

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DODOMA DISTRICT REGISTRY)**

**AT DODOMA**

**LABOUR REVISION NO. 12 OF 2021**

*(Arising from the Commission for Mediation and Arbitration in Labour Dispute of Dodoma in CMA/DOM/109/2020)*

**GLOBAL GRID (T) LIMITED.....APPLICANT**

**VERSUS**

**ELLINA SIMON IDABU.....RESPONDENT**

**RULING**

30/11/2021 & 13/12/2021

**KAGOMBA, J**

GLOBAL GRID (T) LIMITED, (the applicant) has moved this Court to call, examine, revise and set aside the Arbitral Award of the Commission for Mediation and Arbitration (CMA) Dodoma, made by hon. Matalis R, Arbitrator dated 30<sup>th</sup> April 2021 in Application No. CMA/DOM/8/2021. The applicant also prays for any other order that this Court may deem fit and just to grant.

The application is made under section 91(1)(a), (b) and (c) of the Employment and Labour Relations Act, No. 6 of 2004 as amended by section 14 of the Written Laws (Miscellaneous Amendment) (No.3) Act No. 17 of 2010 and Rule 24(1), (2) and (3) and Rule 28(1) (d) and (e) of the Labour Court Rules, GN No. 106 of 2007 and any other enabling provision of the law. The same is supported by an affidavit of applicant's advocate, Christopher Malinga.

According to the affidavit in support of the chamber application, ELINA SIMON IDABU (the respondent) and the applicant were complainant and respondent respectively before CMA in Labour Dispute No. CMA/DOM/109/2020 preferred by the respondent who claimed that she was unfairly terminated by the applicant. The dispute was heard *ex parte* and the *ex parte* award was delivered on 30<sup>th</sup> October, 2020 (Hon. Matalis R, Arbitrator). The applicant's failure to appear before CMA is stated to be caused by lack of awareness of the said matter until on 2<sup>nd</sup> November, 2020 when one of the officers of the applicant received a copy of the said *ex parte* award.

It was further stated in the supporting affidavit that the applicant's effort to get the respondent with a view to settle the said dispute amicably proved futile. It is further stated that the applicant's application for extension of time to set aside the *ex parte* award before CMA was struck out. Hence this application.

On the other hand, the respondent authorized Onesmo David Martin Issiah, learned advocate, to swear a counter affidavit to oppose the application. In the counter affidavit, the learned advocate for the respondent states, *inter alia*, that the applicant was duly served with complaint's referral form and summons and Ayoub Salum Kachenje, the applicant's officer, signed and stamped to acknowledge the service accordingly.

The Counter affidavit further attacks the application for being a delay tactic to stop the respondent from proceeding with execution of the award in Execution No. 36/2020, pending before this Court.

On the date of hearing of this application, Christopher Malinga, learned advocate appeared for the applicant while Mr. Erick Christopher, learned advocate, represented the respondent.

In his submission on behalf of the applicant, Mr. Malinga adopted the contents of the supporting affidavit particularly paragraphs 4, 5, 6, 7, 8 and 10. He went on submitting along the line of the supporting affidavit highlighting that there were irregularities in the CMA award as elaborated in paragraph 7 of the affidavit. The cited irregularities are: 1. There was no proof that the respondent was an employee of the applicant. 2. No. documentary proof to support the prayers made by the respondent against the applicant at CMA. 3. There was no proof that the respondent was unlawfully terminated.

The learned advocate prayed this Court to revise the said award citing the case of **Mohamed Salumu Nahdi V. Elizabeth Jerimiah**, Civil, reference No. 14 of 2017 where the Court of Appeal enjoins Courts to grant extension of time once an issue of illegality has been raised.

Mr. Erick Christopher vehemently opposed the application. He first adopted the counter affidavit of Advocate Onesmo David Martin Issiah as part of his submission. He reiterated what was stated in the counter affidavit that the applicant had knowledge of the presence of the dispute in CMA, as the summons were served to the applicant and were duly received and acknowledged.

