**IN THE COURT OF APPEAL OF TANZANIA**
**AT MOSHI**

**(CORAM: SEHEL, J.A., KEREFU, J.A. And MLACHA, J.A.)**

**CIVIL APPEAL NO. 203 OF 2020**

**BOSCO THADEI KOMBA.....APPELLANT**

**VERSUS**

**NATIONAL MICROFINANCE BANK PLC.....RESPONDENT**

**(Appeal from the Decision of the High Court of Tanzania, Labour Division at Moshi)**

**(Mkapa, J.)**

**dated the 13th day of December, 2019**
**in**
**Labour Revision No. 14 of 2017**

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## JUDGMENT OF THE COURT

5th & 11th December, 2023

**KEREFU, J.A.:**

The appellant, Bosco Thadei Komba, appeals against the decision of the High Court of Tanzania, Labour Division (Mkapa, J.) dated 13th December, 2019 in Labour Revision No. 14 of 2017 challenging the award issued by the Commission for Mediation and Arbitration at Moshi (the CMA) on 28th August, 2015 in favour of the appellant, in Labour Dispute No. MOS/CMA/M/41/2015 (the labour dispute).

In order to appreciate the context in which the labour dispute arose and later this appeal, we find it apposite to briefly provide the material facts of the matter as obtained from the record of appeal. It goes thus; on 18th June, 1982 the appellant was employed by the respondent as a Clerk III and later on promoted to various managerial positions including a Branch Manager. At the time of his termination, the appellant was a Branch Manager at Himo Branch in Kilimanjaro Region. It was alleged that, on 12th April, 2014, the respondent suspended the appellant pending investigation of disciplinary charges instituted against him including, gross misconduct and misuse of office funds.

Subsequently, on 17th November, 2014, the respondent issued the appellant with a final written warning. Thereafter, the appellant went on leave and when he reported back to the office on 31st December, 2014, he tendered a 24 hours resignation notice. However, the said notice was declined by the respondent on the ground that there was a pending investigation against the appellant at different branch offices. On 3rd March, 2015, vide his personal e-mail, the appellant alleged to have received a termination letter for absconding from work.

Aggrieved by the said termination and convinced that there were no valid reasons for his employer to terminate his employment, the appellant approached the CMA, where he contested unfair termination and challenged the procedures adopted by his employer to end his employment. He thus prayed for payment of terminal benefits and compensation at the tune of TZS. 159,450,032.00 being salary for January 2015, one month's salary in lieu of the notice, transportation costs, daily subsistence allowance, severance pay for 10 years and compensation of not less than 12 months.

The appellant's claims were challenged by the respondent who alleged that, prior to his termination, the appellant had shown acts of dishonesty, misconduct and abscondment from work.

As the process of mediation failed, the dispute was placed before the arbitrator who heard evidence from both parties and, in the end, found that the termination of the appellant's employment was unfair, both in substance and procedure. As such, the CMA pronounced award in favour of the appellant and ordered the respondent to pay him a total sum of TZS. 186,669,769.00 corresponding to the reliefs claimed.

Unsatisfied with that decision, the respondent, on 25th May, 2017, lodged a Labour Revision No. 14 of 2017 in the High Court challenging the CMA award. Having heard the parties, the learned High Court Judge found that, it was improper for the arbitrator to award the appellant with terminal benefits and compensation after it had sufficiently established that, the resignation notice by the appellant was legally acceptable and all subsequent actions by the respondent after the said resignation was a nullity. As such, the learned High Court Judge allowed the revision, quashed and set aside the CMA award and ordered the respondent to issue a certificate of service to the appellant in terms of section 44 (2) of the Employment and Labour Relations Act, Cap. 336.

Aggrieved, the appellant lodged the current appeal. In the memorandum of appeal, the appellant has preferred three grounds which can be conveniently paraphrased as follows:

> *(1) That, the learned High Court Judge erred in entertaining the labour revision, setting aside and quashing the CMA Arbitration Award based on whether or not the resignation of the appellant was valid which was not one of the issues framed and agreed upon by the parties for determination of the dispute before the CMA;*

*(2) That, the learned High Court Judge erred in law in interpreting Rules 6 (1) and (2) of the Employment and Labour Relations (Code of Good Practice) Rules, 2007 relating to the appellant's resignation; and*

*(3) That, the learned High Court Judge erred in law in entertaining a new issue 'whether the appellant had suffered damages arising from his resignation' while the issue at the CMA was on whether or not there was fair reason for the appellant's termination.*

When the appeal was placed before us for hearing, the appellant was represented by Mr. Thadei Hyera, learned counsel whereas the respondent was represented by Mr. Sabas Shayo, also learned counsel.

