

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT MWANZA

LABOUR REVISION APPLICATION NO 65 OF 2018

(Originated from Dispute No CM/MZA/MISWA/355/2015 Dated 04/04/2016)

DISTRICT EXECUTIVE DIRECTOR

MISUNGWI.....APPLICANT

VERSUS

JAPHET NGUSSA.....RESPONDENT

RULING

9.11.2018 & 27.02.2019

U. E. MADEHA, J;

This is a ruling arises on points of preliminary objection raised by the respondent Japhet Ngussa against the applicant application who seeks revision on the decision of the commission for mediation and arbitration ("the CMA") at Mwanza dated on 4th April, 2016, made under rules 21(1) (2), (a), (b), (c), (e), (f) & (3) (a), (b), (c), (d) and rules 28(1) (a), (b), (c), (d) & (e) of the Labour court rules G.N No. 106 of 2001 and sections 91 (1) (a) (b) and (2), (2) 94(1) (b) (i) of the Employment and Labour Relation Act No 6 of 2014.

The preliminary objections raised by the respondent against the application are as follows:-

- i. That the applicant application is bad in law and offends the law. i.e. sections 7(1) 9(1), (a) and 12(1)(a) (b) of the Local Government (District Authorities) Act cap 287 for lack of its specifically established corporate name- Misugwi District council as CMA F1 an closing argument*
- ii. That the application has been repeatedly misconceived and it contains wrong or non-citation of the law*
- iii. That the said application is illegal, improper an incompetent, for the notice of application constitutes facts unwanted by the law*
- iv. That the verification of the applicant' affidavit is fatal and incurable defective*
- v. That the application is an abuse of legal process/court process*

- vi. *That the application is unnecessary, scandalous, meritless embossing and against the procedure and practice of the law court for want of attachment of the copy of CMA award and/or order sought to be set aside and other order or reliefs thereof*
- vii. *That the application is forged, fabricated, time barred and saturated, for the copy of the ruling of the court was procured by the applicant on 25th September 2018*

The respondent, who is fended for himself briefly submitted in support of the preliminary objections challenging the application that it's incompetent, ever dwelling the procedures of the law, in particular the applicant's affidavit lack prayers, similarly the application is barred by time. He thus invited this court to struck out the application.

On his part, Mis Kokuganza Lydya the District solicitor at Misungwi appeared for the respondent she strongly resisted the respondent all points of preliminary objection, prefaced her submission to attack the provisions used in the chamber application and that of the notice of application that

this court is moved under the wrong provisions, cited the same reads in the chamber and notice of application produced from rules 21(1), (2), (a), (b), (c), (e), (f) & (3) (a), (b), (c), (d) and rule 28(1) (a), (b), (c), (d) & (e) of the Labour court rules GN No 106 of 2001 and section 91(1) (a), (b) and (2), (2) 94(1) (b), (i) of the Employment and Labour Relation Act No 6 of 2004 and any other enabling provisions of the law maintained that such provisions are suitable and rightly applied.

Submitting on the second point of objection that the affidavit lacks prayers averred that prayers are ever disclosed in the affidavit, they normally placed on the notice of application together with the chamber summons, on his view she argued such objection is fit for disposal.

The learned solicitor concluded her submission bearing the time limitation that this application is time barred, forcedly informed this court that this application is within time, she drew attention of this court on the issue of time limitation was resolved by this court before Hon Matupa J in its ruling dated on 17.09.2018.

Having made a summary on both parties submissions, I prefer my findings begins with the prominent issue raised by the respondent to

whether the application is time barred, I have very careful perused the record at hand, came close with the ruling of this court dated 17.09.2018 before learned Judge Matupa, reading its contents, I came up with the knowledge that the applicant was currently prayed the court extension of time in labour revision No 41 of 2016 which the court granted extension of time, to stance the application before me filed within time therefore the argument that the application is time barred is devoid of merit, I then dismiss the same.

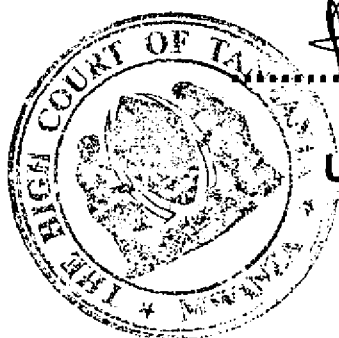
Made analysis on the second essential issue of law to whether the preferred application is under wrong provision of the law, to wit rules 21(1)(2)(a)(b)(c)(e) (f) & (3)(a)(b)(c)(d) and rule 28(1) (a), (b), (c), (d) & (e) of the Labour court rules GN No 106 of 2001 and section 91(1) (a) (b) and (2), (2) and section 94(1) (b) (i) of the Employment and Labour Relation Act No 6 of 2014. In togetherness the rules used by the application advocates revision before the High Court in relation to any award or decision entered by commission for mediation and arbitration (the CMA).


Gathered from the provisions applied by the applicant, I find some essential sections missing as to the requirement of the law such sections

are 91(2) (c) and 91(4) (a) & (b) and 94(1) (b) of the Act of which the present application was ought to apply for necessity of the law, failure to accord the requirement of the law amount to wrong provision of the law.

As argued by the respondent, I am of the settled mind that the application made under the wrong provisions of the law, the applicable provision was to be under rules 24(1) (2) (a) (b) (c) (d) (e) and (f) and 3(a) (b) (c) (d) and rule 28 (1) (a) (a) (c) (d) and) and section 91(1) (a) (2) (c) 4(a) and 4(b) read together with section 94(1) (b). With such findings, the preliminary objections by the respondent are hereby upheld; consequently, I struck out this application without determining other preliminary objections. Considering the matter being a Labour one, I give no order to costs. Order accordingly

DATED and **DELIVERED** at **MWANZA** this 27Th day of February 2020.




.....
U. E. MADEHA
Judge
27/2/2020