

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**HIGH COURT LABOUR DIVISION**

**AT MWANZA**

**LABOUR REVISION No.99 OF 2019**

**TANZANIA LOCAL GOVERNMENT**

**WORKERS UNION (TALGWU).....APPLICANT**

**VERSUS**

**RICHARD JULIUS RUKAMBURA.....RESPONDENT**

**RULING**

*24<sup>th</sup> April, & 08<sup>th</sup> May, 2020.*

**TIGANGA, J.**

The applicant herein is seeking for the following orders;

- a) To stay the enforcement of the Commission for Mediation and Arbitration (CMA) ruling of the labour dispute No. CMA/MZ/NYAM/429-197/2018, pending the determination of the application for revision filed before this honourable court against the decision and ruling of the CMA.
- b) To call the records of the complaint and award given in dispute No. CMA/MZ/NYAM/429-197/2018 of the Commission for Mediation and Arbitration at Mwanza before Hon. Nnembuka, K. Arbitrator, and revise the decision thereof.

The application is preferred by way of chamber summons made under sections 91(3), of the Employment and Labour Relations Act No. 6 of 2004, Rules 24(1), (2)(a), (b), (c), (d), (e), (f), and (3)(a), (b), (c) and (d), of the Labour Court Rules 2007 GN No.106 of 2007 which has been supported by the affidavit duly sworn by the applicant's counsel.

The respondent on the other hand filed the counter affidavit sworn by him together with the notice of preliminary objection to the effect that;

- a) That the application for stay of the enforcement of the ruling of the CMA in Labour Dispute No. CMA/MZ/NYAM/429-197/2018 delivered on 25<sup>th</sup> September 2019 is untenable and it offends the law i.e. section 91(3) of the Employment and Labour Relation Act (supra).
- b) That the applicant's application is misplaced, time barred, improper and incompetent.
- c) That the application titled labour revision is *res subjudice* and an omnibus procedure, for there is another labour revision with no case number files on 17<sup>th</sup> November, 2019.
- d) That the application is against the court's practice and procedure for lack of the referred CMA ruling faced with challenge by the applicant.
- e) That the chamber summons suffers non citation or incompetent citation of sub rule (11) (a) or (b) of rule 24 of the Labour Court Rules GN No. 106/2007 by which it ought to be brought.
- f) That the applicant's application is bad in law for it is an afterthought and contempt of the court or abuse of the court process as to its order by the Honourable Deputy Registrar Mr. O.H. Kingwele in the execution case No. 37/2019 and order of 5<sup>th</sup> November 2019 by Hon. F. Mahimbali in execution case No. 70 of 2019.

- g) That applicant's affidavit is incurably defective for the verification lacks paragraphs 10.1, 10.2, 10.3, 10.4, 10.5 and 10.6 as well as the place and date which the applicant as the deponent has not specifically verified them.
- h) That the whole of the application is devoid of merits for lack of reliefs sought for and legal issues arising from the material facts of the case to have not been clearly and concisely set out in the affidavit contrary to legal requirements of sub rule (3)(c) and (d) of rule 24 of the Labour Court Rules GN. No. 106 of 2007.
- i) That the application is violative of and in non compliance with rule 24(2)(b)(d) and (3) (a) of the Labour Court Rules 2007; for the same served on the respondent misses the case number assigned to the matter and the address at which the respondent is to accept and be served all the documents in the proceedings.

As a matter of procedure, once a notice of preliminary objection has been raised, the same has to be determined first, before going to the merits of the case or application, as the case may be. In consonance of that procedure, the raised preliminary objections were to be argued first.

At the hearing of the preliminary objection, the applicant was represented by the learned counsel Mr. Innocent Kihaga, whereas the respondent had Mr. Kisyeri Marwa Chacha as his personal representative.

In his submission in support of the first preliminary objection, the respondent's personal representative, Mr. Kisyeri contended that the application for labour revision has no registration number which renders the said application unrecognized and the same offends rule 24(2) (b) of

the Labour Court Rules which requires the application to be filed and to bear the case number assigned to it, by the Registrar of the High Court.

On the second limb of objection, he contended that the application for revision is time barred and that it offends the mandatory provision of section 24 of the Employment and Labour Relations Act (supra) which requires applications for revision to be filed within six weeks from the date the award was issued. The award was given on 25<sup>th</sup> September, 2019 and the applicant brought this application on 7<sup>th</sup> November, 2017 which was after six weeks and two days. He further claimed that the applicant did this without first seeking leave of this court. He referred this court to section 3(1) of the Law of Limitation Act which provides that time bared applications or suits to be dismissed.

Regarding the third limb of objection, it was submitted that the affidavit in support of the application is incurably defective for it lacks verification on paragraphs 10.1, 10.2, 10.3, 10.4 (a), (b) and (c) and also that the said affidavit did not show the place it was verified contrary to Order VI Rule 15(3) of the Civil Procedure Code, rendering the whole application improper, incompetent and un maintainable.

On the issue of failure to attach the list and documents that are material and relevant to the application; Mr. Kisyeri contended that it offends rule 24 of the Labour Court Rules because what is attached to the applicant's affidavit reflects different matters which were not pleaded in the CMA and for that matter he prays that this application be struck out for lack of list and documents material to the application.

Regarding the issue that this application is omnibus, it was claimed that the application with registration No. 99/2019 is for the stay of

enforcement and that this court is not properly addressed as required by rule 24(2)(a) of the Labour Court Rules.

