

TANZANIA / JUDGMENT

GRACE MUNISI VERANKIRA AND 2 OTHERS V

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IN THE HIGH COURT OF TANZANIA LABOUR DIVISION AT DAR ES SALAAM REVISION
APPLICATION NO. 18727 OF 2024 (Arising from an Award issued on 28/6/2024 by Hon. Faraja
Johnson, L, Arbitrator, in Labour Dispute No. CMA/DSM/KIN/9/2023/at Kinondoni) GRACE
MUNISI VERANKIRA1ST APPLICANT FLORA
CHALAMILA.....2ND APPLICANT JOYCE
MGOMBELE.....3RD APPLICANT VERSUS ENGENDER
HEALTH..... RESPONDENT

JUDGMENT

Date of last Order: 26/09/2024 Date of Judgement: 12/11/2024 B. E. K. Mganga, J. It is undisputed that, Grace Munisi Verankira, Flora Chalamila and Joyce Mgombebe, the herein 1st, 2nd and 3rd applicants were employees of Engender Health, the herein respondent. It is also undisputed that, on 31st January 2022, 1st applicant signed a one-year fixed term contract with the respondent that started from 1st February 2022 to 31st January

2023. In the said one-year fixed term contract, 1st applicant was employed as a Senior Advisor-Gender, Youth and Social Inclusion (GYSI) at yearly salary of TZS 109,824,000/= that is to say, TZS 9,152,000/=monthly. In the said one-year fixed contract, it was 1 indicated that the position on which 1st applicant was employed is based at Elizabeth Glaser Pediatric AIDS Foundation (EGPAF) at Dar es Salaam offices. On 12th December 2022, respondent served the 1st applicant with the disciplinary charges of gross dishonest and breach of trust alleging that, 1st applicant together with other employees of the respondent and Elizabeth Glaser Pediatric AIDS Foundation (EGPAF) staff on the USAID Afya Yangu Project-Northern Zone, committed fraud. It was alleged that, upon approval of payments for the Family Planning Comprehensive Training that was to be conducted in Manyara from 25 -30 July 2022 by Khadija Nguli, on 5th August 2022, through a WhatsApp message, 1st applicant shared with Khadija Nguli, money distribution plan and that, 1st applicant received TZS 3,500,000/=, Khadija Nguli TZS 3,500,000/=, Ronald Maro TZS 3,500,000/= and Flora TZS 4,000,000/= from the said distribution plan. It was further alleged that, on 18th august 2022, 1st applicant sent a list of names to Ronald Maro, Elizabeth Glaser Pediatric AIDS Foundation (EGPAF) staff and asked him to include those names in the quality assessment

