IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: LEVIRA, J.A., GALEBA, J.A. And ISMAIL, J.A.)

CIVIL APPEAL NO. 487 OF 2021

ALLIANCE LIFE ASSURANCE LIMITED ..... APPELLANT

VERSUS

ELIHURUMA NGOWI ..... RESPONDENT

(Appeal from the Judgment and Decree of the High Court of Tanzania (Labour Division) at Dar es Salaam)

(Mwenegoha, J.)

dated 2nd day of July, 2021

in

Revision Application No. 155 of 2020

.....

JUDGMENT OF THE COURT

11th March & 09th April, 2024

ISMAIL, J.A.:

Elihuruma Ngowi, the respondent, had his service with the appellant brought to an abrupt end on the ground of poor work performance. Feeling hard done, he took his grievance to the Commission for Mediation and Arbitration (the CMA) which found in his favour. It was of the view that the respondent's termination was unfair. This finding rattled the appellant and, as a result, he took his battle to the High Court, Labour Division

(Mwenegoha, J). Finding that there was nothing blemished in the CMA's decision, it dismissed the application. This decision triggered the instant appeal.

A better appreciation of the matter requires that brief facts constituting the dispute between the parties be stated. They are to the effect that, on 12th June, 2017, the respondent was employed as the appellant's Sales and Marketing Manager under an unspecified term contract. He first served on probationary period for six months. This period was extended for six more months until 31st May, 2018. The contract of employment was accompanied by a Personal Performance Agreement, the latter of which contained targets that the respondent was called upon to meet as part of his key performance indicators. It is alleged that in subsequent weekly reviews, the respondent's performance was found to be wanting as targets set were not reached. Placement of the respondent on a performance improvement plan bore no fruits.

At a meeting held on 4th April, 2019, the respondent was called upon to make a defence on why his employment links with the appellant should not be severed. The respondent made out his case but the appellant alleged

that answers given were unsatisfactory hence the decision to terminate his employment on 17th April, 2019.

Unhappy with the decision, the respondent instituted a challenge against the termination to the CMA as indicated earlier on, alleging that the same was unfair. He prayed for compensation in the sum equivalent to 42 months' salaries or reinstatement without loss of remuneration. Proceedings in the CMA began with mediation which did not yield the desired result. The singular issue during the arbitral proceedings was whether the termination was procedurally and substantively fair. This issue was resolved through the testimonies adduced by one witness for each of the sides.

In a decision handed down on 25th March, 2020, the CMA held that the termination was both substantively and procedurally unfair. In the end, the appellant was ordered to pay compensation to the tune of TZS. 84,000,000.00 being a gross sum constituting twelve months' salaries.

The decision was too much to bear for the appellant such that it was challenged through revision to the High Court. Four grounds were raised. These were: exercise of CMA's jurisdiction with material irregularity; improper procurement of the award; material errors in the award; and unlawfulness, irrationality and disregard of the law in the award. These

grounds of dissatisfaction notwithstanding, the submissions in the High Court narrowed to a single question of propriety of the name of the appellant, following what was contended to be the difference of parties between "Alliance Assurance Limited" that featured in the mediation process and "Alliance Life Assurance Limited" that appeared and took part in the arbitration process. Significantly, however, except for the complaint on the name of the appellant, the award of compensation for unfair termination was left unscathed.

Rejecting the contention that the omission of the word "Life" in the appellant's name had the potential of causing confusion, the learned High Court Judge concluded as follows:

> *"It is the view of this court therefore that the applicant was accorded both services of mediation and arbitration and is correctly the party addressed in CMA Award and that the Award does not reflect the proceedings of the case. Consequently, the Arbitrator's decision is hereby upheld."*

It is this decision that has triggered the instant appeal. Four grounds of appeal were raised in the memorandum of appeal filed in this Court. They are as reproduced hereunder:

1. *The honourable Judge erred in law and in fact by not considering that there was serious illegality at the Commission for Mediation and Arbitration in that the party who took part in the mediation was not the party that proceeded with arbitration.*

2. *The honourable Judge erred in law and in fact by overlooking the material error and not considering that the appellant herein is quite different from the party who took part in the mediation.*

3. *The honourable Judge erred in law and in fact by not treating the above serious illegality with the importance that it ought to have been given.*
4. *The honourable Judge erred in law and in fact by ignoring the fact that a preliminary objection which touches jurisdiction of the court can be raised at any point and must be determined.*

At the hearing of the appeal, the appellant enlisted the services of Ms. Mercy Kisinza, learned counsel, whereas the respondent enjoyed the representation of Ms. Glory Venance, learned advocate.