Upon taking the floor to expound on the grounds of appeal, Mr. Hyera intimated that he would argue the first and third grounds conjointly and then, the second ground, separately.

Starting with the first and third grounds, Mr. Hyera faulted the procedure adopted by the learned High Court Judge of raising a new issue, on whether or not the resignation of the appellant was valid, *suo motu* at the stage of composing the judgment and made a finding on the same without affording parties the right to be heard on it. To

amplify on this point, the learned counsel referred us to page 220 of the record of appeal and contended that, the said issue was not among the three issues framed and agreed upon by the parties for determination of the dispute before the CMA. That, it was only raised by the parties in their written submissions found at pages 334 to 343 and 362 to 366 respectively.

It was his argument that, the proper procedure which was supposed to be adopted by the learned High Court Judge, after she had noted the need of considering that issue, was to invite the parties to address the court on that issue. He argued that the said omission is fatal and has contravened the principles of natural justice, hence occasioned a miscarriage of justice to the parties. To buttress his position, he cited the cases of **Luhumbo Investment Limited v. National Bank of Commerce Limited & 2 Others**, Civil Appeal No. 503 of 2020 [2022] TZCA 738: (23 November 2022: TanzLII) and **Charles Christopher Humphrey Kombe v. Kinondoni Municipal Council**, Civil Appeal No. 81 of 2017 [2020] TZCA 1932: (12 June 2020: TanzLII).

As for the second ground, Mr. Hyera also faulted the learned High Court Judge by interpreting Rule 6 (1) and (2) of the

Employment and Labour Relations (Code of Good Practice) Rules, 2007 (the Code of Good Practice) in relation to the appellant's resignation while his employment contract was not for a fixed term contract. Based on his submission, Mr. Hyera urged us to allow the appeal, quash and set aside the decision of the High Court and upheld the CMA's decision.

In his response, Mr. Shayo strongly disputed the argument advance by Mr. Hyera in respect of the first and third grounds of appeal by referring us to pages 220 of the record of appeal and argued that, the issue of appellant's resignation was considered and properly determined by the CMA. He added that, the decision of the CMA was based on the parties' testimonies adduced before it, as opposed to the appellant's claim. To amplify further on that point, Mr. Shayo referred us to the parties' written submissions before the High Court reflected at pages 334 to 343 and pages 362 to 366 of the record of appeal and argued that, both parties utilized their right to be heard on the said issue, as they both adequately submitted on the same in their respective written submissions.

The learned counsel argued further that, in the course of determining the revision, the learned High Court Judge properly

analyzed the evidence on the record together with the parties' written submissions and upheld the decision of the CMA. He thus distinguished the cases of **Luhumbo Investment Limited** (supra) and **Charles Christopher Humphrey Kombe** (supra) relied upon by Mr. Hyera by arguing that facts in those cases are not relevant to the circumstances of the current appeal. As such, Mr. Shayo urged us to find that the appellant's complaint under the first and second grounds is baseless.

On the second ground, Mr. Shayo referred us to pages 451 and 452 of the record of appeal and argued briefly that, the learned High Court Judge properly interpreted Rule 6 (1) and (2) of the Code of Good Practice and arrived at a correct decision. He thus prayed for the entire appeal to be dismissed for lack of merits.

In a brief rejoinder, Mr. Hyera reiterated what he submitted earlier and prayed for the appeal to be allowed.

Having carefully considered the submissions advanced by the learned counsel for the parties together with the grounds of appeal in the light of the record of appeal, we should now be in a position to

confront the grounds of appeal in the same manner as presented to us by the learned counsel for the parties.

Starting with the first and second grounds, we do not think that these grounds need to detain us much as we find the claim by Mr. Hyera not supported by the record. We shall demonstrate. At page 220 of the record of appeal, the three framed issues which were agreed upon by the parties for determination of their dispute by the CMA were:

1. *Whether there was valid reason (s) for terminating the appellant's employment/whether he absconded or not;*
2. *Whether proper procedures were followed during termination; and*
3. *What reliefs are the parties entitled.*

From the above extracted framed issues, it is clear to us that, the dispute between the parties centered on the issue *whether the termination of the appellant's employment was fair or otherwise.* It is therefore obvious that, the CMA and the High Court could not have managed to solve the first and second issues above without determining as to whether the act of the appellant of tendering a 24 hours resignation notice had a bearing to the subsequent termination

of his employment contract. To justify our observation, we have scrutinized the entire record and noted that, the issue of appellant's resignation from his employment started to feature in the CMA Form No. 1 used by the appellant to institute the dispute (see page 14 of the record of appeal). In addition, and as correctly argued by Mr. Shayo, the said issue clearly featured in both parties' testimonies adduced before the CMA. See for instance, the testimonies of DW1 and DW2 at pages 222 to 228 of the record of appeal and PW1 at pages 229 to 232 of the same record. It is also not in dispute that, the CMA at page 309 determined the said issue and concluded that:

