

TANZANIA / JUDGMENT

REV NO 12255 OF 2024 JIMMY WHITSUN MOSHI VRS CRDB BANK PLC

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA LABOUR DIVISION AT PAR E5
5ALAAM LABOUR REVISION NO. 12255 OF 2024 (Arising from Arbitral Award of the Commission
for Mediation and Arbitration at Dar es salaam, DISPUTE NO. CMA/DSM/ ILA/561/2020 issued by
Hon. Muhanika, Arbitrator dated 18 April, 2024) CASE REFERENCE NO. 202405271000012255
BETWEEN JIMMY WHITSUN APPLICANT AND CRDB BANK
PLC..... RESPONDENT

JUDGEMENT

Date of last Order: 16/07/2024 Date of Judgement: 27/08/2024 MLYAMBINA, J. Briefly, Jimmy Whitsun Moshi "the Applicant herein" was employed by the CRDB Bank PLC "the Respondent herein" as a Bank Officer with effect from 1st June, 2015. He was stationed at the Makumbusho Branch, later being transferred to Msasani Branch. On 10th June 2020, he was terminated from the Bank services. On 30th April 2020, the Applicant was informed that the Respondent intended to institute Disciplinary Proceedings at CRDB Bank PLC Disciplinary Committee. On 4th May 2020, the Applicant appeared before CRDB Bank PLC Disciplinary Committee. He was heard, thereafter, the decision of terminating him from employment was issued. The Applicant was dissatisfied with the decision made by the committee. He then filed a Labour Dispute No. CMA/DSM/ ILA/561/2020 before the Commission for Mediation and Arbitration (herein CMA) and the same was heard and determined against him by Hon. Muhanika, Arbitrator on 18th April, 2024. Hence this application for revision of Arbitration Award of the CMA. The application has been made under Sections 91(1) (a) and (2) (b) and (c); 94(1) (b) (i) of the Employment and Labour Relations Act, [Cap 366 R.E2019]; Rules 24(1), 24(2) (a),(b),(c),(d),(e),(f) and 24 (3)(a),(b),(c),(d) and 28 (1) (c), (d)

(e) of the Labour Court Rules, 2007 GN No. 106 of 2007 read together with Rule 34 (1) of the Employment and Labour Relations (General) Regulations GN. 47 of 2017]. The grounds for revision are as follows:

(a) That, the Award is legally and factually wrong; it is irrational and illogical;

- (b) That, upon revising the CMA proceedings, decision and orders thereof, this Court be pleased to issue an order of setting aside and quashing the impugned arbitration award which has been improperly procured on 18th April, 2024.
- (c) That, the Court be pleased to make a finding that there exist good causes for granting orders being sought herein.
- (d) That, the Court be pleased to issue any other order or relief as the same shall deem fit. The application was supported by the affidavit of the Applicant. As regards the first issue, it was the submission of the Applicant that the Arbitrator misdirected herself in fact and in law for failure to ascertain the relevant issues in the dispute and failed to consider all the evidence tendered leading to the impugned Award including the evidence that: One, that, the Applicant was never involved in the opening the Account of the Domestic Revenue which was legally opened by Dioniz Kazikazi, the owner of the Company called Domestic Revenue and the same is not belonging to the Government through TRA. That, all the procedure of opening the same was followed according to the bank rules and regulation. Two, there was no investigation report conducted to warrant for Applicant's disciplinary hearing contrary to Rule 13 (5) of the Code of Good Practice which read: Evidence in support of the allegations against the employee shall be presented at hearing. The employee shall be given a proper opportunity at hearing to respond to allegations, questions any witness called by the employer and to call witness if necessary. Three, the said account was declared suspicious by the Bank to all the employees and no report from the police to the bank was issued against the account as the same is under any criminal investigation or the same belong to TRA and the said evidence was not adduced before the CMA but only mere words that the said account was suspicious but without any reasonable explanation of the same. Four, the Arbitrator was supposed to understand that the document used by the Applicant as the loan agreement was not used fraudulently or dishonestly, and there is no place the Applicant had a reason to believe that it was a forged document. In support of the position, the Applicant cited the Kenyan High Court case of Caroline Wanjiku Ngugi v. Republic [2015] EKLRI in which the Court cited an Indian case of Sukanti Choudhury v. State of Orisa, Crl Revision No. 1407 of 2008 and the case of Ratilal Gordhanbhai Patel v. Lalji Makanji [1957] 1 EA 314 (CAD), in which it was observed that allegations of fraud must be strictly proved. According to the Applicant, there is no place the Respondent adduced evidence on balance of probabilities that there was wrongful act or criminal deception intended to result in financial or personal gain done by the Applicant. Not only that, there was no deliberate dishonesty or deceit for personal advantage done by the Applicant. On the second ground, the Applicant contended that the basis upon which the Arbitrator made the Award that the Applicant has conflict of interest is completely misconceived, wrong, unfounded and misguided both in fact and in law. Thus, the Arbitrator was supposed to take into consideration the meaning of the term conflict of interest which literally means the situation in which a person or entity has competing personal, professional, or financial interests that could potentially influence their judgment or actions in a way that could undermine their impartiality, objectivity, or duty. It typically arises when someone has a vested interest in a particular outcome that may

