

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA**

LABOUR REVISION NO. 16 OF 2018

(Originate from Complaint No. CMA/MBY/143/2018)

**GABRIEL MWASHAMBWA & 26 OTHERS.....APPLICANTS
VERSUS
TANESCO.....RESPONDENT**

JUDGMENT

Date of last order: 14/05/2020

Date of Judgment: 28/07/2020

NDUNGURU, J.

The applicants through the service of Mr. Ezekiel Michael Kihyo, learned advocate filed the present application seeking revision of the ruling of the Commission for Mediation and Arbitration for Mbeya (herein to be referred to as CMA) in Labour Dispute No. CMA/MBY/43/2018 which was delivered on 18th day of May 2018 by Hon. Ndonde Severin, Mediator.

The application was brought under Section 91 (1) (a), (b) and (2) (a), (b) of the Employment and Labour Relations Act, G.N No. 6 of 2004 and Rule 24 (1) and (2) (a), (b), (c), (d), and (e) of the Labour Court Rules, G.N No. 106 of 2007.

The applicants supported the application by the affidavit of Mr. Ezekiel Michael Kihyo, learned advocate for the applicants. The respondent opposed the applicants' application through the counter affidavit which sworn by Mr. John Kyamani, the respondent's principal officer.

To better appreciate the context of the application, it is pertinent to narrate the factual landscape albeit in brief. The applicants (the complainants at the CMA) were employed by the respondent on fixed term contract. They working with the TANESCO (the respondent) until on 29th day of November 2017 when they received the notice from the respondent that their contract come an end on 31st day of December 2017.

The respondent (the employer) had no intention to renew the said contract. He promised to pay the applicants the terminal benefit in accordance with the law. But unfortunately the respondent was not paid them their terminal benefit when the contract come an end on 31st day of December 2017. Still the applicants make follow up their terminal benefit to the respondent until on 12th day of April 2018 when they decided to file an application for condonation at the CMA which was dismissed.

In its ruling dated 18th day of May, 2018 the CMA found that the applicants failed to disclose the good cause for delay to file the labour dispute in time before that Commission. Being aggrieved with the decision of the CMA, the applicants lodged the present application for revision before this Court.

When the application placed before me for hearing, Mr. Ezekiel Michael Kihyo learned advocate appeared for the applicants whereas Mr. John Kyamani, learned advocate appeared for the respondent. Now with the leave of the Court the application was disposed of by way of written submissions, I appreciate both parties for complying to the schedule and for their submissions.

In supporting the application, Mr. Kihyo commenced his submission by adopting the contents of his affidavit to form part of his submission. He further stated that the respondent using some illegal tricks to induce applicants knowingly that they will be paid terminal benefit but later the respondent denies their terminal benefit.

He went on to submit that the CMA was required to consider the issue of illegality among others as the sufficient cause to grant the application for extension of time. He cited the case of **Principle Secretary, Ministry of Defense and National Service vs. Devram Valambia (1992) T.L.R 185** and **Samwel Munsiro vs. Chacha**

Mwikwabe, Civil Application No. 539 of 2019, Court of Appeal of Tanzania (unreported) to cement his submission.

He therefore prayed for the Court that this application be allowed and set aside the decision of the CMA in the Labour Dispute No. CMA/MBY/43/2018 which was delivered on 18th day of May, 2018.

Responding to the application, Mr. Kyamani argued that, the issue of illegality was never addressed at CMA. He added that the condonation will be only on good cause and this is the basis of the Honourable Mediator. He cited the Rule 31 of the Labour Institutions (Mediation and Arbitration) Rules, G.N No. 64 of 2007 to support his contention.

He also cited the case of **Bruno Wenceslaus Nyalifa vs. The Permanent Secretary, Ministry of Home Affairs and Attorney General**, Civil Appeal No. 82 of 2017, Court of Appeal of Tanzania (unreported) to the effect that delay, even a single day has to be accounted. In conclusion, he prayed for the Court to dismiss this application with costs.

Having gone through the record of the CMA, pleading filed before this Court and the submissions made by the counsel for the both parties.

Before I go to decide the merits of this application, the question for the consideration is whether this application is proper before this Court or not.

For easy reference I see it is very important to reproduce the Rule 24 (2) and (3) of the Labour Court Rules, G.N No. 106 of 2007 which provides that:

"(2) The notice of application shall substantially comply with Form No. 4 in the Schedule to these Rules, signed by the party bringing the application and filed and shall contain the following information-

- (a) the title of the matter;*
- (b) (the case number assigned to the matter by the Registrar;*
- (c) the relief sought;*
- (d) an address of which that party will accept notices and service of all documents in the proceedings;*
- (e) a notice advising the other party that if he intends to oppose the matter, that party shall deliver a counter affidavit within fifteen days after the application has been served, failure of which the matter may proceed ex-parte; and*
- (f) a list and attachment of the documents that are material and relevant to the application.*

"(3) The application shall be supported by an affidavit, which shall clearly and concisely set out.

- (a) the names, description and addresses of the parties;*
- (b) a statement of the material facts in a chronological order, on which the application is based;*

- (c) *a statement of the legal issue that arise from the material facts; and*
- (d) *the relief sought.*

Upon perusal of the affidavit filed by the applicants before this Court, I found out that the applicants' affidavit does not contain the relief sought; therefore the affidavit in support of the application for revision was not in compliance with the Rule 24 (3) of the Rules (supra). The law does not only the Notice of the Application to contain the prayer even the affidavit in support of the application.

Again the law demands the notice of application to contain a list and attachments that are material and relevant to the application but the applicants did not set out the list of documents that are material and relevant to the application and also did not annex them as required by the said law rather annex only the copy of the ruling of the CMA.

Furthermorer, I am aware with the principle of the overriding objective but the said principle of overriding objective cannot be invoked blindly in disregard of the rules of procedure couched in mandatory term. This position is well stipulated in the case of **Sgs Societe General De Surveillance SA & another vs. VIP Engineering & Marketing Limited and another**, Civil Appeal No. 124 of 2017, Court of Appeal of Tanzania (unreported) where the Court stated that:

"We also find that the overriding objective principle does not and cannot apply in the circumstances of this case since its introduction in the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2017 (Act No. 8 of 2017) was not meant to enable parties to circumvent the mandatory rules of the Court or to turn blind to the mandatory provisions of the procedural law which go to the foundation of the case."

From the discussion and observation above, this application is struck out for being incompetent before this Court for the reasons that not complied with requirement of the Rule 24 (2) (f) and (3) (d) of the Labour Court Rules, G.N No. 106 of 2007. No order as to costs.

It is so ordered.




D. B. NDUNGURU
JUDGE
28/07/2020

Date: 28/07/2020

Coram: D. B. Ndunguru, J

Applicants: Present

For the Applicants: Mr. Ezekiel Kihio – Advocate

Respondent:

For the Respondent: Absent

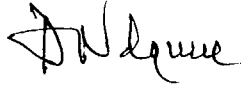
B/C: M. Mihayo

Mr. Ezekiel Kihio – Advocate:

The case is for judgment, we are ready.

Court: Judgment is delivered in the presence of Mr. Ezekiel Kihio
and the applicants and in the absence of the respondent.




D. B. NDUNGURU
JUDGE
28/07/2020