THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY OF MBEYA

AT MBEYA

LABOUR REVISION NO. 23 OF 2019

(From Consolidated Labour Dispute No. CMA/MBY/87/2019)

BETWEEN

1. LEWIS MTOI
2. WETSON MWAKISU .....**APPLICANTS**
3. BULUBA MWAMBA
4. AMIRI MASUMAYI

AND

NOKIA SOLUTION AND NETWORKS

TANZANIA LTD.....RESPONDENT

RULING

1/07 & 01/10/2020

UTAMWA, J:

This application was made under sections 91 (1) (a), (2) (a) and 94 (1) (b) of the Employment and Labour Relations Act No. 6 of 2004, read together with rules 24 (1), (2) (a) – (f), (3) (a) – (d), 28 (1) (b), (c), (d) and (e), 55 (1) and (2) of the Labour Court Rules, 2007 (G.N No. 106 of 2007). The applicants namely; LEWIS MTOI, WETSON MWAKISU, BULUBA MWAMBA and AMIRI MASUMAYI moved this court to call for record,

inspect, revise and make appropriate orders against the ruling of the Commission for Mediation and Arbitration of Mbeya (the CMA) in dispute No. CMA/MBY/87/2019 dated 25/09/2019.

Briefly, the background of this application, according to the record and the arguments by the parties, is this: in July, 2019 the applicants filed an application before the CMA. It was against the respondent, NOKIA SOLUTION AND NETWORKS (T) LTD, their former employer. The application was essentially for condonation seeking extension of time for the CMA to hear the applicants' complaints out of time. The complaints envisaged to be heard by the CMA upon extending the time were said to have arisen from an unfair termination and payment of outstanding entitlements namely; initial relocation, overtime, payment of compensation incurred when performing the employer's duties by using their own tools of work and compensation for health due to nature of work.

The major reason the applicants advanced for the delay of nine years was that, they were working in remote areas which hindered them to confront their employer (the respondent). The arbitrator found *inter alia*, that, the reason was insufficient for granting the prayed extension of time. The arbitrator further noted that, the applicants' contention that they did not claim the said payments before termination because they did not want to have a dispute with the respondent while working, was not tenable. This was because, the applicants' contractual and legal rights had to be claimed when due and not to be accumulated. He thus, dismissed the application. The applicants were dissatisfied with the decision, hence this revisional application.

The applicants filed their respective affidavit containing grounds for application. Basically, the grounds are to the effect that;

(i) The CMA committed a gross error by failure to take into account that, the respondent's failure to file a notice of opposition made the applicants' prayer unopposed.

(ii) That, the absence of the counter affidavit and notice of opposition curtailed the respondent from participation in hearing and making oral arguments before the commission.

(iii) That, the CMA grossly erred to entertain the respondent's arguments and form the basis of its decision in the absence of the counter affidavit and the notice of opposing the application.

(iv) That, the CMA erred in law and fact by not considering the reasons adduced by the applicant, which were unopposed and the respondent did not deny that the applicants had demanded their entitlements and were paid part of the same before termination.

(v) That, the CMA erred in law for basing its decision on extraneous matters which were not addressed before it.

The application at hand, was opposed by the respondent through a notice of opposition accompanied by a counter affidavit sworn by Mr. Thomas Mihayo Sipemba, learned advocate. In essence, the basis for the opposition is that, the arbitrator correctly dismissed the application for condonation because, the applicants did not adduce sufficient reasons for their delay.

During the hearing of the application, all parties were represented. Ms. Mary Mgaya, learned advocate represented all the applicants. The respondent enjoyed the legal services of Ms. Pube Kabeta, learned advocate from the East African law Chambers. The application was heard by way of written submissions.

In her written submissions in-chief supporting the application, the applicants' counsel submitted that, the arbitrator misdirected himself by deciding the issue on extension of time together with the grounds which had to be dealt with when deciding the merits of the dispute/complaint upon granting the prayed extension of time. She contended that, the arbitrator was supposed to only resolve the issue of whether the applicants' delay was justified. Instead, the arbitrator decided that the claimed payments were not maintainable.