training conducted between 24-29 July 2022 and that, some of the names appeared at the same training on Family Planning conducted in Manyara between 25-30 July 2022. It was further alleged that, 1st applicant asked Ronald Maro to delete the PDF document she sent him with the said list telling him that, her computer is on SharePoint which is live and can be accessed by everyone. It was also alleged that, after 1st applicant has reviewed the pdf document, payment was made on 31st August 2022, and that, TZS 16,852,013/= were released to trainers and on 1st September 2022. It was further alleged that, after the said payment to trainers, 1st applicant sent a message to Ronald Maro informing him that she had received only TZS 4,00,000/= from trainers as most of them were unwilling to give money though one of the trainers confirmed that they received money three times. It was also alleged that, on 1st September 2022, 1st applicant told Ronald Maro that she collected TZS 10,000,000/= and asked the said Ronald Maro to suggest distribution plan and that, the latter agreed that 1st applicant should receive TZS 3,500,000/=, Ronald Maro TZS 3,500,000/=, and Joyce TZS 2,500,000/= and that, she sent the said money to the parties as agreed. Based on the afore allegations, disciplinary hearing was conducted as a result, on 6th January 2023, respondent terminated employment contract of the 1st applicant. It is also undisputed by the parties that, on 28th February 2022, Flora Chalamila, the 2nd applicant, signed a one-year fixed term contract of employment with the respondent starting from 1st April 2022 through to 31st March 2023. In the said one-year fixed term contract, 2nd applicant was employed as Family Planning/Reproductive Health Program Officer at monthly salary of TZS 3,783,436.80 equivalent to TZS 45,401,241.60 yearly. In the said one-year fixed term contract of employment, it was indicated that, 2nd applicant was reporting to the Senior Technical Advisor, FP/RH, Tanzania based in Dar es salaam. It was also further indicated that, the position of the 2nd applicant was based at Elizabeth Glaser Pediatric AIDS Foundation (AGPAF) Manyara Offices. On 12th December 2022, respondent served 2nd applicant with the disciplinary charges of gross dishonest and breach of trust. In the said charge, it was alleged that, on 28th July 2022, Ronald Maro, Elizabeth Glaser Pediatric AIDS Foundation (EGPAF) staff send to the 2nd applicant the Family Planning Comprehensive Training Budget through WhatsApp message and that, on 4th August 2022, after Family Planning Comprehensive training Dar -08-16 was paid on 2nd August 2022, the 2nd applicant send TZS 2,000,000/= to the said Ronald Maro. It was also alleged that, in the Comprehensive Family Planning training at Manyara, Grace and the team decided that 2nd applicant would receive TZS 4 4,000,000/=. Based on those allegations, on 6th January 2022, respondent terminate employment of the 2nd applicant. It is further undisputed by the parties that, on 27th January 2022, the 3rd applicant signed a one-year fixed term contract of employment with the respondent starting on 1st February 2022 through to 31st January 2023. In the said one-year fixed term contract, 3rd applicant was employed as Gender, Youth and Social Inclusion (GYSI) Officer reporting to the Senior Advisor, GYSI, Tanzania based in Dar es salaam. In the said fixed term contract, it was indicated that, 3rd respondent's position is based at Elizabeth Glaser Pediatric AIDS Foundation (EGPAF) Kilimanjaro Offices. It was also indicated that, monthly salary of the 3rd applicant was TZS 4,149,631.20 equivalent to TZS 49,795,574.40 per year. On 14th December 2022, respondent

served the 3rd applicant with disciplinary charges of gross dishonest and breach of trust. It was alleged in the said charge that, on 1st September 2022, 3rd applicant received TZS 2,500,000/= in her bank account from Grace Munisi after payment was made on 31st August 2022 to trainers and that, the 3rd applicant facilitated in Arusha Forensic sample collection on-site support 5 activity. Based on those allegations, on 6th January 2023, respondent terminated employment contract of the 3rd applicant. Aggrieved with termination of their employment, applicants filed Labour dispute No. CMA/DSM/KIN/9/2023 before the Commission for Mediation and Arbitration (CMA) at Kinondoni complaining that respondent terminated their employment unfairly. On fairness of reason, in the referral form (CMA F1), 1st applicant indicated that, the offence charged with, presupposes proper investigation against the complainant but no proper investigation was done before finding complaint guilty and unfairly terminated. She also indicated that, there was no evidence that linked her with the offences alleged and that, there was no sufficient evidence to justify that she committed misconducts. She further indicated that, she was unaware of the rule alleged contravened because, the policy used is erroneously from Elizabeth Glaser Pediatric Aids foundation (EGPAF). The 1st applicant also indicated that, there was no consistence because, more than one employee was involved but treatment of these employees on the same matter is different and that the alleged misconduct did not constitute a fair reason for termination. On procedural fairness, 1st applicant indicated that, (i) she was not afforded reasonable time to prepare her response to the allegation 6 because, she was afforded 24 hours instead of 48 hours to respond to a series of allegations, (ii) no minutes of the Disciplinary Committee were supplied to her hence fundamental breach of natural justice principles, (iii) there was no step-by-step during disciplinary hearing and the seconded employer has not raised an issue today, (iv) there was no sufficient notice of hearing, (v) she was operating in Dar while the allegations arising from filed in Arusha, (vi) she was not permitted to participate fully in the disciplinary hearing proceedings, (vi) she was not fully made to understand the nature of the offences, (vii) disciplinary hearing committee was not impartial because it was part of the complaining management hence biased, (viii) the committee investigated, weighed extraneous consideration, prosecuted and finally made unfair and irrational decision, (ix) the decision was unfair and irrational in breach of ILO standards, (x) no right to appeal was explained to her during the final verdict, (xi) there was full of irregularities of the procedure as the rules of natural justice were violated during disciplinary hearing, (xii) during the disciplinary hearing, no strict proof was invoked on criminal allegations advanced against her, (xiii) termination was not an appropriate sanction, (xiv) no proper quasi-judicial criminal process was conducted to establish mens rea and actus reus during the disciplinary hearing as the allegations were centered on 7 criminal acts namely, fraudulent acts and falsification of documents in order to obtain money, (xv) no evidence was examined to determine the precise nature of the complaint committed, (xvi) no internal rule in respect of the Employer's policy was identified to have been contravened by her as a basis of termination, (xvii) disciplinary hearing was supposed to be conducted like a criminal trial with her witness, cross examination and all other formalities normally associated with trial

