IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MWANDAMBO, J.A., MWAMPASHI, J.A. And FELESHI, J.A.)

CIVIL APPEAL NO. 55 OF 2022

GODFREY NDERINGO ..... APPELLANT

VERSUS

STANBIC BANK TANZANIA LIMITED ..... RESPONDENT

(Appeal from the decision of the High Court of Tanzania, Labour Division at Dar es Salaam)

(Itemba, J.)

dated the 28th day of June 2021

in

Revision No. 908 of 2019

.....

JUDGMENT OF THE COURT

11th & 27th February 2025

MWANDAMBO, J.A.:

From 2014, Stanbic Bank Tanzania Limited and Godfrey Nderingo were employer and employee respectively until September, 2018 when that relationship was severed by termination. The appellant challenged that termination before the Commission for Mediation and Arbitration (the CMA) claiming unfairness of it for which he prayed several reliefs, namely; compensation for unfair termination and for loss of reputation. Having found that the termination was not only unfair but also influenced by unproven allegations of bribery, the CMA awarded the appellant 12 months' salaries on account of unfair termination and TZS 300,000,000.00

compensation for loss of reputation. It aiso awarded the appellant severance allowance payable upon termination of employment under section 42 of the Employment And Labour Relations Act (the ELRA).

The respondent challenged the CMA's award to the extent of compensation of TZS. 300,000.000.00 for loss of reputation allegedly for being unjustified and severance allowance which was not part of the reliefs the appellant had claimed before the CMA. The High Court (Itemba, J) was satisfied that the appellant had sufficiently proved loss of reputation but found the award of TZS 300,000,000.00 incongruent with the evidence proving the associated losses from the false allegations of soliciting bribery. It reduced the amount to TZS 20,000,000.00. Regarding payment of the unclaimed severance allowance, the High Court dismissed the complaint upon being satisfied that it was a statutory entitlement upon termination of employment which need not be specifically claimed through CMA Form No. 1 as one of the remedies.

Both parties were dissatisfied with the decision of the High Court and lodged their respective notices of appeal on different dates. The appellant's notice was lodged on 2 July, 2021 followed by the respondent on 19th July, 2021. As the respondent's notice was lodged subsequent to the appellant's notice, it became an address for service in terms of rule 88 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules).

The appellant instituted his appeal on 18 February, 2022 faulting the High Court for holding that the award of TZS. 300,000,000.00 general damages was too excessive. Subsequently, the respondent lodged her notice of cross-appeal raising two complaints on the reliefs claimed to be unjustified in relation to TZS 20,000,000.00 general damages and payment of severance allowance not claimed as one of the appellant's reliefs prayed before the CMA.

At the hearing of the appeal, Messrs. Moses Boaz and Kelvin Kidifu, learned advocates, appeared representing the appellant. The respondent retained the services of Mr. Anthony Mseke and Ms. Neema Ndossi, also learned advocates. As the hearing was about to take off, it became apparent that the competence of the appeal was hanging in the balance. That necessitated inviting the learned advocates for both parties to address the Court thereon.

Initially, Mr. Boaz was undecided. Upon reflection, he conceded that the appeal was indeed incompetent for being time barred. The learned advocate could not do better than yielding to the inevitable outcome of striking out the incompetent appeal. Prompted by the Court on the fate of the notice of cross-appeal, Mr. Boaz contended that the notice of appeal could not survive the striking out of the appeal and so he invited us to strike it out as well.

With the concession by the appellant's counsel, Mr. Mseke welcomed the obvious outcome of striking out the appeal but was insistent that the striking out of the appeal had no adverse effect on the notice of cross-appeal. He beseeched us to hold that the notice of cross appeal as intact and be determined as such.

It is glaring from the record that, the Registrar of the High Court notified the appellant's advocate to collect certified copies of documents requested for appeal purpose on 15 November 2021. It is remarkable that, 60 days for instituting the appeal prescribed under rule 90(1) of the Rules, started running from that date. That means that the period for instituting the appeal expired on 14 January 2022. The appellant instituted his appeal on 18 February 2022 way beyond 60 days prescribed by the aforementioned rule rendering it time barred and thus incompetent and liable to be struck out as conceded by Mr. Boaz. Consequently, the incompetent appeal is hereby struck out.