conflict with their responsibility to act in the best interest of another party or organization. It was the contention of the Applicant that; based on the facts of this matter, there is no place showing the Applicant was in any way, through loan from Dioniz Kazikazi, the owner of the Account opened by the Bank after complying with all the conditions of the Bank. Also, he had no any financial interest that potentially influence his judgment or actions in a way that could undermine their impartiality, objectivity, or duty or favour Dioniz Kazikazi. In response, the Respondent submitted that; according to exhibit D2 (Charge Sheet) and Exhibit D5 (Notice of Termination), the Applicant was charged and found guilty of gross dishonest. The evidence on record shows that the Applicant knew that an account was fraudulently opened by individuals in the name of Domestic Revenue purposely to mislead taxpayers to pay through that account, believing that they were paying the Tanzania Revenue Authority (TRA). Having considered both parties submission, I do agree with the Applicant that a dishonest person has to have a behaviour or actions that involve deception, lack of integrity, or untruthfulness. However, in this matter, it is not disputed that the Applicant did not open the account. But, the evidence on record, as found by the Arbitrator, proves that the Applicant knew that the account was private using a name, which would mislead people as it is related to the Tanzania Revenue Authority. Indeed, as properly replied by the Respondent, the Applicant was not charged for opening the account but for gross dishonest. It is in evidence that the Applicant entered into a Loan Agreement with this "Domestic Revenue" and he repaid the loan by crediting the sum of TZS 300,000/= into a suspicious customer's account with number 0150481162101. It is also in record that the Applicant admitted to have taken loan from the said Domestic Revenue. In terms of Exhibit D7 - Code of Conduct and Ethics, if it is assumed that this customer exists, it was against Employer's Policy for an employee to borrow from the bank's customer. To turn things to the worse, the Applicant did not inform the employer that the account in the name of Domestic Revenue was not an account operated by the TRA as it was purported to be. It is the findings of this Court that the Applicant's act of borrowing from the Domestic Revenue, and repaying the same through the same account, exposed him to know that it was not an account operated by the TRA. Nevertheless, the Applicant regardless of being a banker, a person expected to be honest, did not report this incident to the bank and hence the charge of gross dishonest was properly made and proved before the Arbitrator. In the cited case of Charles Mwita Siaga Vs National Microfinance Bank PLC, Civil Appeal No. 112 of 2017, Court of Appeal of Tanzania at Dar es Salaam (unreported) at page 13, the Court held that: The Applicant is in the banking industry, where honesty by its employees is its key stock in trade; without it, its business would collapse with dire consequences, not only to the employer and its other employees but also to the economy at large. It is true, therefore, that the nature of the bank demands a unique degree of honesty from its employees, such that, any show of dishonesty amounts to a grave misconduct and may be sanctioned more severely than if it is committed in any other less honesty sensitive industry. Above all, through exhibit D3 (the hearing form and record of hearing), the Applicant clearly admitted having been involved and facilitated the transaction that were suspicious and detrimental to the Bank by crediting TZS 300,000/= into a suspicious customer account. Another admission is reflected in the

