

IN THE HIGH COURT OF ZANZIBAR

(INDUSTRIAL DIVISION)

HELD AT VUGA

CIVIL APPLICATION No. 14 OF 2021

**(Application for review of the Arbitral Award given in the Dispute No
DHU/M.MG/143/2019)**

INTERNATIONAL SCHOOL OF ZANZIBAR.....APPLICANT

VERSUS

MAHIR ALI NASSOR.....RESPONDENT

RULING

27th May & 08th July, 2022

A. I. S. Suwedi, J

The facts of this application in brief were that the respondent, **Mahir Ali Nassor** previously filed a dispute before the Dispute Handling Unit (the Unit), dispute no. DHU/MM.G/143/2019 claiming for unfair termination done by the applicant, **International School of Zanzibar**. In his Form no. 1 and the opening statement he requested for the termination to be found unfairly, hence to be reinstated and been given permanent contract or to be paid his benefits as per the law as well as TZS 4,000,000/- as advocate costs.

The applicant denied the allegation and his opening statement he asserted that the termination was lawful as the contract has expired and he requested the Unit to see the termination lawful.

Consequently, the dispute arbitrated into the respondent's favour and under Regulation 119 (1) (a) of the Labour Relations (Mediation and Regulations), 2011, the applicant ordered to compensate the respondent 6 months' salary (i.e. USD 2500 at the rate of TZS 2200 which is equal to TZS 33,000,000/-).

Aggrieved by that decision, the applicant is applying for review under Rule 41 (1) (2) and (3) (a) of the Industrial Court Rules, 2015 and Regulation 45 (6) of the Labour Relations (Mediation and Arbitration) Regulations, 2011. The application supported with an affidavit which was objected by the respondent through the counter affidavit. Both affidavit and counter affidavit have been adopted as part of the parties' respected submission.

Before me, the applicant appeared via the learned Counsel Jambia S. Jambia and the respondent represented by Mr. Gido Simfukwe, learned advocate.

Counsel Jambia threw 7 grounds for review of which ground (d) and (e) submitted jointly; then he submitted together grounds (b) (c)

and (f) whereas ground (a) and (g) were argued separately. Though I have invited assessors to this application and they had successful gave out their appreciated opinion that the award is valid as there was a breach of contract done by the applicant, but after I scrutinized the records of the application and the submission made, I developed an attention to ground 5 that:

(g) That the Honorable Arbitrator failed to give out reasons for his decision.

I thus decided to concentrate on this particular ground before the others and in respect with this ground Counsel made a very short submission that Arbitrator failed to give reasons for the decision he reached. The award is not systematic but Arbitrator kept jumping from the point to point without determining them which is against Regulation 45 (3) and 52 (1) (2) of the Labour Relations (Mediation and Arbitration) Regulations of 2011 and he rested his submission by saying that the award is not proper from the defects stated and it caused miscarriage of justice on the side of the applicant and he urged me to set aside the award.

Counsel Gido replied ground (g) and he stated that Arbitrator gave out reason for the decision at page 7 of the award and the law was well applied. He finally prayed for the award to be remained as it is.

On this issue of the reason for the decision, counsel Jambia rejoined by objecting what has been stated by counsel Guido that at page 7 Arbitrator just summarized the evidence adduced by the parties.

I took my time to read the entire award given by the Arbitrator on the unknown date, and I honestly failed to see the reason given for the decision reached. Arbitrator just took much of his time in reproducing what the witnesses have said before him. In his short analysis, I did not detect any reason for his determination. As correctly stated by counsel Jambia, Arbitrator was jumping from here to there without clearing his argument and analysis and worse enough no reason have been given.

There are situation Arbitrator agreed that the contract between the applicant and the responded had ended and later he concentrate on the reason why the contract was not renewed. Finally, he declared the termination unfairly and awarded the respondent as said earlier herein. Perhaps Arbitrator has logic in his conclusion but unfortunately it has not been disclosed.

Just like any other legal proceeding, the entire process of Arbitration is finalized by delivering a judgment which is termed as award. This is to say Arbitration is adversarial as litigation and for this reason the procedure to be followed has been well prescribed. One of

the events given under the Regulations (supra) is award stage of which Regulation 52 (1) says:

The Arbitrator shall write and sign a concise award containing the decision with reasons within 30 days time from the last hearing date.

The emphasis has been given on time and the reason for such decision and sub-regulation (2) of the same Regulation says that:

Every award shall contain the following:

- (a) Details of the parties
- (b) The issue or issues in dispute
- (c) Background information admitted between the parties
- (d) Summary of the parties' evidence and arguments
- (e) **Reasons for the decision;** and
- (f) The order in the form of precise outcome of the arbitration [Emphasis added]

The wording signifies that the award must contain among others reason of the decision met. Reason for the decision cannot be obtained without doing a proper analysis of the evidence produced. Otherwise the award cannot be said as award under eyes of law.

It is a trite law that the first appellate Court may make proper evaluation of the entire evidence in order to satisfy itself and to come up with its finding. Please see the case of **Dinkerrai Ramkrishan Pandya v. R** (1957) E.A. 336. Though, this Court as first appellate Court had the obligation to make good the error committed by Arbitrator. However, I

am of the view that doing so every now and then will encourage the lower Courts not to discharge their obligations properly and for this reason I found it appropriate not to exercise the powers as first appellate Court.

With that being said, and with the fact that there is no award legally which can be upheld or otherwise, I decided to remit the records to the Unit so that the proper award can be given and for this reason I see no need to determine other grounds tabled by the applicant.

DATED at TUNGUU ZANZIBAR this 08th of July, 2022

A handwritten signature in blue ink, appearing to read 'A. I. S. Suwedi', with a large circular flourish on the left side.

A. I. S. Suwedi

JUDGE – INDUSTRIAL COURT