Having struck out the incompetent appeal, the fate of the notice of cross of appeal should not detain us. As we held in **Absa Bank Tanzania Limited & Another v. Hjordis Fammestad,** [2022] TZCA 300, 24 May 2022, TANZLII, a cross- appeal is an appeal on its own like a counter claim in a suit which cannot be affected by the striking out of the underlying appeal or suit. Put it differently, a notice of cross appeal survives the

striking out of the appeal. Accordingly, we decline the invitation extended to us by Mr. Boaz to strike out the notice of cross appeal. Instead, we shall proceed to determine it as urged by Mr. Mseke on the understanding that the respondent or cross appellant is now the appellant and the appellant, now becoming the respondent in terms of rule 103(1) of the Rules.

As intimated above, the notice of cross appeal raises two issues. The first is whether the award of TZS 20,000,000.00 general damages was justified. The second relates to the legality of severance allowance not claimed before the CMA. We have found it convenient to begin our discussion with the latter.

Mr. Mseke was as resolute in his oral arguments before us as he did before the High Court that, since the appellant did not claim the relief in CMA Form No. 1, it was an error by both the CMA and High Court to grant it. He sought reliance from the Court's decision in **Dew Drop Co. Ltd v. Ibrahim Simwanza** [2021] TZCA 525 (27 September 2021); TANZLII to argue that, it is not the business of the court to award a litigant a relief not claimed in his pleadings. Counsel implored the Court to find the award of severance allowance erroneous and set it aside.

Mr. Boaz for his part was in support of the reasoning of the High Court that, severance allowance is a statutory entitlement under section 44(1) (e) of the ELRA which is payable to an employee upon termination of the employment contract. It was Mr. Boaz's submission that, the High Court was right in holding that the respondent in the cross appeal was thus entitled to the relief regardless whether it was reflected in the CMA F. No. 1. Mr. Mseke's argument in rebuttal was simply a reiteration of his position that the High Court was wrong in its decision upholding the CMA's award on the severance payment.

It is not in dispute that the respondent did not include payment of severance allowance in the list of reliefs before the CMA. Whether it was an oversight or otherwise is beyond our concern in this appeal. What is clear to us and to the parties is that, having found the termination of the respondent from employment unfair, the CMA granted reliefs claimed in the CMA F. No. 1 as well as the impugned severance allowance irrespective of the fact that it was not included in CMA Form No. 1. Despite the contestation against the grant of that remedy, the High Court rejected the arguments from Mr. Mseke and held, rightly so in our view, that severance allowance being a statutory entitlement to an employee who has worked with the same employer for not less than 12 months is payable whether it is claimed or not. It is significant that the 12 months' period

worked with the same employer is a crucial condition for entitlement to payment of severance allowance and upon termination of employment contract be it at the instance of the employer or employee. Apparently, there was no dispute that the respondent had not worked for a period less than 12 months.

We agree with Mr. Mseke to the extent that, as a general rule, the court cannot award reliefs not claimed in their cases consistent with what we said in **Dew Drop Co. Ltd** case (supra). However, that rule does not extend to cases involving reliefs which by their nature involve statutory entitlement. Indeed, in **Dew Drop Co. Ltd** (supra), the Court refrained from disturbing reliefs awarded in accordance with section 40 (1) of the ELRA, severance allowance included. The main preoccupation in that case was on non-statutory entitlements and so the proposition against awarding reliefs not claimed in pleadings does not extend to those regulated by statute. It is, with respect, distinguishable and unhelpful to the appellant in the cross appeal. Conversely, the reasoning by the High Court is well founded being supported by the Court's decision in, amongst others, **Mantra Tanzania Ltd v. Joaquin Bonaventure** [2024] TZCA 1153 (28 November 2024) TANZLII in which it stated:

"... In our view, the granted reliefs are legally payable regardless . . . whether the same were prayed by the employee or not . . ." [At page 33].

In the upshot, we find no merit in the 2nd ground in the notice of cross-appeal and dismiss it which takes us to the 1st ground.