She also contended that, the ruling was based on extraneous matters in that, the arbitrator decided that compensation for health due to nature of work which was claimed by the applicants, was within the exclusive jurisdiction of the Occupational Safety and Health Authority (OSHA) and not the commission. According to her, this was not supposed to be deliberated at the stage of the application for extension of time since the issue before him was only whether the applicants had accounted for each day of delay to warranty the extension of time.

Furthermore, the applicants' counsel contended that, the decision that the claims of initial relocation, overtime and compensation from use of personal tools were not part of the terminal benefits was also premature. The same applied to the decision of the arbitrator in holding that, such

claim ought not to have been accumulated. She added that, the course taken by the arbitrator thus, prejudiced the applicants since it denied their right of fair hearing. This is because, the applicants would have defended the claims had the arbitrator extended the time. She cited the case of **Agnes Simbambili Gabba v. David Somson Gabba, civil Appeal No. 26 of 2008 Court of Appeal of Tanzania (CAT) at Dar es Salaam** (unreported) to support the contention.

The learned counsel for the applicants also insisted that, the arbitrator violated the principles of natural justice especially the applicants' right to be heard as it is enshrined under Article 13 (6) (a) of The Constitution of United Republic of Tanzania 1977 (the Constitution). The right to be heard was insisted in the case of **University of Cambridge, 1723, 1stra. 557** cited with approval by Megarry, J. in **John v. Rees and others [1969] 2 ALL 274.**

It was the view of the counsel for the applicants therefore, that, the ruling by the CMA was confusing since it was not clear if the CMA was dealing with the merits of the matter or the application for extension of time. She additionally insisted that, the claim by the applicants on initial relocation, overtime and compensation from use of personal tools for the employer's work was genuine. The criticism of the arbitrator on the applicants' reason on working continuously in remote areas (as one of the causes for the delay) was wrong and prejudicial to the applicants. She further reminded this court on what may amount to a good cause for extension of time. She thus, contended that, a good cause cannot be laid down by any fast rule, as stated in the case of **Osward Masatu**

Mwizarubi v. Tanzania Fishing Processing Ltd. Civil Application No. 13 of 2010 (unreported). She thus, urged this court to revise the ruling.

In response, the learned counsel for the respondent essentially submitted that, the application at hand has no basis. This is because, from the record especially the ruling of the CMA, it is clearly shown that, the arbitrator decided the application for extension of time before it basing on the reasons adduced by the applicants. However, the arbitrator found the reasons to be insufficient and dismissed the application. He further submitted that, the contention by the applicants that they worked in remote areas did not get evidential support since they remained to be mere words. He added that, the remote areas alleged by the applicants were never disclosed so as to assist the CMA to assess the said remoteness. He thus, prayed for this application to be dismissed for lack of merits.

I have considered the record, the arguments by the parties and the law. In my settled view, the major issue here is whether or not this court can exercise its powers to revise the impugned ruling of the CMA at issue. Indeed, I am convinced that, one important legal argument advanced by the learned counsel for the applicants sounds correct. This is the contention that, the arbitrator based the ruling on extraneous matters and deprived the applicants of their right to be heard. This view is based on the following grounds: that, according to the record, and as I hinted earlier, the application before the CMA was basically for condonation seeking extension of time for the CMA to hear the applicants' complaints out of

time. The applicants' complaints envisaged to be heard by the CMA upon extending the time, were the following: initial relocation, overtime, payment of compensation for performing the employer's duties using their (applicants') own tools and compensation for health due to nature of work.

According to the record therefore, it was intended that, the CMA would firstly hear the application for extension of time and determine it first. It was further intended that, the CMA would hear the parties on the merits of their claims (complaints) only upon granting the application for extension of time. This intention of the parties and the CMA itself is vindicated by the record of the CMA itself. According to pages 2-4 of the typed version of the proceedings of the CMA for example, it is clear, as broad daylight, that, the representative of the applicants made arguments on the issue of extension of time only. Nothing was addressed on the merits of the intended complaints of the applicants. In turn, the representative of the respondent replied to the arguments made by the applicants' representative. Those replying submissions were also focused on the issue of extension of time. The rejoinder submissions as well, were basically confined to the same issue on extension of time. The lamentation by the learned counsel for the applicants that parties did not address the CMA on the merits of applicants' complaints is thus, genuine.