Lastly on the issue that the chamber summons suffers non citation or incomplete citation of sub rule (11) (a) or (b) of 24 of the Labour Court Rules by which it ought to be brought, Mr. Kisyeri contended that the application without registration number and the application with registration No.99 of 2019 carrying the contents of stay of enforcement should be dismissed and he referred the case of **Peter Ng'omango versus Attorney General [1993] T.L.R 77**

In reply, the counsel for the applicant submitted that a preliminary objection should be on a point of law and specifically pleaded and submitted that the first, fourth and fifth points of preliminary objection do not pass the required standard. He then cited the cases of **National Insurance Co operation of (T) and Parastatal Sector Reform Commission vs. Shengena LTD**, Civil Application No. 20 of 2007 (CAT) at Dar es Salaam (unreported) citing the case of **Mukisa Biscuits Manufacturing Company Ltd vs. West End Distributors Ltd** (1969) EA 696 to that effect.

Submitting in reply to the remaining objections, counsel stated the Labour Revision filed by the applicant has a registration No. 99 of 2019 and the same has adhered to rule 24 (2)(b) of the Labour Court Rules, hence the preliminary objection has to be dismissed.

On the second issue by the respondent on the application being time barred, counsel for the applicant submitted that the award which is the subject matter of the application was delivered on 25<sup>th</sup> September, 2019. Thus from that date to the 7<sup>th</sup> November, 2019 is within the time

prescribed under section 91(1) (a) and (b) of Employment and Labour Relation Act.

Regarding the third point of preliminary objection that the affidavit of the applicant had a defective verification he submitted that the said affidavit's verification is not defective in the sense that it mentioned number 1 up to 10, which also includes 10.1, 10.2, 10.3 and 10.4 (a), (b) and (c).

On the fourth issue that the Labour Revision is against court practice and procedure for lack of a list and attachment of the documents, he submitted that the same had attachments listed and mentioned in the affidavit i.e. copy of the payments, (TALGWU-1), copy of the CMA award, copy of the ruling by the Registrar, (TALGWU-4) and therefore the application complied with Rule 24(2) (f) of the Labour Court Rules.

On the last point of preliminary objection regarding the claim that the application is omnibus and res subjudice, counsel for the applicant submitted that the application was for stay of enforcement of the award and that its chamber summons and the affidavit clearly stipulate so. He denied the same to be an omnibus application and res subjudice; and prayed for the objections to be seen as delaying technique and be dismissed.

In his rejoinder, the representative for the respondent reiterated his earlier submission that the application is time barred for it was filed after six weeks and two days without leave of this court, moreover that the application for revision has no registration number hence null and void to be entertained. He added that there can never be an application for stay of enforcement without any pending application for revision or appeal. He

concluded his submission by stating that two applications for different remedies cannot be filed together for it renders the same to be omnibus. He then prayed that this application be dismissed.

For easy flow of the arguments and ideas in this ruling and for the reasons to be revealed in the course, I will start with the third point which raises the complaint that “the application titled labour revision is *res subjudice* and an omnibus procedure, for there is another labour revision with no case number filed on 17<sup>th</sup> November, 2019. After having examined the chamber summons and the affidavit in support of the application together with the documents attached thereto, and on close examination of the reliefs sought by the applicant, in the chamber summons, I have come to an agreement with the respondent that the application is omnibus. This finding is backed up by the facts that the application at hand is Labour Revision No.99 of 2019. However, inside the file it has two chamber summons with two distinct prayers, one being for revision of the Award of Labour Dispute No. CMA/MZ/NYAM/429-197/ and the other is for stay of enforcement of the same CMA Award pending the determination of the application for revision.

These two applications though emanating from one labour dispute, but are made under different provisions of the law, and are not of similar nature, therefore combining them in one application renders the application bad in law. As it was held by the CA in **Rutagatina C.L versus The Advocate Committee and Another**, Civil Appeal No. 98 of 2010 CAT – DSM (unreported) that;

*"..When two different prayers with different provisions of the law are sought in one application, then the said application becomes omnibus and cannot stand in the eyes of the law..".*

With the above cited case, it is instructive to rule, as I hereby do, that this application is omnibus and therefore incompetent before this court. What then is the consequence? As it was also held by the Court of Appeal of Tanzania in **Mohamed Salimin versus Jumanne Omary Mapesa**, Civil Application No. 103 of 2014 (unreported) that;

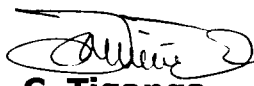
*"...as this court has held for time (s) without a number an omnibus application renders the application incompetent and is liable to be struck out"*

Therefore in view of the above, I remain with no other option than to strike out this application on the strength of the authorities cited above. Having so held, and as this point alone suffices to dispose the application, I find no reason to labour on other grounds of objection, doing so will be endeavouring into academic exercise which I am not ready to attempt.

No order as to costs is made.

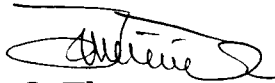
It is so ordered.

**DATED at MWANZA** this 8<sup>th</sup> day of May, 2020

  
**J. C. Tiganga**  
Judge  
**08/05/2020**



Ruling delivered in open chambers in the absence of the parties but with the directives that, they be notified of the results through their mobile phones.



**J. C. Tiganga**

**Judge**

**30/04/2020**