The complaint in the 1st ground relates to the justification of payment for general damages to the respondent over and above compensation for unfair termination. To start with, the appellant's counsel contended that there was no proof before the CMA for the award of general damages of TZS.300,000,000.00 reduced to TZS.20,000,000.00 by the High Court. Counsel contended that, damages are not awarded in labour related disputes considering that, unfairness of termination of employment has a remedy under section 40 (1) (c) read together with regulation 32 of the Labour Institutions (Mediation and Arbitration) Guidelines, G.N. No. 67 of 2007. According to the learned advocate, not every employee claiming that his image has been tarnished as a result of the termination of employment deserves general damages unless there is proof that the tarnishment of his image was a direct consequence of the unfair termination of employment. He referred to us several decisions of the Court to buttress his position on the principle behind award of general damages that is, **Anthony and Another v. Kitinda Kimaro** [2015]

TZCA 269 (25 February 2015), TANZLII and **Felician Muhandiki v. The Managing Director Barclays Bank Tanzania Limited** [2023] TZCA 101 (13 March 2023) TANZLII.

In addition, the Court was referred to a passage in a book titled: *Law of Tort with Law of Statutory Compensation and Consumer Protection* by P. S. Atchuthen Pillai, 9th edition, Eastern Book company, Lucknow. Page 532 of the book is devoted to the objective behind award and measure of general damages. Mr. Mseke was tenacious in his stance against the award of general damages to an employee upon termination of employment outside the remedies specifically provided for under section 40 (1) of the ELRA. He invited us to quash the award for lack of justification.

Not amused, Mr. Boaz invited us to dismiss this ground for being baseless. Counsel argued that the award of general damages is at the court's discretion which is what the CMA and High Court did. It was his further submission that, whereas the respondent asked TZS.500,000,000.00 for loss of reputation, the CMA awarded him TZS.300,000,000.00 which was reduced by the High Court to TZS.20,000,000.00. It was his further argument that, contrary to the appellant, the respondent proved general damages for loss of reputation following unproved allegation of corruption which made him

unemployable in the banking industry which was not controverted. Counsel implored us to draw inspiration from the decision of the High Court sitting at Dodoma in **National Microfinance Bank Plc v. Alice Mwamsojo**, Labour Revision No. 16 of 2018 (unreported). It was thus argued that, payment of 12 months' salaries could not have been a substitute for award of general damages for loss of reputation.

Mr. Mseke's counter argument was to the effect that, the award of general damages in labour cases is, unlike other ordinary cases, subject to proof which was wanting in the instant appeal. He invited us to find the decision of the High Court in **Alice Mwamsojo** (supra) to be bad law in view of section 7(7) of the ELRA which prohibits discrimination in employment.

Our starting point towards determination of this ground will be section 88 (1) (b) (ii) of the ELRA which provides thus:

> *"88.- (1) For the purposes of this section, a dispute means:*
>
> *(a) N.A.*
>
> *(b) a complaint over-*
>
> *(i) the fairness or lawfulness of an employee's termination of employment;*
>
> *(ii) any other contravention of this Act or any other labour law or breach of contract or any*

employment or labour matter falling under common law, ***tortious liability and vicarious liability****;"*

The respondent claimed TZS.500,000,000.00 as compensation for loss of reputation before the CMA. In his opening statement, apart from challenging unfair termination, he made a claim founded on tort premised on publication of malicious and defamatory statements allegedly causing him to suffer damage from it. As hinted earlier, the CMA awarded the respondent TZS.300,000,000.00 general damages. Before the High Court, the appellant challenged the award of TZS.300,000,000.00 on the ground that there was no sufficient evidence to prove the amount.

In its judgment, the High Court disagreed with the CMA on the award of TZS 300,000,000.00. for injury of loss of reputation for lack of evidence. Instead, it found it established by evidence that his image had been tarnished such that he could not secure new employment. It thus reduced the amount to TZS. 20,000,000.00. This it did in line with the objectives of the ELRA, amongst others, promotion of economic development through economic efficiency, productivity and social justice set out under section 3 (a) thereof.

It is remarkable that, the appellant's complaint in the 1st ground is not against the award of general damages as such, rather, the quantum

allegedly, for lack of proof of the damage suffered. As Mr. Mseke would be aware, the jurisdiction of the Court in appeals from the Labour Court is limited to points of law only in terms of section 57 of the Labour Institution Act (the Act). That means, it is beyond the Court's power to deal with findings of fact arrived by the CMA and concurred by the Labour Court. In the premises, the appellant's contest on the justification to awarded general damages as Mr. Mseke attempted to do relying on **Anthony Ngoo** and **Felician Muhandiki** cases (supra) cannot arise. Those decisions are with respect, irrelevant to support the appellant's quest in the manner argued by Mr. Mseke. Neither can he succeed on the challenge on the quantum it being a discretion of the Labour Court from which the appeal has arisen.

As submitted by Mr. Boaz, there is no material upon which one can fault the Labour Court in the exercise of its discretion reducing the quantum of general damages as it did. We think Mr. Mseke will be undoubtedly aware of the principles in interfering with the award of general damages by appellate courts restated in many of the Court's decision in particular, **The Cooper Motor Corporation Ltd v. Moshi Arusha Occupational Health Services** [1990] T.L.R. 96 for the proposition that, the appellate court's power to interfere with the award of damages by the lower court is limited. It can only do so when it is

satisfied that in assessing the damages, the trial court applied a wrong principle of law (as taking into account some irrelevant factor or leaving out of account some relevant one); or that the amount awarded is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage. We have seen none of the above stated conditions warranting interfering with the award of general damages for an injury which the High Court and the CMA concurred on the unemployability of the respondent by reason of the unproved allegations on corruption against the respondent.

On the applicability of the decision of the High Court in **Alice Mwamsojo** (supra), it seems to us to be relevant to the respondent considering the provisions of the Banking and Financial Institutions (Licencing) Regulations, G.N. No. 297 of 2014 (The Licencing Regulations) we came across in our own research. Relevant to this appeal is Regulation 13 of the Licencing Regulations which vests in the Bank of Tanzania as the Licencing Authority and Regulator of Banks and Financial Institutions, power to assess fitness and propriety of any director or senior member of management of a bank or financial institution before being employed in such bank or financial institution. The first schedule to the Licencing Regulations make elaborate criteria for determining character and experience required of a member of the board and senior management of

a bank or financial institution. In this regard, before the Regulator approves a person proposed to hold the post of director or senior management, it must be satisfied of his character and **moral** which entails disclosure of information by the prospective employer regarding, amongst others, whether the person it seeks to employ has committed or convicted of the offence of fraud or any other offence of which dishonesty is an element. To attain such role, the fifth schedule contains a fairly long questionnaire to be filled by the person proposed by a bank or financial institution as director or senior management position from which the Regulator can make a determination regarding propriety or fitness of such person before granting the application.

It cannot be seriously doubted that, no bank or financial institution can forward to the Licencing authority/Regulator name of a person whose previous employment in a bank was terminated for a serious misconduct involving soliciting bribes from customers as it were with the respondent. In our view, the fact that the CMA found the respondent's termination unfair did not make matters better for him as far as to his employability in the banking industry. Under the circumstances, we share the same views taken by the High Court in **Alice Mwamsojo's** case (supra) to the extent it relates to employees in senior management positions in banking industry regulated by law. It is for this reason we do not agree with

Mr. Mseke that section 7 (7) of the ELRA can operate to mitigate the respondent's position. It cannot be a basis for interfering with the award made by the High Court. As urged by Mr. Boaz, we find no merit in this ground and dismiss it.

In the event, the cross appeal is found to be devoid of merit and we dismiss it. In view of the practice on costs in labour matters, we order each party to bear own costs.

DATED at **DAR ES SALAAM** this 26th of February, 2025.

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

E. M. FELESHI
JUSTICE OF APPEAL

Judgment delivered this 27th day of February, 2025 in the presence of mr. Boazi Moses, Ms. Anastela Selestin, both learned Advocate for the Appellant and Mr. Shepo Magilari, learned Advocate for the Respondent, is hereby certified as a true copy of the original.

E. G. MRANGU
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL