

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA

REVISION APPLICATION No. 28 OF 2019

JAMES KUMONYWA..... APPLICANT

VERSUS

TCCIA MARA..... RESPONDENT

(Arising from Labour Revision No. 35/2017 High Court of Musoma)

RULING

Date: 31st March, 2020.

Kahyoza, J

James Kumonywa instituted a labour dispute to the Commission for Mediation and Arbitration (the CMA) and lost. The CMA struck out Mr. James Kumonywa's application on the ground that the dispute was lodged out of time. James instituted Labour Revision No. 35/2017 seeking this Court to revise the award of the CMA in labour **dispute No. CMA/138/2015**, striking out his application.

James was employed by Tanzania Chamber of Commerce, Industry and Agriculture-Mara Branch (TCCIA) as a Regional Executive officer. TCCIA terminated James' employment on 1/7/2015. On the 14/8/2015 James instituted a Labour dispute before the CMA. The CMA decided that by virtue of rule 10(1) of the Labour Institutions (Mediation and

Arbitration) Rules G. N 64/2007, James was required to institute his dispute within 30 days. Rule 10(1) state as follows:-

*"Disputes about the fairness of an employee's termination of employment must be referred to the Commission **within thirty days** from the date of termination or the date that the employer made a final decision to terminate or uphold the decision to terminate".*

The CMA struck out the application. Aggrieved by that award the applicant lodged an application for Revision before this Court.

This Court did not hear the application on merit as the parties reached an agreement which I reproduce here as follows: -

"Parties have reached an amicable settlement out of court that the applicant's claim be paid as he claims that is Tshs. 6,675,000/=. It was further agreed and is recorded that the respondent will pay the applicant an amount not exceeding Tshs. 6,675,000/= or less depending on the balance in respondent's account on the 28th July, 2015. The applicant left the office on the 28th July, 2015.

The respondent's chairman is bound to produce to this Court respondent's bank statement immediately after obtaining the same so that the drawn order shall reflect the actual amount payable. It is awarded accordingly.

J. R. Kahyoza
JUDGE

13/9/2019

Court: Award read over to the parties as shown.

J. R. Kahyoza

JUDGE

13/9/2019"

TCCIA was required as shown above to submit a bank statement indicating the balance into bank account on the date the applicant left office. TCCIA complied and the amount in the bank account was found to be TZS 228,390/=. A drawn order was executed showing that James was entitled to be paid TZS 228,390/=.

James was obviously aggrieved by the drawn order and instituted the current application seeking this Court to review its award.

James, the applicant, prayed to be heard afresh on the ground that there was no legal meeting conducted which resulted into an amicable settlement. He submitted further that there was no agreement on how the amount claimed must be settled.

He added that the chairman of TCCIA had malice and that he attended the negotiations without utmost good faith that is why he failed to produce a bank statement.

TCCIA, Chairman, Mr. Boniphace replied that it was agreed that the matter be amicably resolved. Following the advice, the two parties met and discussed the dispute and reached a conclusion. The conclusion attained was that James, the applicant had no legal bases for the claimed amount.

He averred that later James called him and the two agreed that James be paid any amount not exceeding his claim provided that, that amount was in respondent's account at the time of his termination.

He submitted further, that TCCIA was non – profit making organization. It depends on the contributions from members. He added that it had no source to pay the applicant's claims.

He added that agreement with the applicant was reached without any undue influence or force. The settlement was amicably reached and both sides signed it.

In his rejoinder, James contended that he TCCIA has sources to pay the claimed amount. He added that there was money collected by the chairman not banked by the former chairman.

Given the above submission there is basically one issue whether the applicant has established the grounds for this Court to Review its decision. Rule 27 of the Labour Court Rules **G. N. 106/2007** provides grounds for Review. It states:-

"27.1) Any review shall be instituted by filing a written notice of review to the Registrar within fifteen days from the date the decision to be reviewed was delivered.

(2) Any person considering himself aggrieved by a judgment, decree or order from which –

- a. *An appeal is allowed, but from which no appeal has been preferred ; or*
 - b. *No appeal is allowed, and who, from the discovery of any new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the judgment or decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the judgment, decree or order made against him.*
 - c. *Many apply for a review of the judgment, decree or order to the Court.*
- (3) – (9)”*

The award, the applicant seeks to review, was recorded amicably. For that, reason not appealable. Consequently, for the applicant to succeed, he has to establish any of the circumstances provided for under rule 27 (2)(b). Those circumstances are:-

- a. He discovered a new important matter or evidence which after exercise of due diligence was not within his knowledge at the time of the judgment, decree or order;
- b. That there exists some mistake or error apparent on the face of record; or
- c. That there is any sufficient reason.

