

IN THE HIGH COURT OF TANZANIA
(LABOUR COURT DIVISION)
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

LABOUR REVISION NO. 31 of 2019

(Arising from Labour Dispute No. CMA/SHY/81/2016)

KAHAMA TOWN COUNCIL..... APPLICANT

VERSUS

ELIUS MOSSES MOLLEL..... RESPONDENT

RULING

21/07 & 02/10/2020

Mdemu, J.;

In this application, the Applicant herein moved this Court to revise the award of the Commission for Mediation and Arbitration (CMA) in labour dispute No. CMA/SHY/81/2016 dated 18th April, 2017. This application was made under the provisions of Rule 24(1), 24(2) (a) (b) (c) (d) (e) (f), 24(3) (a)(b)(c)(d)(e) and Rule 28(1)(a)(b)(c)(d)(e) of the Labour Court Rules, 2007, G.N. No.106 of 2007 read together with section 91(1)(a)(b), 91(2)(a)(b)(c) of the Employment and Labour Relations Act, No.6 of 2004. The application is supported by the affidavit of one Stephen John Magalla, legal officer of the Applicant.

Briefly, the Applicant was an employer of the Respondent who was terminated from work on 21st March, 2016. With that, the Respondent filed his complaint to the Commission for Mediation and Arbitration (CMA) for unfair termination. The CMA decided the matter in favor of the Respondent

and ordered the Applicant to reinstate the Respondent. The Applicant thus sought this revision on the following grounds;

- i. *That, the Honourable Court be pleased to call the records of the proceedings of the Commission for Mediation and Arbitration in Labour Dispute No. CMA/SHY/81/2016 so as to satisfy itself as to the legality, correctness and propriety of the same.*
- ii. *That, the Honourable court be pleased to revise the award of the Arbitrator dated 18th April, 2017 and set aside the same.*
- iii. *That, the Honourable court be pleased to grant costs of this application.*
- iv. *That, the Honourable Court be pleased to make any other order(s) or reliefs as it may deem fit and just to grant.*

Hearing of this application was on 21st of July, 2020. The Applicant was represented by Mr. Albert Rwechungura, Learned Solicitor, whereas Mr. Martin Masanja, Learned Advocate entered appearance for the Respondent.

The Learned Solicitor for the Applicant first sought directives of this court as the Respondent is a Public Servant and this court had once decided in the case of **Kahama Town Council v. Kulwa Steven Mtandimala, Labour Revision No. 32 of 2019** (unreported) that, the CMA had no jurisdiction on labour matters involving Public Servants. He thought, as the facts are similar in the instant application, the Public Service Commission is the clothed with jurisdiction.

In response thereto, Mr. Martin Masanja, Counsel for the Respondent submitted that, at CMA the matter has different facts. He referred at page 4 of the CMA award where in his view, the matter was resolved. He added that, after the amendment Act in the year 2016, it made it mandatory to exhaust remedies under the Public Service Commission. Prior, the Respondent was to opt either to lodge the matter at CMA or to the Public Service Commission. He thus sought, along with directives requested, hearing of the application should proceed.

I have considered submissions of both parties, and I have found that; **one**, it is not disputed that the Respondent was a Public Servant employed by the Town Council of Kahama. **Two**, the record shows that, the Respondent was terminated for acts or omission involving moral turpitude; gross negligence in the performance of his duty, failure to perform satisfactorily duties assigned to him and negligence occasioning loss to the employer.

Three, it is also on record that, the Respondent filed Labour dispute to the Commission for Mediation and Arbitration, Shinyanga which decided in his favor on 18th April, 2017 and ordered his reinstatement.

As submitted by parties, the Written Laws (Miscellaneous Amendment) Act, No.13 of 2016 which introducing Section 32A to the Public Service Act, Cap.298; Public Servants have to exhaust first remedies in the Public Service Act before resorting to the CMA. The amendment reads as follows;

"A public servant shall, prior to seeking remedies provided for in the labour laws, exhaust all remedies as provided for under this Act."

In the instant application, the Respondent was a public servant, therefore he was supposed to seek first remedies in the Public Service Commission and not to the CMA. As I stated in the case of **Kahama Council v. Kulwa Stephen Ndaudyimara** (supra), the provisions of Section 25(1)(b) of the Public Service Act, 2002 has not given a public servant another forum other than that provided for in the Public Service Act.

Furthermore, it was stated in the case of **Magreth Justus Bussa & 3 Others vs DED of Magu District Council, (2013) Labour Court Case Digest, 2017** at page 219 that, the CMA would not adjudicate labour disputes whose decision is waiting for presidential decision upon reference to him following decision of the Public Service Commission.

It is settled law in this country that, courts would normally not entertain matters for which a special forum has been provided unless, that special forum has been exhausted [see **AG V. Lohay Akonaay and Joseph Lohaay (1995) TLR 80.**]

Therefore, it is clear that, the Respondent being a Public Servant will only seek redress to reliefs under labour laws upon shown to have exhausted the forum provided for in the Public Service Act. As the Respondent was a public servant, the Act requires him to exhaust remedies in the Act, meaning, referring the dispute to the Public Service Commission.

In the end result, the Commission for Mediation and Arbitration of Shinyanga had no jurisdiction to entertain the application of the Respondent, being a public servant, unless it is proved that, he prior exhausted remedies under the Public Service Act.

For the foregoing reasons, the proceedings and the award in CMA/SHY/81/2016 are hereby nullified. Each part to bear own costs.

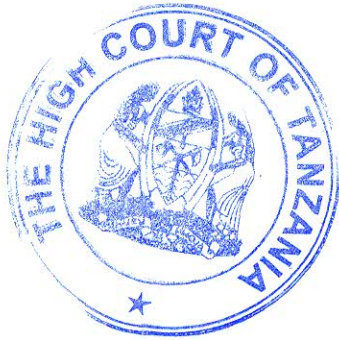
It is so ordered.


Gerson J. Mdemu

JUDGE

02/10/ 2020

DATED at **SHINYANGA** this 02nd day of November, 2020.




Gerson J. Mdemu

JUDGE

02/10/2020