Mr. Christopher added that the applicant being so duly served for her own reason opted not to come to CMA, and has not objected before this Court that her officer, one Ayoub Salum Kachenje, did receive the service. He explained that after defaulting appearance, CMA heard the matter *ex parte* and issued the award accordingly on 30/10/2020. He also explained that the award was served to, and was duly received by the applicant on 2/11/2020. That, the applicant who had not disputed to have been duly served, did not apply to set aside the *ex parte* order within fourteen (14) days set by the law, but kept quiet since 2/11/2020 up to 17/3/2021, being five (5) months later, when he filed application for extension of time to file the application to set aside the CMA award.

Mr. Christopher further submitted that in her application to set aside the *ex parte* award, the applicant told CMA that she was not aware of the dispute, which was not true. He said the respondent oppose the reason advanced by the applicant in her affidavit as well as the claim that she was not aware of the dispute.

Regarding the applicant's claim that she made effort to settle amicably with the respondent, Mr. Christopher found it ridiculous that while one of the alleged irregularities is the claim that there was no proof of the employment between the parties, yet the applicant wanted to mediate. He also opposed the existence of points of illegality while all the issues stated as points of illegality are matters requiring evidence. It is for this reason Mr. Christopher finds the cited authority in **Mohamed Salum Nahdi** (Supra) does not help the applicant, as in that case, there was a point of illegality, being the denial of a right to be heard, while in this matter at hand there are only matters

of evidence. He wound up his reply submission by pointing out that no cogent reasons were adduced for the delay of five (5) months since the *ex parte* award was issued.

In an apparent state of surrender, Mr. Malinga for the applicant, told the Court that he had nothing to rejoin, before adding that he reiterates his submission in chief.

Having heard the submissions by learned advocates for both parties, I think the issue is very clear. The Court has to decide on whether the application has merit. In determining this issue, I shall consider the facts as presented, records of the CMA and the law.

Under the cited provisions of the law applied by the applicant to prefer this application, the Court is empowered to set aside the award made. Section 91(2) of the Employment and Labour Relations Act, 2004 provides two (2) grounds upon which this Court may make revision: (1) Misconduct on part of the Arbitrator or (2) the Award being improperly procured. In this application, it is apparent that the applicant alleges the latter.

The main argument of the applicant as per paragraph 7 of the supporting affidavit is that, there are issues of illegality involved. It is trite law that illegality on face of record is a ground for revision. The duty to prove or substantiate the alleged illegality rests on the applicant. (See Tanzania **Telecommunication Co. Ltd v. Teverael Ngalambi**, [2011-2012] LCCD 31.)

In this application the said illegality is alleged to exist on three (3) points;

1. There was no proof of employment tendered by the respondent before CMA.
2. No documentary proof to support the prayers made by the respondent against the applicant before CMA.
3. There was not proof that the respondent was terminated.

As correctly submitted by Mr. Erick Christopher, all the three points raised in the application do require proof. They are, indeed, matters of questionable evidence rather than being questions of law.

By questions of law, the law envisages allegations such as lack of jurisdiction *per se*, limitation of time and denial of right to be heard. They are matters which, on their face, give an impression that a decision being challenged is no decision for lack of jurisdiction or for breach of constitutional or other legal right of a party to the dispute. The matters raised in this application do not fall under the legality category so to speak. They are contentious matters of evidence which the CMA is expected to have considered before issuing its award.

The records of CMA show clearly that the *ex parte* award was made on 2/11/2020. The submission by Mr. Christopher that the applicant was served with the said award, was not controverted by Mr. Malinga, when he had opportunity for rejoinder. It therefore remains that by the applicant filing her application five months later on 17/3/2021 to set aside the *ex parte*



award, she was hopelessly out of time. The CMA was apt in this point as shown on page 4 of its typed ruling dated 30/4/2021, when it stated:

*"Ni rai ya Tume Kwamba Mleta maombi hakuwa na matamano na umakini kuleta maombi ya kutengua uamuzi wa upande tangu alipopokea nakala ya uamuzi wa upande mmoja tarehe 2/11/2020 kwa sababu alikuwa na muda wa kutosha".*

(**Literary translated thus;** it is the opinion of the Commission that the applicant was neither interested nor serious to file an application to set aside *ex parte* award since she received a copy of the award on 2/11/2020, because she had enough time to file her application).

This Court shares the same opinion with CMA. For the above stated reason, I find no merit in this application. Accordingly, the application is dismissed. No order as to costs.

Dated at Dodoma this 13<sup>th</sup> Day of December, 2021.



  
**ABDI S. KAGOMBA**  
**JUDGE**