



**NATIONAL BANK OF COMMERCE LTD V. MATHIAS
RAYMOND MUJUAMUNGU
COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
(WAMBALI. J.A, KAIRO. J.A., AND NANGELA, J.A.)
CIVIL APPEAL No. 352 OF 2023**

(Appeal from the Judgment and Decree of the High Court of Tanzania, Labour Division at Dar es Salaam (Mteule, J.) dated the 29th day of March, 2023 in Labour Revision No. 386 of 2022)

Labour law — unfair termination — general damages for non-pecuniary loss — appellate interference with discretionary awards — wrong principle of law or inordinate award required for interference

The Appellant, a long-serving forensic investigator, was terminated for alleged gross negligence. The CMA found the termination substantively and procedurally unfair and awarded 24 months' remuneration, severance pay, and TZS.100,000,000.00 as general damages for reputational and non-pecuniary loss. The employer successfully sought revision in the High Court, which reduced general damages to TZS.50,000,000.00 on the basis that the claimant had only one year left before retirement. The claimant cross-appealed to the Court of Appeal. The Court examined the well-established principle that appellate interference with discretionary awards of general damages is permitted only where a wrong legal principle was applied or the award is inordinately erroneous. It found the High Court erred by relying on an irrelevant and unexplained factor (one year to retirement), failing to identify any specific error in the CMA's assessment, and misapprehending evidence on the claimant's retirement timeline. The Court set aside the High Court's variation, restored the CMA award of TZS.100,000,000.00 as general damages, struck out the time-barred appeal, and made no order as to costs.



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Held

1. The Court held that both lower tribunals correctly found that the appellant's termination was unfair and that the appellant was entitled to general damages for non-pecuniary loss (pain, mental anguish, injury to reputation). General damages are discretionary and intended to restore the claimant as far as money can, but appellate interference is limited to cases where a wrong principle of law was applied or the award is inordinately high or low.
2. The Court reaffirmed the principle that an appellate court should not disturb an award of general damages unless the trial court applied a wrong principle, took into account irrelevant factors, omitted relevant ones, or produced an amount so inordinately high or low as to be wholly erroneous.
3. The Court found that the High Court erred in reducing the CMA's award because it relied on an irrelevant and inadequately explained factor (the asserted one year remaining to retirement), did not identify any error in the CMA's reasoning, did not state the starting point for the one-year period, and misapprehended the evidence as to the time remaining to retirement.
4. Consequently, the Court allowed the cross-appeal, set aside the High Court's reduction, and restored the CMA's award of general damages of TZS.100,000,000.00; it made no order as to costs. The separate appeal that had been filed was struck out as being time-barred.

The Court sustained the preliminary objection and struck out the late appeal. The cross-appeal is allowed. The High Court award of TZS. 50,000,000.00 is set aside and the CMA award of general damages of TZS. 100,000,000.00 is affirmed.

Statutory provisions referred

Section 58 of the Labour Institutions Act

Cases Laws

- a. Razia Jaffer Ally v. Ahmed Mohamedali Sewji & 5 Others [2006] T.L.R. 433



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- b. Niko Insurance (T) Limited v. Hussein Athumani Mwaifyusi & Another (Civil Appeal No. 168 of 2017) [2021] TZCA 4695
- c. Cooper Motor Corporation LTD v. Moshi/Arusha Occupational Health Services [1990] T.L.R. 96
- d. Peter Joseph Kilibika & Another v. Patrick Aioyce Mlingi, Civil Appeal No. 37 of 2009 (unreported)
- e. Nance v. British Columbia Electric Railway Co. Ltd [1951] A.C 601
- f. Abubakar Haji Yakubu v. Air Tanzania Co. Ltd, Revision No. 162 of 2011

Advocate Sylvatus Sylvanus Mayenga represented the Appellant

Advocate Joseph Ndazi represented the Respondent