but there was a grave failure to observe the procedural requirements hence the entire disciplinary hearing was a nullity. Based on the foregoing, 1st applicant indicated in the CMA F1 that she was claiming (i) to be reinstated, (ii) to be paid monthly compensation of TZS 9,152,000/= for 4 years, (iii) to be paid general damages due to mental stress, economic loss of income of 4 years and fringe benefits packages thereof including insurance cover for herself, children and husband, harassment and psychological torture/high pressure resulted into hospital rest at Aghakhan hospital, post-traumatic stress disorders as a consequence of the respondent's unfair termination of her employment contract, denial of her timely payment of her 13 cheque, (iv) to be issued with a certificate of service, (v) to be paid severance pay, (vi) to be paid NSSF 10% monthly contributions for the 8 period of 4 years, (vii) to be paid leave entitlement for the period of 4 years, and (viii) to be paid airtime at the rate TZS 200,000 per month for 4 years. On her part, Flora Chalamila, the 2nd applicant, indicated in the CMA F1 that, procedures for termination were not followed and that, the reason for termination was not valid and fair. Based on that, she indicated in CMA F1 that she was claiming (i) to be reinstated or in alternative (ii) compensation for 4 years salaries(TZS 181,604,976/=, (iii) general damages, (iv) be issued with a certificate of service, (v) be paid severance pay, (vi) NSSF 10 % contribution for 4 years, (vii) leave entitlement for 4 years, (viii) TZS 150,000/= each month for 4 years. Joyce Mgombee, the 3rd applicant, indicated in the CMA F1 that, termination was both substantively and procedurally unfair. She further indicated that, she was claiming (i) a declaration that termination was unlawful, (ii) compensation of TZS 199,182,288/= for 4 years, (iii) be issued with certificate of service, (iv) be paid severance, (v) general damages, (vi) leave entitlement for 4 years, (vii) TZS 150, 000/= each month for 4 years, (viii) in alternative, be reinstated. On 28th June 2024 Hon. Faraja Johnson, L, Arbitrator, having heard evidence of the parties, issued an award that termination was fair 9 both substantively and procedurally and dismissed the dispute and all claims by the applicants. Applicants were aggrieved with the said award hence this application for revision. In the joint affidavit in support of the Notice of application, applicants raised eight (8) issues namely: -

1. Whether it was proper for the trial arbitrator to proceed with determination of evidence of the parties even after concluding that CMA F1 was defective and improperly filed before CMA.
2. Whether the EGPAF to whom applicants were seconded was duly involved into disciplinary action as per secondment contracts.
3. Whether there was evidence tendered before CMA suggesting that the employer had lost her money.
4. Whether applicants had ever distributed among themselves money that belong to the respondent.
5. Whether all electronic evidence tendered and admitted by CMA were in accordance with the relevant law.