Ms. Kisinza began her onslaught by abandoning ground four of the grounds of appeal. She then chose to combine the remaining grounds of appeal, narrowing the complaint to what she considered as an anomaly in the name of the appellant. Ms. Kisinza took an issue with the names of the appellant as they appear in Form No. 1 which initiated the complaint in the

CMA. She contended that it contained names of a non-existing party to the arbitration proceedings. The learned counsel made reference to rule 4 (2) of Labour Institution (Mediation and Arbitration Guideline) GN. 64 of 2007 which provides that, parties to a complaint must attend to a mediation session prior to their involvement in the arbitral process. She referred us to the decision of the Court in **Dew Drop Co. Ltd v. Ibrahim Simwanza,** Civil Application No. 244 of 2020 (unreported), in which it was held that Form No. 1 is synonymous with a plaint which indicates the parties to the dispute.

She submitted that the registered name of a party gives an identity of the party. On this, Ms. Kisinza cited the Court's decision in **Jaluma General Supplies Ltd v. Stanbic Bank (T) Ltd,** Civil Appeal No. 34 of 2010 (unreported). The learned counsel argued that there was no formal or specific order for rectification of the name from "Alliance Assurance Limited" to "Alliance Life Assurance Limited", a key requirement as was underscored in **Inter-consult Limited v. Mrs. Nora Kassanga & Another**, Civil Appeal No. 79 of 2015 (unreported). She contended that the error was much more serious than a mere typo. She referred us to the case of **CRDB Bank PLC (formerly CRDB (1996)) Ltd v. George Mathew Kilindu**, Civil Case No. 110 of 2017 (unreported) in which it was held that citing of a new

name without leave of the Court is a fatal irregularity. The learned counsel contended that the omission of the word "Life" in the name of the appellant in key documents at the CMA, was a significant infraction. She wound up by seeking to distinguish the decisions cited by the respondent from the circumstances of this case.

In her rebuttal submission, Ms. Venance discounted the impact of the omission and refuted the contention that there was lack of participation of the appellant. The learned counsel argued that in Form F.6, Ms. Nausheen Sumar, a human resource personnel representing Alliance Life Assurance Limited attended the mediation and appended her signature thereon, thus attesting to the participation of the appellant in that process. She further contended that, despite the difference in the names, it is gathered that Form No. F. 3 attached to the respondent's submissions was served on the appellant, the respondent then, and it bears the official stamp of the appellant. Ms. Venance submitted that the same Ms. Sumar appended her signature in the certificate of settlement/non settlement of the dispute, appearing at page 21 of the record of appeal and that the appellant's stamp was also affixed to the said certificate. This, in the learned counsel's contention, was proof of the appellant's participation in the mediation

process. Since the appellant did not challenge the name before the CMA, during the mediation, Ms. Evance argued, she was estopped from challenging it at this stage of the proceedings, adding that the appellant should have spoken if the respondent was not her employee. That she did not do, and the learned counsel's contention was that, introduction of the issue at this latter stage was nothing other than an afterthought that should be given a wide berth. To buttress her argument, Ms. Evance referred us to the case of **Makubi Dogani v. Ngodongo Maganga**, Civil Appeal No. 78 of 2019 (unreported).

Regarding authorities raised by the appellant, the respondent's counsel was of the contention that these were distinguishable, drawing little or no relevance to the matter at hand. Starting with **Dew Drop Co. Ltd** (supra), Ms. Evance's contention was that in that case, the dispute revolved around the reliefs sought in CMA F. 1, while in **Jaluma General Supplies Ltd** (supra), what was at stake was the difference of names as they appeared in the plaint and the notice of appeal. Discounted as well, was the relevance of other decisions cited, contending that they too, were far-fetched, as far as circumstances of this case were concerned.

In rejoinder, Ms. Kisinza argued that, the issue in contention was a point of law that can be raised at any time of the proceedings, even at the appellate stage. She argued that the appellant's appearance in the CMA was not a concession, and that such appearance does not validate the omission complained about. She insisted that there is no automatic rectification of the court records, contending that the respondent conceded that the error was not formally rectified.