I now consider if the applicant has established any of the above factors for review. The applicant's ground for seeking review was that there was not agreement that the applicant be paid out of the balance in the respondent account at time he left office. Another ground was that he was induced to enter into the agreement. He contended that the respondent's chairman had a hidden agenda. He did not go the negotiation table with utmost good faith. He failed to submit a bank statement at the time of negotiation.

The law is very clear it requires the applicant for review to establish that he obtained or discovered new important matter or evidence which after exercise of due diligence he could not have known the existence of that material evidence. The applicant entered into an agreement expecting that there would be enough funds in the bank account to satisfy his claim or a great part of it. He came to find out that there was negligible amount after had entered into an agreement.

There is no dispute that the applicant was not a signatory he had no means of discovering the balance in the TCCIA's bank account. The question is what new matter did the applicant discover? Is it that the account on the date he left office had no enough balance to settle his claim? Is it that he was induced to enter into the agreement believing that there will be enough balance to settle his claim?

I scrutinized the affidavit in search for to answer in vain. Thus, I find that the applicant did not established that he discovered an important evidence after the award was discovered.

I considered whether the applicant established a second ground of review, that is there exists an apparent error on the face of record. It is settled that an appeal is different from an application for review. In **Tanganyika Land Agency Ltd and 7 others V. Manohar Land Aggrawal Civ. Appl No. 17/2008** (CAT unreported) the court aptly stated that "*an application for review is by no means an appeal through a back door whereby an erroneous decision is reheard and corrected at the instance of the litigant who becomes aggrieved by such a decision*". Thus, in an application for review an applicant must demonstrate that there is an error on the face of record. What amounts to an error apparent on the face of record? The Court of Appeal has defined phrase **apparent or manifesto error on the face record** in the following decisions **Chadrakant Joshubai Patel Vs. Republic** [2004] TLR 2018 and **John Kashindye Vs. Republic**, Criminal Application No. 16 of 2014, **Patrick Sanga Vs. Republic**, Criminal Application No. 8 of 2011, **Maulidi Fakini Mohamed @ Mashauri Vs. Republic**, Criminal Application No. 120/07 of 2018 and **Issa Hassan Uki Vs. Republic**, Criminal Application No. 122/07 of 2018, **Tanganyika Land Agency Limited and 7 others Vs. Manohar Lal Aggrwal, Civil Application No. 17 of 2008** (all unreported) to mention but a few, thus,

"An error apparent on the face of the record must be such as can be seen by one who runs and reads, that is, an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may conceivably be two opinions... but it is no ground for review that the judgment proceeds on an incorrect exposition of the law ... a mere error of law is not a ground for review under this rule. That a decision is erroneous in law is no ground for ordering review... it must further be an error apparent on the face of the record ..."

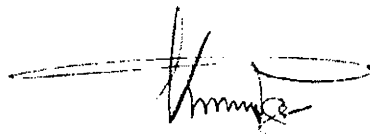
I painstakingly considered the applicant's affidavit and submission to see whether he established any error on face of record. He could not establish any patent or obvious mistake committed by the Court. All what he deponed and submitted are matters that took place outside the Court. It could be that those circumstances affected the Court's finding, however they cannot amount to apparent errors on face of record. It has been pointed out that apparent errors on the face of record are errors, which can be seen by one who **runs and reads**, and which do not require long drawn process of reasoning.

Errors, the applicant is trying to point out requires a detailed process of reasoning. One has to consider the impact of the respondent's chairman concealing some important information during the negotiation. Those are not errors on the face of record. If there are errors as submitted by the applicant, such errors cannot be see on face of record. Parties are not permitted to begin fresh litigation because of the new view they may

entertain of law or of the case or new versions they present of what should be the new appreciation of the Court.

In the upshot, I find the application devoid of merit. I accordingly dismiss it.

It is so ordered.



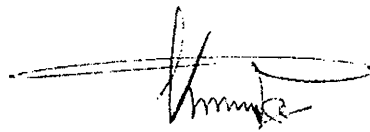
J. R. Kahyoza

JUDGE

31/3/2020

Court: Ruling delivered at 03.00 pm. Mr. James Kumonywa, the applicant was present and discharged at 09.00am before the ruling was delivered.

Copies of the Ruling to be dispatched to them. B/C Mr. Charles present.



J. R. Kahyoza

JUDGE

31/3/2020