

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
(LABOUR DIVISION)**

AT ARUSHA

APPLICATION FOR REVISION NO 47 OF 2020

(Original Dispute No CMA/ARS/88/2019)

AIM STEEL LTD.....APPLICANT

VERUSU

MAHAMUDU ALLY HAMIS.....RESPONDENT

JUDGMENT

20/9/2021 & 1/11/2021

GWAE, J

In the Commission for Mediation and Arbitration (Hereinafter to be referred to as "CMA"), the respondent, Mahamudu Ally Hamis lodged his complaint that his employment which he secured since January 2015 was unfairly terminated by the applicant, AIM Steel Limited on the 24th January 2019.

In its conclusion, the CMA held that the respondent was terminated without valid reason and that, termination procedures were not followed. The commission then awarded the respondent severance pay, one-month

salary in lieu of the requisite notice of termination and payment of 12 months' salary compensation.

It was the applicant's accusations against the respondent that on the 4th January 2019, the respondent caused car accident in Dar-es salaam alongside Indian ocean shore. Following the said accident the respondent was arrested, detained and on the following day he was released on bail pending investigation. The applicant further lamented that after the respondent's release on bail, he did not return to his place of work. Eventually the respondent was duly charged with and found guilty of a disciplinary offence termed "negligence". The disciplinary was conducted in the absence of the respondent. However, the respondent was yet to be served with termination letter.

The award of the CMA aggrieved the applicant, thus this application for revision based on the following grounds;

1. That, the arbitrator erred in law and fact by holding that the respondent was unfairly terminated while he absconded from the work
2. That, the arbitrator erred in law and fact for his failure to properly evaluate the evidence

When this matter was called on for hearing before me, the applicant was represented by Mr. Herode, the representative of applicant's own choice whereas the respondent defaulted appearance. Mr. Herode merely sought for adoption of the applicant's affidavit. However, he added that the testimony of DW2 be discarded as the applicant had never terminated the respondent that is why the respondent had failed to tender a termination letter since he absconded from the work adding that, the employer did comply with the requirement of Rule 13 (1) of the Code of Good Practice, GN No. 42 of 2007.

Carefully examining the records of the Commission including the testimony of the respondent and his witness, CW2, I have noted anomalies or contradictions as to the date of the termination since the respondent is found to have indicated in his Referral Form No. 1 to have been terminated from his employment on the 24th January 2019 as opposed to his testimony during arbitration whereas he testified that he was terminated on the 9th January 2019. More so, the labour officer who appeared for the respondent testified that, she summoned the applicant in writing after the respondent's complaints were lodged in her office but when crossed examined, she lucidly disproved that fact.

These pieces of evidence which are found to contradictory and filling of the referral form cannot be left unquestioned. The evidence of the respondent as to whether he was terminated is questionable and by necessary implication, it is perceived that, the applicant was yet to terminate the respondent's services.

It is trite law that, if apprehended contradictions or inconsistencies go to the root of the dispute (whether the respondent had already been terminated or he absconded from his employment taking into account that a misconduct namely; being absent from work without permission or acceptable reasons for more than five (5) days justifies an employer to terminate an employee), it follows that, such contradictions must have an effect of an adverse inference. I would like to subscribe my holding in the decision of the Court of Appeal in the case of **Sahoba Benjuda vs. The Republic**, Criminal Appeal No.96 of 1989, where it was held that: -

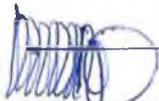
"Contradiction in the evidence of a witness's effects the credibility of the witness and unless the contradiction can be ignored as being minor and immaterial the court will normally not act on the evidence of such witness touching on the particular point **unless it is supported by some other evidence.**" (emphasize is mine)

I have further noted that, the learned arbitrator was not justified to hold that, the accident was not intentional, that was a misdirection on the part of learned arbitrator, reason being, an offence of negligence involves decree of reasonableness and foreseeability. In our case, wrong parking of a motor vehicle near ocean shore may constitute an offence of negligence unlike the finding of the arbitrator.

In the final result, this application is granted. The arbitral award is consequently revised and set aside. Each party shall bear his or her costs.

It is so ordered




M. R. GWAE,
JUDGE
1/11/2021