> *"...The matter stands at the position it was, at the time when Mr. Komba resigned from employment on 31/12/2014. All action undertaken by the respondent are declared a nullity."*

Again, and as correctly argued by Mr. Shayo, the said issue was one of the respondent's grounds when she submitted her revision before the High Court. Specifically, ground 2 (b) as clearly reflected at page 315 of the record of appeal. This can as well be evidenced at pages 340, 341 and 364 of the record of appeal where both parties, in their written submissions before the High Court, extensively submitted

on that issue. Then, the learned High Court Judge, having considered the grounds for revision, parties' submission and the CMA Award, observed that:

> *"From the above statement, the mediator sufficiently established the fact that, the resignation notice by the respondent was legally acceptable and further that, all subsequent actions by the respondent after his resignation was a nullity. In the circumstances, it does not get into my mind on how the mediator proceeded to award the appellant with reliefs while the termination by the employer which was past resignation was declared a nullity and all that transpired after the day the appellant tendered his resignation a nullity."*

Subsequently, the learned High Court Judge allowed the revision, quashed and set aside the CMA decision and ordered the respondent to issue the appellant with the certificate of service. Following the above sequence of events, with profound respect, we find the claim by Mr. Hyera that the issue of the appellant's resignation was raised *suo motu* by the court, to be misconceived. We equally find the cases of **Luhumbo Investment Limited** (supra)

and **Charles Christopher Humphrey Kombe** (supra), he cited to us, distinguishable and not applicable in the circumstances of this appeal. That said, we find the first and second grounds of appeal devoid of merit.

Moving to the second ground of appeal, we have noted that Mr. Hyera is faulting the learned High Court Judge for giving an improper interpretation of Rule 6 (1) and (2) of the Code of Good Practice. In principle the said Rule, among others provides guidance on how a resignation can be pursued. For the sake of clarity, Rule 6 (1) and (2) provides that:

> *"(1) Where an employee has agreed to a fixed term contract, that employee may only resign if the employer materially breaches the contract. If there is no breach by the employer, the employee may lawfully terminate the contract before the expiry of the fixed term by getting the employer to agree to an early termination.*
>
> *(2) Where there is an indefinite contract, the employee may resign-*
>
> *(a) by giving a notice of termination: or*
>
> *(b)without notice, if the employer has materially breached the contract."*

Our reading of the above sub-sections in Rule 6 in relation to the interpretation given by the learned High Court Judge at page 451 of the record of appeal, leaves us with no doubt that the learned High Court Judge correctly interpreted the above Rule and properly applied it in the circumstances of this appeal. For avoidance of doubt, the learned High Court Judge stated that:

> *"Rule 6 (1) and (2) of the Code of Good Practice G.N. No. 42 of 2007, sufficiently provides that, the relationship between the employer and the employee comes to an end once the employees tender a resignation notice/letter. The above rule applies mutatis mutandis to the revision at hand. The mediator also conceded to the same effect at page 9 of his award..."*

Therefore, in the instant appeal, since there is no dispute that, the appellant pursued his right by tendering his resignation notice to the respondent on 31st December, 2014 and the same was received by the respondent on the same day, we are satisfied that the interpretation of Rule 6 (1) and (2) of the Code of Good Practice given by the learned Judge is correct and cannot be faulted. As such, we also find the second ground of appeal to be devoid of merit.

Consequently, we dismiss the appeal in its entirety for lack of merit. Considering the circumstances of this appeal, we make no order as to costs.

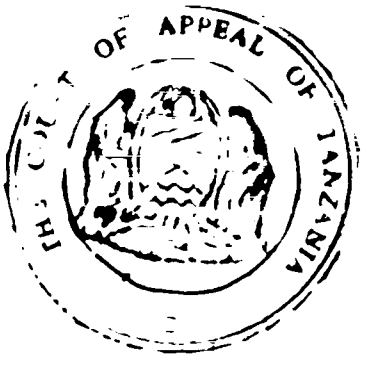
**DATED** at **MOSHI** this 11th day of December, 2023.

B. M. A. SEHEL
**JUSTICE OF APPEAL**

R. J. KEREFU
**JUSTICE OF APPEAL**

L. M. MLACHA
**JUSTICE OF APPEAL**

The Judgment delivered this 11th day of December, 2023 via video conference from the Dar es Salaam in the presence of Mr. Sabas Shayo, learned counsel for the respondent also holding brief for Mr. Thadei Hyera, learned counsel for the appellant, is hereby certified as a true copy of the original.




G. H. HERBERT
**DEPUTY REGISTRAR**
**COURT OF APPEAL**