision at the MZA CMA are Office. I , ~Rweyema I JUDGE
 19/3/2010 I. 6

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