

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

LABOUR REVISION NO. 66 OF 2020

(Arising CMA/NYAM/118/2018)

KISSA GIDEON MWASOMOLA APPLICANT

VERSUS

AGENCY FOR DEVELOPMENT OF

EDUCATION MANAGEMENT (ADEM) RESPONDENT

RULING

06/10/2020 & 10/03/2021

W. R. MASHAURI, J;

This application is originating from Labour Dispute No. CMA/MZ/NYAM/118/2018 dated 7th May, 2018. It has been filed in this court by Kissa Gideon Mwasomola (the applicant against the decision in the above cited respondent Agency Development ADEM (Respondent).

By dint of the chamber summons in support of the application filed in this court by the applicant, the application has been made under Section 91(I)(c)(b) and 91(2)(a)(b) (c), 94(I)(b)(i) of the Employment and Labour Relations Act Cap 366 RE: 2019 read together with rule 24(2), 24(I),

24(2)(a)(b) (c)(d)(e)(f) and rule 24(3)(a)(b)(c)(d), 28(I) or (b) or (c) or (d), or (e) of the Labour court Rules, 2007, G.N No. 106 of 2007.

The order sought by the Applicant from this court is that, this court be pleased to revise and set aside an award given by the Commission for Mediation and Arbitration of Mwanza at Mwanza and grant for an order for extension of time to the Applicant to file an application for Revision out of time.

Any other order(s) this court deems fit to grant.

Suo mottu, the parties argued the application by written submissions. In his written submission, Mr. Samwel Mahuma learned counsel for the applicant adopted the applicant's affidavit as part of his submission in support of the application for revision.

The learned counsel for the applicant submitted that, he was served by the applicant his submission supporting an application for revision which was brought in court under section 91(I)(a)(b) 92(a)(b)(c), 94(I)(b)(i) of the Employment and Labour Relations Act Cap. 366 RE: 2019. Rule 24(I)(2)(a)(b)(c)(d)(e)(f) and Rule 24(3)(a)(b)(c) (d), 28, (I)(a)(b)(c)(d) and (e) of the Labour Rules, 2007.

That, under section 28(I) the court may on its own motion or on application by any party, call for the record of any proceedings which have been decided by any responsible person or body implementing the provisions of the acts an in which no appeal lies or has been taken thereto, and if such responsible person or body appears

- (a) N/A
- (b) N/A
- (c) To have acted in the exercise of its jurisdiction illegally or with material irregularity or that there has been an error material to the merit of the subject matter, before such responsible person or body involving injustice.
- (d) The court may revise the proceedings and give such order as it deems fit.

The issue is whether the applicant has properly moved this court to revise the decision of the CMA for Mwanza at Mwanza in the Labour Dispute No. CMA/MZ/NYAN/118/2018 dated 7th May, 2018.

This is not a suo mottu made application for revision initiated by this court under section 28(I)(c) of G.N. No. 106 of 2007. It has been filed by the

applicant under rule 24(I)24(2) (a)(b)(c)(d) (e) (f) and 24(3) (a)(b)(c)(d) of the Labour Court Rules G.N. No. 106 of 2007.

Section 24 – (I) G.N. No. 106 of 2007 provides that: -

24 – (I) Any Application shall be made on notice to all persons who have an interest in the application.

Section 24 – (2) provides that: -

24(2) The notice of applications Shall substantially comply with Form No. 4 in the schedule to these rules signed by the party bringing the application and filed and shall contain the following information: -

- (a) The application shall be supported by an affidavit which shall clearly and concisely set out: -
- (b) A statement of material facts in a chronological order on which the application is based.
- (c) A statement of the legal issues that arise from the material fact of the case. I have carefully gone through the applicants sworn affidavit and I agree with the respondent's submission in opposing the application that, in his sworn affidavit, the applicant said nothing as to how Rule 28 paragraph (I) (c) and (d) was violated.

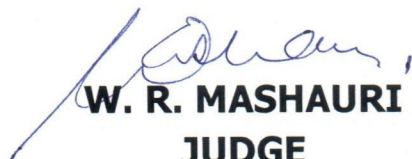
What is complained of by the applicant in his affidavit is that, when this labour dispute was filed on 2nd Mach, 2018 the complainant sought condition to refer the dispute as he was demanding inter alia salary arrears. His application however was dismissed instead of being struck out.

It is settled law that, once a labour dispute is filed in court before the same is heard, it is a condition sine qua non to refer the same to the responsible person or body for condonation.

An omission to refer the same for condonation is fatal. It is an error material to the subject matter. And since the error is a procedural error, the application ought not to be dismissed. It ought to be struck out so as to give room to the applicant to go to court and rectify the same.

To that extend, this application for revision is allowed.




W. R. MASHAURI
JUDGE
04/03/2021

Date: 10/03/2021

Coram: Hon. W. R. Mashauri, J

Applicant:

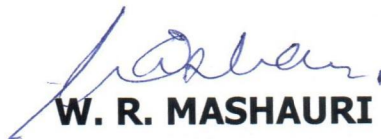
Respondent:

B/c: Elizabeth Kayamba

Court: Ruling delivered in court in presence of Mr. Samwel Mahuma Advocate for the appellant and Subira Mwasomola, State Attorney for the Respondent this 10th day of March, 2021.

Right of appeal explained.




W. R. MASHAURI
JUDGE
04/03/2021