internal interview tendered and admitted as Exhibit D II. The Applicant was internally interviewed regarding crediting of Three Hundred Thousand (300,000/=) in the suspicious customer's account and he admitted having credited the said amount of which he said that it was a loan advanced to him. Also, during investigation, the Applicant brought fictitious loan agreement which was tendered and admitted as exhibit D9. During internal interview, he said to have received loan from Dioniz Kaskazi while before the CMA he said that the said loan was advanced from Domestic Revenue. This evidence is reflected at page 13 of the Award as follows: Mlalamikaji amekiri kuwa anatambua msingi na taratibu za kazi za Benki zinakataza mfanyakazi kuchukua mkopo kutoka kwa mtu binafsi au kampuni binafsi ambayo ni mteja wa Benki. Kwamba Benki inazuia kitendo chochote kinachoweza kuleta mgogoro wa kimaslahi. Lakini Pamoja na utambuzi huo mlalamikaji alichukua mkopo kwa anayodai nikampuni ya mtu binafsi huku akikiri pia ni mteja wa tawi lao As rightly replied, these two distinct statements from exhibit D9 and D II proves that the Applicant was attempting to hide some truth. There is nowhere the Applicant has challenged the existence of investigation report both at disciplinary hearing and at the CMA. Mr. John Kinimo (DW 2), testified before the CMA that the Applicant was informed of the outcome of the investigation and the particulars of the offence committed. I find that was in compliance with Regulation 13 (2) of the Code of Good Practice. It is also in record that during cross-examination, the Applicant herein admitted to be an experienced Banker and to have been provided with Code of Conduct and Ethics (Exhibit D7) and Personal Manual (Exhibit D8) which all together prohibit the Applicant as an employee of the Bank to enter into/secure personal loan from the Bank's customer. In that regard, I do agree with the Respondent that the conflict of interest for being involved in suspicious transaction in crediting the stated amount in the said fictitious account were contrary to inter alia section 2.4.1 (d) (e) of Bank's Code of Conduct and Ethics and Personal Manual (Exhibit D7) which create conflict of interests; section 8(6) (a-h) of the Anti-Corruption and Fraud Risk Policy which imposes an obligation on every employer of the bank to report and communicate any suspicious transaction; and Rule 12 (3) (a) and (d) of G.N No. 42 of 2007. The Respondent acted grossly dishonestly for intentionally violating the Bank's Code of Conduct and Ethics, Personal Manual and the Anti-Corruption and Fraud Risk policy. With the afore findings, I further agree that the Arbitrator acted with all fairness, complied with due process and safeguarded the rights of the Applicant as an employee. The Applicant has invited this Court to ask itself whether there was any act or offence committed by the Applicant to warrant termination. The answer is that; the dishonest act already stated and done by the Applicant was contrary to Rule 12 of the Employment and Labour Relations (Code of Good Practice) Rules, 2007 Government Notice Number 42 of 2007 which warrant termination. Turning to the third ground, the Applicant submitted that the Arbitrator erred in fact and in law by holding that the Applicants were terminated fairly and the Respondent adhered with proper procedures as required by law and applied fair legal practice. The Applicant cited Rule 13 of the Employment and Labour Relations (Code of Good Practice) Rules, 2007 Government Notice Number 42 of 2007 which provides for the termination procedures and Section 37(2) (c) of the Employment and Labour Relations Act, 2004 Act Number 6 of 2004 which provides that:

A termination of employment by an employer is unfair if the employer fails to prove that the employment was terminated in accordance with a fair procedure. The Applicant went ahead to cite the case of *Shekilando Service Station Total v. Ombeni Mushi*, Revision No 124 of 2020, High Court of Tanzania, Labour Division At Dar es Salaam at page 7 which cited with approval the case of *Tanzania Revenue Authority v. Andrew Mapunda*, Labour Rev. No. 104 of 2014 in which it was held as follows: It is the established principle that for the termination of employment to be considered fair it should be based on valid reason and fair procedure. In other words, there must be substantive fairness and procedural fairness of termination of employment, Section 37(2) of the Act, (ii) I have no doubt that the intention of the legislature is to require employers to terminate employees only based on valid reasons and not their own will or whims. On the fourth ground, the Applicant submitted that the Arbitrator erred in fact and in law by holding that the Applicant was terminated fairly despite admitting the Respondent's duly opening of the account led to termination. The alleged reason for terminating of the Applicant was not fair and the same contravened the provision of Rule 12 (3) of G.N 42 of 2007, It was contrary to Rule 13 (1) of GN No. 42 (supra) which requires the employer to conduct an investigation in order to ascertain whether there are grounds for hearing to be held. Furthermore, the Applicant was of submission that the termination was contrary to the provisions of Section 37(2) of the ELRA which prohibits termination that does not follow a fair procedure; contrary to Article 7 of the ILO Termination of Employment Convention, 158 of 1982 which became operational on 23/11/1985; and further elaborated in the case of *Ismail Kihula v. Shield Security*, Revision No. 263 of 2016, High Court of Tanzania Labour Division at Dar es Salaam which cited with approval the case of *Nmb Bank Ltd. (Pic) v. Alphonse Belas Kayes & Balthazar Jeremiah Mng'ong'o*, Revision No. 17/2015 High Court Labour Division at Arusha Sub Registry (unreported) where the Court held that: The procedures provided under Rule 13 of the Employment and Labour Relations (Code of Good Practice) GN 42/2007 are not meant to be used in checklist fashion" Therefore, in regard with what has been explained herein above we pray that this honourable Court issue a fair decision that the Applicant's termination was substantively and procedurally unfair... In response to the third and fourth ground, the Respondent called upon the Court to note that the reasons for termination was not opening of account but rather it was the Applicant's gross dishonest of transacting in an account which was fraudulently opened and failed to report to the bank about the account which was suspicious. I find, the third and fourth grounds should not detain the Court. As reasoned while determining the first and second ground, the evidence clearly proves that the Applicant entered into fictitious loan agreement with suspicious customer using a fraudulent opened account in the name of Domestic Revenue and non-reporting of the suspicious transaction. By reviewing, Exhibit DIO ("Bank Statement"), Exhibit D II (Internal interview), Exhibit D2 (Charge Sheet), Exhibit D3 (Record of Disciplinary hearing including attendance), Exhibit D4 (Notice of Intention to Appeal with letter stating reasons for Appeal), and Exhibit D5 (Notice of Termination) it clearly indicates that the Respondent fairly followed the procedures and clearly complied with Rule 13 of G.N No. 42 of 2007. As such, the CMA was justified to rule that the Respondent followed all legal procedures. It is the