6. Whether procedure for termination of the applicants' employment contract of employment were duly followed.
7. Whether the trial arbitrator properly evaluated evidence adduced in deciding the matter in favour of the respondent.
8. Whether the trial arbitrator fairly determined the reliefs that the parties were entitled to. Respondent opposed the application by filing both the Notice of Opposition and the Counter affidavit sworn by Jovitus Rugahenda, her principal officer. When the application was called on for hearing, Mr. Frank Kilian, learned advocate appeared and argued for and on behalf of the 10 applicants while Mr. Pascal Kamala, learned advocate appeared and argued for and on behalf of the respondent. Both counsels strongly submitted in support and against the application based on the aforementioned issues raised by the applicants. Having heard respective rival submissions, I adjourned the application and scheduled it for judgment. At the time of composing the judgment, I carefully examined the CMA record and find that, some exhibits were admitted collectively but endorsement was done only on one document and that, exhibits that were admitted collectively were not sufficiently identified on the record by both the witnesses and the arbitrator. I also noted that, Flora Chalamila's working station was at Manyara and Joyce Mgombele's working station was in Kilimanjaro and the issue that led to the disciplinary proceedings occurred out of Dar es salaam but they filed the dispute in Dar es salaam. With those observations, I resummoned both counsel and asked them to address the court as whether, the procedure adopted by the arbitrator in admitting exhibits was proper and the effect thereof and whether, CMA Dar es Salaam had jurisdiction or not. Responding to the 1st issue relating to admission and marking of exhibits raised by the court, Mr. Kilian conceded that, there was no 11 proper identification of exhibits and that, exhibits were not properly admitted. He added that, the effect is that, proceedings were a nullity. Based on the 1st issue, counsel for the applicants prayed the court to nullify CMA proceedings, quash the award and order trial de novo before a different arbitrator. Responding to the 2nd issue relating to jurisdiction, Mr. Kilian submitted that, CMA had jurisdiction because the appointment letter of Flora Chalalmila, the 2nd applicant, dated 24th February 2022 (Part of exhibit. D4) shows that, she was based in Dar es Salaam and that, she was assigned duties at Manyara offices. When referred by the court on exhibit D10, counsel readily conceded that, duty station of the 2nd applicant was Manyara and that, DW2 who tendered the said exhibit, was not cross examined on duty station of the 2nd applicant. Counsel conceded further that, in her evidence, Flora Chalamila(PW2), testified that her duty station was Manyara. He added that, in the notice to attend the disciplinary hearing dated 16th December 2022, 2nd applicant was called from Manyara to Dar es Salaam to attend the disciplinary hearing. Mr. Kilian further submitted that, the charge sheet had allegations relating to training that was conducted in Manyara and Dar es Salaam. 12 He also submitted that, the allegation was that, money were sent from Dar es Salaam to Manyara, the latter being duty station of the 2nd applicant. He was quick to submit that, termination was done in Dar es Salaam hence CMA in Dar es Salaam had jurisdiction. He also submitted that, Joyce Mgombele's working station was at Elizabeth Glaser Pediatric AIDS Foundation

