IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

LABOUR DIVISION

AT ARUSHA

REVISION NO 54 OF 2021

DEPUTY REGISTRAR
High Court Arusha
Labour Section
RECEIVED ON
DATE : 10/3/2022

(Originating from Commission for Mediation and Arbitration Application No. CMA/ARS/ARS/22/2021)

JACOB JOSEPH KOTOROI.....APPLICANT

VERSUS

NAKI SECURITY COMPANY LIMITED.....RESPONDENT

APPLICANT'S WRITTEN SUBMISSION IN SUPPORT OF THE APPLICATION FOR REVISION

MAY IT PLEASE YOU MADAM JUDGE,

This is the Applicant's written submission pursuant to the order given by this court on 24th February 2022, that this matter be disposed off by way of written submissions. I first pray to adopt the contents of the Applicant's affidavit for them to form part of this submission.

MADAM JUDGE,

A brief background of this case is that, the Applicant was employed by the Respondent as a security guard in 2016, whereas he had yearly contracts his last one being entered in April 2020, and that this contract was terminated on 30th January 2020 without any justifiable reasons. The Applicant decided to file the complaint at the Commission for Mediation and Arbitration with the help from the Legal and Human Rights Centre, however the decision was entered in favour of the Respondent and thus he preferred this Application for Revision based on the following grounds;

1. That, in determining the dispute, the honourable mediator gravely misdirected himself by relying on evidence of a contract which the Applicant had stated that he had not signed, thereby arriving at a wrong conclusion.
2. That, during the hearing the Applicant was not properly represented and thus the proceeding was not just and fair.

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3. That, the trial Commission erred in law and fact for failure to evaluate and to give consideration to the evidence , grounds and reasons presented before the CMA by the Applicant.

MADAM JUDGE,

The Applicant wishes to submit on the 2nd ground of revision to create a foundation on the other grounds. At the inception of this matter the Applicant had sought help from the Legal and Human Rights Centre, however during hearing someone by the name **Amani Kaduma** represented himself as an officer from the **Legal and Human Rights Centre** and introduced one **Musa Mulata** to the Applicant as his advocate. The Applicant noticed some discrepancies *(as explained below)* during the hearing, but he was assured by his advocate one **Musa Mulata**, that all is well, until the end of the proceeding when he lost the case and then realized the deceit that had taken place including the fact that the said **Amani Kaduma** and **Musa Mulata** are not just officers of **Legal and Human Right Centre** but also are unqualified practising advocates.

MADAM JUDGE,

The said **Musa Mulata** impersonated himself as an advocate and made the applicant herein as well as the Commission for Mediation and Arbitration to believe him while he was not. Efforts by the Applicant tried to search him in the **Wakili data base** showed that his name is not amongst practicing advocates. The Applicant also tried reaching his so-called advocate (**Amani Kaduma**), however there was no response from him. This act of impersonating and pausing as an advocate reeks illegality since the Applicant was not properly represented during trial.

MADAM JUDGE

It has long ago established legal principle that, unqualified advocates are not only allowed to draft documents he/she is barred from representing clients in the court of law and in case he did so, then everything emanating therefrom are illegal. Court has once in the case of **AUA INDUSTRIAL GROUP LTD Vs WIA GROPU LTD, Civil Cause No. 44 of 2019, (HC)(Dar es salaam)(Unreported)** were it was held that;

> ***"...disqualified advocate is not privy and qualified to practice not only to preparing pleadings but even notarizing legal documents. It is even worse if he appears to conduct any suits unless cleared..."*** [Underlined for emphasis]

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MADAM JUDGE,

This Court has always emphasized that the right to be heard is a fundamental principle of natural justice which falls within the ambit of fair hearing and fair trail that should be observed by all courts in the administration of justice. Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977 provides that: -

"When the rights and duties o f any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right o f appeal or other legal remedy against the decision o f the court or o f the other agency concerned."

MADAM JUDGE,

Therefore, a denial of the right to be heard in any proceedings would vitiate the entire proceedings. To cement that the court in the case of the case of **Abbas Sherally and Another v. Abdul S. H. M. Fazalboy, Civil Application No. 33 of 2002 (unreported)** observed that:

"The right of a party to be heard before adverse action is taken against such party has been stated and emphasized by courts in numerous decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified / even if the same decision would have been reached had the party been heard, because the violation is considered to be a breach of natural justice."

MADAM JUDGE,

In the instant case, it is evident that the act of one **Musa Mulata** pausing as an advocate for the Applicant had caused the Applicant not to be not accorded the right to be heard and address the Commission especially because he was a lay person. Therefore, the mediator arrived at his finding in contravention of the right to be heard. Such omission amounted to a fundamental procedural error which has occasioned miscarriage of justice to the Applicant. Consistent with the law, the resultant effect is that such finding cannot be allowed to stand.