The record of the CMA however, shows that, though the parties did not address it (the CMA) on the merits of the applicants' complaints, the impugned ruling discussed the merits of the applicants' claims mentioned above. It did so from page 4-5 of the typed version of the ruling. It then decided them in disfavour of the applicants. It further dismissed the

application for extension of time. The arguments by the learned counsel for the respondent that the CMA did not decide on the merits of the applicants' complaints, and that, it decided on the issue of extension of time only, cannot thus, be correct. This is because, they cannot override the contents of the record demonstrated above. The law is trite that, court records are presumed to be serious and genuine documents that cannot be easily impeached, unless there is evidence to the contrary; see the case of **Halfani Sudi v. Abieza Chichili, [1998] TLR. 527**. In the case at hand, no scintilla of evidence has been adduced to impeach the record of the CMA which has in law the status of court records.

Owing to the above depicted picture, it is correct to argue that, the applicants were not heard on the merits of their complaints as put forward by the learned counsel for the applicants. Due to these reasons, I agree with the learned counsel for the applicants that, the CMA considered extraneous matters in deciding the issue of extension time in the sense that, it considered and decided matters that were not addressed by the parties. This course amounted to a denial of the right to be heard on the party of the applicants regarding their complaints. The principles of Natural Justice were thus, violated as correctly argued by the counsel for the applicants. It is trite law that, a decision of court reached through violation of Principles of Natural Justice or the right to fair trial is a nullity; see decisions in **Agro Industries Ltd v. Attorney General [1994] TLR 43**, **Raza Somji v. Amina Salum [1993] TLR 208** and **Kabula d/o Luhende v. Republic, CAT Criminal Appeal No. 281 of 2014, at Tabora** (unreported). The law further guides that, it is immaterial whether

the same decision would have been arrived at in the absence of the violation; see **General Medical Council v. Spackman [1943] AC 627** followed in **De Souza v. Tanga Town Council [1961] EA. 377** (at p. 388), and **Abbas Sherally and another v. Abdul Sultan Haji Mohamed Fazalboy, CAT Civil Application No. 133 of 2002, at Dar es Salaam** (unreported). See further **Alex Maganga v. Awadhi Mohamed Gessan and another, HCT Civil Appeal No. 13 of 2009, at Dar es Salaam** (unreported).

In fact, the omission committed by the CMA discussed above, also offended the applicants constitutional rights to fair trial. This right is effectively enshrined under Article 13 (6) (a) of The Constitution as properly put by the applicants' counsel. This right cannot thus, be easily violated by any court or adjudicating organ in this land. The Court of Appeal of Tanzania underlined this right as one of the corner stones of the process of adjudication in any just society like ours: see the decision in the **Kabula d/o Luhende case** (supra).

The reasons I have adduced above, in my settled opinion, suffice to dispose of the entire matter without even considering other arguments advanced by both sides. I therefore, answer the issue posed above affirmatively that, this court can properly exercise its revisional powers and revise the ruling by the CMA. I therefore, make the following orders; the proceedings of the CMA, from the date this matter was heard to the date the impugned ruling was delivered are hereby nullified and quashed. The ruling made by the CMA, dated 25th September, 2019 is hereby set aside. If parties still wish, the application may he heard by another arbitrator

according to the law. Each party shall hear his own costs since this is a labour matter and the CMA contributed to the irregularity that led to this application and to the finding I have just made. It is so ordered.

J.H.K. Utamwa

JUDGE

01/10/2020

01/10/2020.

CORAM; Hon. JHK. Utamwa, J.

For applicants: present Ms. Rehema Mgeni, advocate.

For respondent: Mr. Mohamed Yusuph, advocate.

BC; Mr. Patrick, RMA.

Court: Ruling delivered in the presence of Ms. Rehema Mgeni, advocate for the applicants and Mr. Mohamed Yusuph, counsel for the respondent, in court, this 1st October, 2020.

JHK. UTAMWA.

JUDGE

01/10/2020.