

IN THE HIGH COURT OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

LABOUR REVISION NO. 3 OF 2019

(Original RF/CMA/DOD/82/2016)

MUSTAPHA MUHINDI & 135 OTHERSAPPLICANTS

VERSUS

C.R.J.E EAST AFRICA LIMITED.....RESPONDENT

19/5/2020 & 20/5/2020

RULING

MASAJU, J

The Applicants, Mustapha Muhindi & 135 others, by way of Notice of Application made under section 91 (1) (a) and (b), 2 (b) and (c), 94 (1) (b) (i) of the Employment and Labour Relations Act, 2004, Rules 24 (1) (2) and (3) and Rule 28 (1) (a), (c) (d) and (e) of the Labour Court Rules, 2007, apply for Revision of the Award by the Commission for Mediation and Arbitration in Labour Dispute No.REF/CMA/DOD/82/2016 between themselves and the Respondent, C.R.J.E East Africa Ltd. The Notice of Application is being supported by the Affidavit sworn by the Applicants' learned counsel, Mr. Godwin Beatus Ngongi.

The Respondent contests the Application, hence the Counter Affidavit sworn by Mr. John Kuyela Kidando, the learned counsel for the Respondent to that effect. The Respondent hasn't raised any preliminary points of law, but on the 24th day of February, 2020, when the Application was called upon for hearing, Mr. Elisha Jones, the learned counsel, for the Applicants prayed the Court to adjourn the hearing for some days so that he can guide himself on whether the Application for Revision is made by way of Chamber Summons or whether the Notice for Revision in itself suffices to move the Court. That, he would have come back to the Court to address the Court from a well-informed point of view. The Respondent, in the service of the learned counsel, John Kuyela Kidando, did not contest the prayers by the Applicants. The matter was scheduled for hearing on the 20th day of April, 2020 so that the parties can address the Court on the pertinent issues of law raised by the Applicants.

When the said legal issues were heard in the Court on the 20th day of April, 2020, the learned counsel Elisha Jones, appeared for the Applicants whilst the learned counsel, Baraka Mkami, appeared for the Respondent. The Applicants submitted that Order XLIII Rule 2 of the Civil Procedure Code, [Cap 33] provides that Applications in Court shall be filed by way of Chamber Summons supported by affidavit unless there is any other law to the contrary. That, Rule 24 of the Labour Court, Rules, 2007 provides for how Applications are made. That,

Application for Revision are provided for under Rule 28 of the Labour Court Rules, 2007 but without modalities on how to move the Court. That being the case, the Application for Revision can be made by way of a Notice supported by affidavit pursuant to Rule 24 (1) of Labour Court Rules, 2007. That, Rule 26 (1) of the Labour Court Rules, 2007 provides for Applications which are to be made by way of Chamber Summons. Revision is not among them. That, Application for Revision, therefore can be made by way of either both Chamber Summons and Notice of Application or by Notice of Application supported by Affidavit. That, this is the position of the Court as per **Sist Patrick & 2 others V. The Manager China Paper (High Court – Labour Division) Revision No. 25 of 2009; Bonite Bottlers Ltd V. William Issa (High Court – Labour Division) Revision No. 163 of 2009** and **Said Mohamed & 9 others V Ms Mees Ltd (High Court Labour Division) Revision No. 9 of 2011**. The Applicants submitted that their Application has been properly filed before the Court and therefore competent before the Court.

The Respondent, on his part, submitted that there are two conflicting positions on how to move the Court in respect of Application for Labour Revision. One position is that the Notice of Application under Rule 24 of the Labour Court Rules, 2007 suffices to move the Court as so decided by the court in **Said Mohamed & 9 others V. Ms Mees Ltd (Supra)**. The second position is that the Notice of Application does not satisfy to move the Court in Application for Labour Revision because the

essence of the Notice is just to notify the parties interested in the dispute. It cannot move the Court on its own. That, the Application for Labour Revision must be made by way of Chamber Summons supported by affidavit as it was decided in the case of **Coca Cola Kwanza Ltd V. Emmanuel Mollel (High Court Labour Division) Revision No. 22 of 2008 and PLY and Patel (T) Ltd Tanga V. Hamad Kassim (High Court – Labour Division) Revision No. 286 of 2008**. That, there is a *lacunae* in Rule 28 of the Labour Court Rules; 2007 which *lacunae* is cured by adopting Rule 26 of the Labour Court Rules, 2007 which provides for Application for Review by way chamber Summons. That, in order to have a competent Application for Revision there should be Chamber Summons supported by affidavit along with Notice of Application drawn in accordance with Rule 24 of the Labour Court Rules, 2007. The Respondent then drew the attention of the Court to the alleged defectiveness of the Notice of Application as he prayed the Court to dismiss the Application for want of competency.