further findings of this Court that the allegation advanced by the Applicant that he was not given the right to be heard while he was summoned to attend disciplinary hearing, it is not true. The records indicates clearly that the Applicant attended and defended himself orally and with documents supporting his defence, and even exercised right to appeal against the decision of the disciplinary Committee. All such evidence proves that the disciplinary hearing was fairly conducted and right to be heard was given to the Applicant. Indeed, the real question was whether the account was fictitious or not; and of importance is the admission that the account was fictitious and the Applicant knowingly and deliberately proceeded to benefit from the account by making personal transactions. The Applicant was guilty of gross dishonesty. Since the Applicant was transacting in an account purported to be of the TRA opened in CRDB Bank Pic, and the Applicant prepared a Loan Agreement which was not authentic while transacting in the said account, it is clear that the Applicant is dishonest in his dealing regardless the fact that he did not personally open the account. As regards the fifth ground, the Applicant submitted that the Award of the CMA is tainted with fatal irregularities for failure to consider and observe the principle of the law that regulate labour laws in Tanzania. In the case of Halfani Sudi v. Abieza Chichibi [1998] T.L.R. 527 where it was held that: A Court record is a serious document; it should not be lightly impeached, (ii) There is always a presumption that a Court record accurately represents what happened. The Applicant did submit that the Arbitrator failed to take into the account that the disciplinary hearing contravened the mandatory provision of Rule 13 (3) reading together with Rule 4 (3) on the Disciplinary Hearing guidelines Code o f Good Practice GN 42 o f 2007 which require the presence of the presence of the Trade union Representative in the disciplinary hearing. In reply, the Respondent refuted the Applicant's assertion that the CMA Award was tainted with irregularities. He submitted that the Arbitrator did not violate or contravene Rule 13 (3) and Rule 4(3) o f the Disciplinary Hearing Guidelines GN.42 o f 2007, which requires the presence of a Trade Union representative in the disciplinary hearing. Thus, the Applicant was informed and given all the statutory rights to which he is entitled, including the right to be represented during the disciplinary hearing, the decision whether to exercise the same or not remained to be the Applicant's discretion which the Respondent had no legal obligation to interfere. Thus, there is no irregularity in the CMA proceedings. I agree that denial to afford representation leads to deprivation of a fundamental right of representation. However, the records clearly 15 evidences that the Applicant was afforded all his statutory rights. Non exercising of such right cannot be turned to be a good ground of revision. It is purely an afterthought which should not benefit a loser. In the end result, the application is hereby marked dismissed for being devoid of merits. No order as to costs. Y.J. MLYAMBINA JUDGE 27/08/2024 Judgement pronounced and dated 27th August, 2024 at 14:38 hours in the presence of Counsel Gwamaka Mwaikugile, for the Applicant and Caroline Mageni for the Respondent. Right of Appeal explained.

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Prepared on 13 October 2026 · Esheria