We have heard the counsel's rival submissions. We have also unfleetingly leafed through the record of appeal and authorities furnished to us by the learned counsel. The parties draw a convergence on the fact that the word "Life" which completes the name of the appellant was omitted in Form No. F.1 through which the respondent's complaint was instituted. In our view, the counsel's unanimity has narrowed their contest to mirror what was contested in the High Court. It is whether omission of the word "Life" in the name of the appellant was significant and fatal, and bore adverse consequences on the part of the appellant. We propose to spend considerable time assessing the gravity of the omission and the implication accompanying it, if any.

It is a canon of civil litigation that parties to a suit must be impleaded in their own full names as they appear in the correspondences or records from which a cause of action is founded. Any fundamental change of the name of a party has the effect of changing the identity of a party. With all these safeguards in mind, it has been held to be not uncommon for a plaintiff to be uncertain about the defendant's correct legal name, and that, despite searches and inquiries, the ignorance may continue with the defendant being improperly named in a statement of claim. If the change is in the form of a misnomer that is done inadvertently, the settled position is that the court enjoys the discretion of choosing to focus on the rights and substance of the parties and their case, rather than punitively truncating the proceedings through striking out of the cases. In arriving at such conclusion, the question which will be posed by the court is whether a reasonable defendant in looking at the document as a whole, and in all the circumstances, would conclude that they were, in fact, the defendant. If the answer is yes, courts are allowed to be tolerant and, in fitting situations, to order amendment of the pleadings, especially where the error involves the name of a corporate personality of the person sued. The condition precedent, however, is that the corporate personality of the person sued should not be in doubt – see

the Supreme Court of Nigeria's decision in **Patrick Okolo & Another v. Union Bank of Nigeria Ltd** (1999) LPELR-SC 161/1998.

In the instant appeal, there is no denying that the notice of hearing which was issued and served on the appellant was in the wrong name, that is Alliance Assurance Limited. Nonetheless, the appellant took heed and appeared in the CMA, duly represented by Ms. Sumar whom the record informs was part of the process, working hand in glove with the appellant's Chief Executive Officer. Undisputed as well is the fact that Ms. Sumar, a representative of the appellant at the session, appended her signature to signify the appellant's concurrence that mediation had failed.

What we are certain of and in respect of which we retain no doubt in our mind, as was even confirmed at the hearing of this appeal is that, to both parties, it was a common and simultaneous premise and understanding that, at the CMA, the present respondent was the complainant and the appellant was the respondent. That was irrespective of the manner in which the appellant's name was appearing in some of the papers before the CMA. The point is, there was no mistaken identity of either of the parties by the other.

Ms. Kisinza maintained that the omission was of a significant nature and taken a swipe at what she considers to be a clandestine, if not unilateral, decision to introduce the change to the name. Her take was that such act was inappropriate and violative of the law. To bolster her argument, she referred us to our decision in **CRDB Bank PLC** (supra) in which it was held that, citing a new name without leave is a fatal irregularity.

It is at this point in time that we find the decision in **Christina Mrimi v. Coca Cola Kwanza**, Civil Application No. 113 of 2011 (unreported), cited by Ms. Venance, handy and relevant. In that case, an error was occasioned in the name of the respondent and it read *Coca Cola Kwanza Bottlers Ltd* instead of *Coca Cola Kwanza Limited*. The view taken by the respondent in that case was that inclusion of the word "Bottlers" had the effect of creating a different entity. While the Court noted that there was an omission, it discounted the effect of such omission and took the view that this was a mere slip of the pen that could be cured through an amendment, done at the instance of either parties. In arriving at the conclusion, the Court relied on a couple of English decisions both of which were cited by the counsel for the appellant in that case. The first was the case of **Evans Construction**

Co. Ltd v. Charrington & Co. Ltd & Another [1983] 1 All E.R. 310 in it was held:

> *"... As the mistake in this case which led to using the wrong name of the current landlords did not mislead the Bass Holdings Ltd., and as in my view there can be no reasonable doubt as to the true identity of the person intended to be sued, this case falls within the scope of RSC Order 20, r.5 (3), it would be just to correct the name of the respondent from Charringtons Ltd. to Bass Holding Ltd."*

The key principle that we distilled from the foregoing excerpt and earlier on in this decision, and which was reiterated in the persuasive case of **Best Friends Group and Another v. Barclays Bank Plc** [2018] EWCA Civ 601 is that, where the mistake is genuine and one which would not have caused reasonable doubt as to the identity of the person intended to be sued then correction of the name is the furthest the court would go, and that, given the trifling nature of the omission and peculiarity of the matter, such correction need not be formal. In the latter case which was persuasively relied on in **Coca Cola Kwanza** (supra), the omission of the word "Veterinary" from the name "Best Friends Veterinary Group" was considered

to be honest and genuine, and one that caused no reasonable doubt as to the identity of the party in question.