MADAM JUDGE,

The Applicant will jointly submit on the 1st and 3rd grounds, that during hearing of the case, the respondent presented exhibit P2 which was the contract of employment which the Respondent had alleged to have been signed by the Applicant. The Commission relied on this evidence as proof that the Applicant's contract had come to an end. In real sense the Applicant had signed his contract of employment in April 2020, which remained in

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possession of the Respondent and was supposed to end in April 2021, however the Respondent brought a contract (Exhibit P2) which he alleged that the Applicant had signed.

MADAM JUDGE,

The Applicant denied that the signature was not his and that he had not signed the same, but it was not taken into consideration and even the one pausing as the advocate did not help the Commission reach a just decision. This fact shows that the Commission did not give audience to the evidence and testimony of the Applicant and just relied on that from the Respondent. Given this fact the Applicant prays that the proceeding and decision of the Trial Commission be pronounce a nullity.

MADAM JUDGE,

It is our contention that, decision emanating from an illegal proceedings has to be quashed and set aside immediately. Like in the instate case where it is vividly clear from the CMA decision that, applicant herein was being represented by unqualified Advocates who did cause miscourage of justice on the part of the applicant herein.

Submitted and humbly prayed.

Dated at Arusha this 10th **day of** March **2022**

Appellant Counsel duly authorized

Presented for filing This 10th **Day of** March **2022**

Registry Officer

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DRAWN AND FILED IN GRATIS BY;

Francisca A. Lengeju, Advocate

Legal and Human Rights Centre

Arusha Legal Aid Clinic

P.o Box 15243

Olerian Street, Plot No. 116/5

Sakina Kwa Iddi

Arusha



COPY TO BE SERVED UPON;

General Manager

NAKI SECURITY COMPANY LTD

The Respondent

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IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL CASE No. 44 OF 2019

AUA INDUSTRIAL GROUP LIMITED.....PLAINTIFF

Versus

WIA GROUP LIMITED.....DEFENDANT

ORDER

10/6/2019

Coram: Hon. De-Mello, J;

For the Plaintiff: Shamim Kikoti Adv.

For the Defendant: Charles Tumaini/Simon Patrick

CC: Placidia – Present

Shamim: The matter is for mention. Written Statement of Defence has been served and filed, supposedly, on the 28/5/2019. We however, find the need for a Repiy to the Written Statement of Defence. We thus pray for Leave to do so, seven (7) days, is adequate Madam Judge.

Charles: We do not object to the prayers. However, the Plaint reveal the drawer to be one Allen A. J. Mwakyoma, purportedly disqualified to practice. He is of Roll No. 1792.

Court: Records indicate the same from the tams.judiciary.

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Charles: This, Madam Judge, is in contravention with section 43 of the Advocate Act Cap. 341 R.E. 2002, read together Notary Public & Commissioners for Oath Act Cap. Reg. 6. Section 43 excludes disqualified Advocates from drawing of pleadings. It is however, section 41 Madam Judge, I beg to revisit. Similarly Reg. 6 of the Notary's Public and Commissioner for Oaths, the pleadings before your Court are incompetent. See the also the case of **Ismail Ally Salehe** vs. **Akbar Amir H. Amir & CATS Ltd., Civil Case No. 156** of **2016 High Court Dar Es Salaam Registry,** in which Mutungi Judge, had this to say in page 8, **"... against the Advocates Act and punishable and has to besummarily rejected, the Plaint is thus Nullified... costs to follow.**

Shamim: Madam Judge, It has come to my knowledge now, as of this situation. However, the alleged Advocate acted as a drawer only and not in conduct of the case. The case referred by Counsel is distinguishable as Advocate Mwakyoma did prepare the pleadings as seen but not in conduct. He never attestated to qualifies as a Commissioner for Oaths as evidenced. In the interest of justice, the matter is for Struck Out as opposed to dismissal, as it is yet to be heard on its merits. I hence pray to amend the pleadings in view of replacing a qualified Drawer alone and, not the Plaint as a whole.

Patrick: The whole Plaint is in the light of the disqualified Advocate. It renders it all a Nullity. . They ought to be Rejected, He even acted as Notary Public by drawing the Pleadings. We however concede to **Struck Out** and **REJECTED** as proposed and not **DISMISSAL.**

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Court: Vivid and, quite apparent, the observation by Counsel Charles and Patrick has it that, Advocate Mwakyoma is disqualified from practicing. My search from tams.judiciary website, had confirmed the position. He is not privy and, qualified to practice not only to preparing pleadings but even notarizing legal documents. It is even worse if he appears to conduct any suits, unless cleared. The law under section 41 of the Advocates Act Cap. 341, let alone a series of decided cases, including the cited one in Ismail Ally Salehe (supra) by Mutungi Judge, speaks louder of itself. The document by means of a Plaint that is before this Court is a Nullity. The little the Court can offer is to **REJECT** as opposed to **DISMISSAL** as costs is granted, considering a Written Statement of Defence already filed and, in place.

It is ordered.

THE HIGH COURT OF TANZANIA

J. A. De-Mello

JUDGE

10/6/2019

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