(EGPAF) at Kilimanjaro. He strongly submitted that, the dispute arose in Dar es Salaam where disciplinary hearing were conducted hence CMA at Dar es Salaam had jurisdiction. On his part, Mr. Kamala, counsel for the respondent, responding to the 1st issue raised by the court submitted that, exhibits were properly admitted but were not properly numbered and endorsed by the arbitrator. He submitted that, there was a prayer to tender, the other party was asked to comment and exhibits were admitted by the arbitrator. He added that, witnesses identified exhibits but the arbitrator did not properly endorse on those exhibits. He was quick to submit that, the effect of failure to endorse on exhibits is curable under section 88(6) of the Employment and Labour Relations Act [cap. 366. R.E. 2019]. Responding to the 2nd issue relating to jurisdiction of CMA, Mr. Kamala submitted that, the disputes must be filed in the locality it arose. He also submitted that, it is mandatory for the parties to indicate in CMA 13 F1 the place the dispute arose. He added that, in CMA F1, all applicants wrongly indicated that the dispute arose in Dar es Salaam. He further submitted that, the charge sheets that were served to the applicants (exhibit P1, P8 and D6) all show that applicants committed misconducts to the project called USAID Afya Yangu Project Northern Zone that was conducted in Manyara. Mr. Kamala further submitted that, duty station of Flora Chalamila, 2nd applicant was in Manyara while duty station of Joyce Mgombele, the 3rd applicant was in Kilimanjaro. He also submitted that, Duty Station of Grace Munisi, the 1st applicant was in Dar es Salaam and that, the charge sheet served to 1st applicant (exhibit P1) clearly shows that the misconduct was committed in Manyara. Counsel submitted that, it was not proper for Flora Chalamila and Joyce Mgombele, the 2nd and 3rd applicants respectively, to file the dispute at Dar es Salaam. Counsel concluded that, CMA Dar es Salaam had no jurisdiction and prayed the court to nullify CMA proceedings, quash and set aside the award so that, if parties are still interested, they can file a dispute in a proper jurisdiction. After response by counsel for the respondent to the issues raised by the court, Mr. Kilian, counsel for the applicants prayed to add one 14 issue relating to nullification of CMA proceedings based on jurisdictional, which, according to him, was very important. I granted that prayer as a result, Mr. Kilian submitted that, if the court nullifies CMA proceedings based on jurisdictional issue, then, it should also nullify disciplinary hearing proceedings of the respondent. Counsel added that, if CMA had no jurisdiction, then, respondent had no jurisdiction to terminate applicants while in Dar es Salaam because the dispute arose outside Dar es Salaam. Counsel submitted that, under section 94(1)(c) of Cap. 366 R.E. 2019 (supra), this court has Powers to nullify disciplinary hearing proceedings conducted by the employer. When probed by the court, counsel conceded that, there is no provision prohibiting an employer to conduct disciplinary hearing proceedings outside the place the dispute arose. He was quick to submit that, the dispute which is referred to CMA originates from disciplinary hearing proceedings and that, since those proceedings were finalised in Dar es Salaam, applicants were required to file an appeal before CMA within 30 days. Since the issue of nullification of disciplinary hearing proceedings conducted by the respondent raised by counsel for the applicants was new and was not covered by counsel for the applicants at the time responding to the issues raised by the court, I allowed counsel for the 15 respondent to respond. It was submissions of Mr. Kamala that, jurisdiction of this

court is a creature of the statute and that, its jurisdiction is against CMA award in terms of section 91 of Cap. 366 R.E. 2019(supra). He also submitted that, this court cannot make decision on matters that were not decided by CMA. He added that, there is no provision giving the court power to nullify disciplinary hearing proceedings of the employer. He went on that, the law does not provides the place the employer should conduct disciplinary hearing proceedings, rather, only it provides a place the dispute should be filed namely, at a place it arose. In disposing this application, I will start with issues raised by the court before discussiing what was submitted by the parties based on issues that were raised by the applicants. In dealing with the issues raised by the Court, I will start with the jurisdictional issue. It is undisputed by the parties that, work station of the 2nd applicant was in Manyara. In fact, in her evidence, Flora Chalamila, 2nd applicant stated in her evidence in chief that her work station was Manyara. In addition to that, an email dated 20th December 2022 by Jovitus Rugahenda(DW2) responding to the 2nd applicant's email dated 19 December 2022 23:06 the subject being "Ruhusa" all admitted as 16 exhibit D10, shows that, 2nd applicant's duty station was Manyara and not Dar es Salaam. Exhibit D10 readds in part:- "Dear Flora, Your request is well noted. However, please note that your workstation is Manyara and your decision to travel out of your dusty station without the supervisor's permission is a disciplinary issue...All in all, we accept your request to conduct the hearing virtually and by this request please confirm that you are waivering your rights of appearing physically before the committee." It was evidence of Monica Shio (DW1) from Elizabeth Glaser Pediatric AIDS Foundation (EGPAF) while under cross examination that, Flora Chalamila initiated training at Manyara. Not only that, but also, Jovitus Rugahenda (DW2) while testifying both in chief and under cross examination stated that, the dispute arose at Arusha and Manyara offices. On the other hand, Joyce Marcus Mgombele (PW3), the 3rd applicant, while testifying in chief stated that, she was employed in February 2021 as Gender youth and Social inclusion program officer stationed at Kilimanjaro. That evidence is collaborated by evidence of DW2 while in chief when he stated that, Joyce Mgombele was program officer gender youth and social inclusion (Afya Yangu Project) in Elizabeth Glaser Pediatric AIDS Foundation (EGPAF) Kilimanjaro and 17 Arusha. Evidence of both the 1st applicant and the respondent shows that 1st applicant was stationed in Dar es Salaam. From the above evidence of the parties, it is my findings that, duty stations of the 2nd applicant was in Manyara and that of the 3rd respondent was in Kilimanjaro. Evidence of the parties also shows that, the alleged misconducts were committed by the applicants while in those areas. Evidence shows that, it is only the 1st applicant who was stationed in Dar es salaam. Therefore, both 2nd and 3rd applicants were supposed, in terms of Rule 8(1) of the Labour Institutions (Mediation and Arbitration) Rules, GN. No. 64 of 2007(supra), to file the dispute in Manyara and Kilimanjaro respectively, where the dispute arose or at CMA headquarters in Dodoma. It is further my opinion that, both 2nd and 3rd applicants were supposed to file the dispute in Dar es salaam after obtaining leave of CMA transferring the dispute from CMA Manyara and CMA Kilimanjaro respectively to CMA Dar es Salaam. In my view, the mere facts that, respondent's offices are in Dar es Salaam does not give jurisdiction to CMA Kinondoni in Dar es salaam over the dispute that arose out of Kinondoni territorial jurisdiction. In fact, the

above cited rule does not state that disputes must be filed where the employer had offices. The catch words in Rule 8(1) of GN. No. 64 of 2007(supra) are 18 that, disputes must be filed where they arose. The disputes that were filed by the 2nd and 3rd applicants did not arise in Dar es salaam rather, it was in Manyara and Kilimanjaro respectively. My afore conclusion is fortified by what was held in the case of CRDB Bank PLC vs Lusekelo Mwakapala (Civil Appeal No. 143 of 2021) [2023] TZCA 17637 (22 September 2023) wherein the Court of Appeal held that, CMA at Ilala had no territorial jurisdiction over the dispute that arose in Rukwa. The same position was held by this Court in the case of Mkombozi Commercial Bank Plc vs. Humphrey Singogo (Revision Application No. 877 of 2019) [2023] TZHCLD 1481 (10 November 2023) that:- “The case at hand, dispute arose at Mwanza region, while dispute was instituted at Dar es Salaam CMA, Ilala District. There is no any application filed to the commission for any exemption, to that effect. Thus, hearing of the dispute by CMA Ilala District Office is without jurisdiction. Jurisdiction is important aspect, it gives the power for court, or and tribunal to determine dispute. Records does not show whether permission was sought and granted to file dispute at CMA Ilala Office instead of Mwanza.” For the foregoing, I hold that, CMA at Kinondoni Dar salaam had no territorial jurisdiction over the dispute against both the 2nd and 3rd applicants that arose in Manyara and Kilimanjaro respectively. In short, proceedings were a nullity. It was, seemingly, conceded by counsel for the applicants to the jurisdictional issue, when he submitted that, respondent had no 19 jurisdiction to terminate applicants while in Dar es Salaam because the dispute arose outside Dar es Salaam. Those submissions were followed by submissions that, the court has powers, in terms of section 94(1)(c) of Cap. 366 R.E. 2019(supra), to nullify disciplinary hearing proceedings conducted by the employer in Dar es Salaam. With due respect, section 94(1)(c) of Cap. 366 R.E. 2019(supra) does not give this court such powers and has nothing to do with disciplinary proceedings conducted by the employer. Under the said section 94(1)(c) of Cap. 366 R.E. 2019(supra), this court has powers to review decisions, codes, guidelines or regulations made by the Minister under the said Act. I have carefully read the provisions of Cap. 366 R.E. 2019(supra) specifically the above cited section 94 that relates to powers of this court and find that, this court has no power whatsoever, of nullifying disciplinary proceedings conducted by the employer and order the employer to conduct another disciplinary hearing proceedings. It is my view that, at revision stage, in considering whether termination was fair substantively or procedurally, the court has powers under the said section 94 of Cap. 366 R.E. 2019(supra), to hold that disciplinary proceedings were properly conducted or not. If the Court finds that, disciplinary hearing proceedings were improperly conducted, then, that amounts to unfair termination but, the court cannot nullify those disciplinary hearing 20 proceedings. In such a situation, the court awards the employee based on procedural unfair termination. It was submitted by counsel for the respondent that jurisdiction is a creature of statute. I entirely agree with those submissions. Jurisdiction of this court like jurisdiction of any court or tribunal, is a creature of statute hence it cannot be assumed or asurped. hat is the settled position of the law obtained in the case of Commissioner General Tanzania Revenue Authority & Another vs Milambo Limited (Civil Appeal 62 of 2022) [2022] TZCA 348 (14 June 2022), Millicom Tanzania Nv vs James Alan Russels Bell & Others (Civil Revision No.

3 of 2017) [2018] TZCA 355 (26 July 2018), National Bank of Commerce Ltd vs National Chicks Corporation Ltd & Others (Civil Appeal 129 of 2015) [2019] TZCA 345 (23 September

2019) to mention but a few. In Milambo's case (supra) the Court of Appeal held inter-alia that:- "... jurisdiction is a creature of statute and not the dislikes or likes of the parties or mere compelling situations..." It was conceded by counsel for the applicants and submitted by counsel for the respondent that, there is no provision prohibiting an employer to conduct disciplinary hearing proceedings outside the place the dispute arose. I entirely agree with those submissions. The only 21 restriction available is the place the parties can file the dispute based on the locality the dispute arose. Since there is no provision requiring the employer to conduct disciplinary hearing in a certain locality and since there is no provision giving power this court to nullify disciplinary hearing proceedings conducted by the employer, I find that submissions and the prayer by counsel for the applicants is not merited. It was correctly in my view, conceded and submitted by counsel for the applicants that, there was no proper identification of exhibits and that, exhibits were not properly admitted. On the other hand, it was submitted by counsel for the respondent that, exhibits were properly admitted but were improperly endorsed. It was correctly submitted by counsel for the respondent that, there were prayers by the witnesses to tender exhibits, the other party was asked to comment and the arbitrator admitted the exhibits. It was equally correctly submitted by counsel for the applicants that, exhibits were not correctly identified by the witnesses and they are not correctly identified by the arbitrator in the proceedings and further that, exhibits were not properly endorsed. I have examined the CMA record and find that, witnesses did not describe properly the documents they intended to tender and the arbitrator, did not give description of the document that he admitted as exhibit. Worse, 22 as pointed out herein above, exhibit that were admitted collectively were not all endorsed. What the arbitrator did, was just endorsing on one document that was admitted collectively without endorsing on all documents, as a result, it is unknown, which document in the list of documents filed by the parties were admitted as exhibit or not. In short, there is uncertainty of the names/descriptions of exhibits that were tendered by the parties. That being the state of affairs, it is unsafe for this court to assume and rely on documents not clearly shown that were admitted as exhibits. That was a fatal irregularity which vitiated the whole CMA proceedings. In their submissions when responding to the issues raised by the court, both counsel were of the view that proceedings were a nullity. But, their point of departure was on whether, it was due to jurisdictional issue or improper endorsement of exhibits. It is my view, as discussed hereinabove, that, proceedings were a nullity based on both territorial jurisdiction and improper admission and endorsement of exhibits. The issues raised by the court has disposed the whole application. I therefore find no need of discussing or reproducing submissions of the parties relating to the issues raised by the applicants. 23 That can be done in opportune time in the properly conducted proceedings. For the foregoing, I hereby nullify CMA record. The parties may, if still interested, pursue their right in proper jurisdiction, after complying with the law. Dated at Dar es Salaam on this 12th November

2024 B. E. K. Mganga JUDGE Judgment delivered on 12th November 2024 in chambers in presence of Erick Kanga, Advocate for the Respondent but in the absence of the Applicants.
B. E. K. Mganga JUDGE 24

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Prepared on 14 October 2026 · Esheria