The Applicants in rejoinder, submitted that their Notice of Application was not defective. The Applicants ultimately prayed the Court to maintain their Application in the Court. That in the event the Court finds otherwise, the remedy thereof should be to strike the Application out of Court instead of dismissal.

When all is said and done by the parties to this Application for Revision of a labour dispute, the Court is of the reasoning and position thus;

1. That, the relevant provisions of sections 91 and 94 of the employment and Labour Relations Act, [Cap 366] read with the relevant provisions of Rule 28 of the Labour Court Rules, 2007 form the enabling provisions of law in Application for Revision. Rule 24 of the Labour Court Rules, 2007, is not applicable because the said Rule is intended to govern the filing, initiation or institution of Labour disputes proceedings before the Court at first instance. The Notice of Application is supported by Affidavit.
2. That, Rule 26 of the Labour Court rules, 2007 is applicable to Application for Review of a decision or proceedings of a responsible person or body performing reviewable function by way of Chamber Summons supported by affidavit. The said Chamber Application of Review shall be filed to the body or person that made decision and to all other affected persons.
3. That, Rule 27 of the Labour Court Rules, 2007 is applicable to the Review of Judgments in Chambers. Such Review is instituted by filing a **Written Notice of Review** to the Registrar of the Court. This Rule provides for neither Chamber Summons nor affidavit thereto, despite the fact that such Application is made in Chambers.
4. That, Rule 28 of the Labour Court Rules, 2007 applies to the Application to the Court for Revision of Judgments.

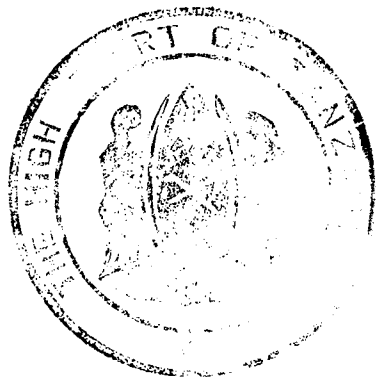
This Rule does not provide for how the Court shall be moved. The rule mentions neither Notice, Chamber Summons nor Affidavit simply because the procedural practice in the Court is that application for Revision in the Court are made by way of Chamber Summons supported by the Affidavit. Where **Notice of Application** supported by Affidavit or **Written Notice of Review** were intended in moving the Court, the specific rules thereof so stated. So, in the absence of such specific guidance on Application for Revision to the Court, Application for Revision under Rule 28 of the Labour Court Rules, 2007 shall be made by way of Chamber Summons supported by Affidavit.

5. Since the submissions on the defectiveness of the Notice of Application allegedly for non-compliance with the format of the Notice so provided for under Rule 24 of the Labour Court Rules, 2007 were not part of the two legal issues under consideration, as agreed by the parties on the 24th day of February, 2020, the Court should be passive of such submissions accordingly.

That said, the Application to the Court for Revision of Judgments under Rule 28 of the Labour Court Rules, 2007 should be made by way of Chamber Summons supported by Affidavit, being the legal practice of the Court. Since in the instant purported Application for Revision there was no such Chamber Summons supported by Affidavit but Notice of Application

supported by Affidavit, it follows that the purported Application for Revision is incompetent in the Court. The incompetent Application is hereby struck out of the Court with leave to the Applicants to file another Application for Revision, if any, out of time accordingly. The parties shall bear their own costs.

On a rather serious note, the Court wishes there could be a harmonised legislative position on how to move the Court in terms of Applications for Review and Revision under Rules 26, 27 and 28 of Labour Court Rules, 2007 by providing, *inter alia*, that such Application shall be made by way of Chamber Summons supported by affidavit and that such Application may be contested by way of counter affidavit. The need for simplified user friendly laws and rules of procedure for one to access justice in Courts of law or tribunals cannot be over emphasized. The sooner the relevant legislative authority on the Labour Court Rules considers this advice accordingly the better.



A handwritten signature in black ink, appearing to read 'George M. Masaju', is written over a horizontal line.

GEORGE M. MASAJU

JUDGE

20/5/2020