Ms. Kisinza referred us to a few decisions of this Court on the matter, one of which is the case of **Inter-Consult Limited v. Mr. Nora Kassanga & Another** (supra) in which the parties' contention revolved around the change of name from **International Engineering Consultancy Services Limited** to **Inter Consult Limited** in which the Court held to be a major change that required a formal order of the court. In our considered view, the Court drew an appropriate conclusion because the change of name was substantial and one that changed the entire architecture, creating an impression that this was a whole different entity with a different identity. It amounted to a misdescription which would not be dealt in any other way than by having the matter struck out. We find this to be distinguishable from the omission in the instant appeal. Coming to the case of **CRDB Bank PLC** (supra), the distinctive feature is that, in the latter, the change occurred at the stage of lodging the notice of appeal to the Court while in all preceding proceedings the name that featured was that of CRDB (1996) Limited. There was also a mix up in the documentation as other documents read 'CRDB Bank PLC (formerly CRDB (1996) LTD)'. We are of the settled view that, the

mix up was so glaring and confusing that the only cure was to have them amended through a court order. As for **Jaluma General Supplies Limited** (supra), our position is that the substitution of the name Jaluma General Supplies Limited that featured in all proceedings with the name Jaluma General Enterprises Limited was significant and came at latter stages, almost at the tail end of the judicial ladder and it was a recipe for confusion.

We entertain no doubt that, unlike the instances in the cited cases, the omission of the word "Life", which we consider to be a mere keyboard error, a misnomer, was cured the moment the appellant chose to obey the notice of hearing, filed documents that bore the complete citation of the appellant's name, and participated in the mediation proceedings. We further hold that, the statement of claim served on the appellant (Form No. F1) pointed a litigation finger at the right person i.e. the respondent's employer, such that she knew that it was meant for her despite the naming error.

We venture to think, as well, that, the substantive point to consider in this appeal resides in the answer to the question as to whether of one or both of the parties were prejudiced by the omission in the appellant's name. Ms. Kisinza was not forthright on this aspect, but our unflustered view is that none was prejudiced as the right to a fair hearing was accorded to both

parties who fully participated in the proceedings, offered witnesses for testification and tendered documents in support of their respective cases. In short, there was no deflection of justice arising out of the decision that Ms. Kisinza is critical of.

It is in view thereof, that we consider this complaint lacking the necessary cutting edge which would convince us to take the view that the omission was colossal and one which would occasion a miscarriage of justice to the appellant or at all. As such, there should be nothing to raise a few eyebrows on. We are convinced that, the omission was honest and genuine and caused no doubt as to the identity of the appellant as a party in the arbitration proceedings. Luckily again, in this case, the error was detected at the earliest stage of the proceedings and, in any case, one which could easily, in the current legal dispensation, be cured by the Overriding Objective Principle. In that regard, we find nothing meritorious in the learned counsel's argument of the possible confusion the omission may cause to the general public. It was an 'in-house matter' and we are not persuaded, one bit, that the omission had an impact of wide application percolating to the business sphere where distinction of categories of insurance products is important. In

any event, other than arguments from the bar there was no evidence of any such factual confusion.

We, therefore, consider this appeal barren of substance and we dismiss it. This being a matter arising from a labour dispute, we make no order as to costs.

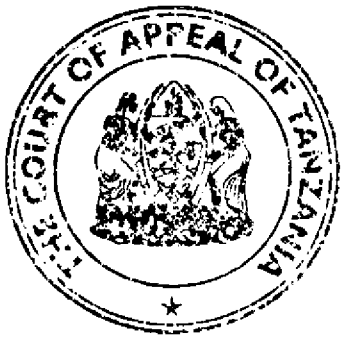
DATED at **DAR ES SALAAM** this 8th day of April, 2024.

M. C. LEVIRA
JUSTICE OF APPEAL

Z. N. GALEBA
JUSTICE OF APPEAL

M. K. ISMAIL
JUSTICE OF APPEAL

This Judgment delivered this 9th day of April, 2024, in the presence of Ms. Mercy Grace Kisinza, learned counsel for the Appellant and the Respondent in person is hereby certified as a true copy of the original.



C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL