

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

**LABOUR REVISION NO. 27 OF 2020**

*(Arising from Labour Matter in CMA/MUS/39/2020 before Hon. KEFA P.E)*

**CHAMA CHA WAALIMU TANZANIA (CWT).....APPLICANT**

**Versus**

**BARAKA AGALLA OWAWA ..... RESPONDENT**

**RULING**

*16<sup>th</sup> March & 29<sup>th</sup> April, 2021*

***Kahyoza, J.***

**Baraka Agalla Owawa** sued **Chama cha Walimu Tanzania** (CWT) for unfair termination before the Commissioner for Mediation and Arbitration at Musoma (the **CMA**). **Baraka Agalla Owawa** won the case. The labour dispute was heard *ex parte*. **Chama cha Walimu Tanzania** (CWT) filed an application seeking the **CMA** to set aside its *ex parte* award. The CMA dismissed the application.

Aggrieved, **Chama cha Walimu Tanzania** filed an application for revision seeking this Court to set aside the order of the CMA refusing to set aside its *ex parte* award.

A brief background is that the respondent instituted a labour dispute against the applicant, his employer. The arbitrator fixed a hearing date. On the date fixed for hearing the applicant's advocate was unable to attend on the ground that his employer advised him to quarantine himself for 14 days as it was suspected that he might have contacted COVID-19

following his travel to Dar es salaam. He prayed the hearing to be fixed any date from the 1<sup>st</sup> day June to 5<sup>th</sup> day June, 2020. The applicant's Regional Secretary submitted a written request and appeared before the CMA. For reasons not recorded, the arbitrator did not grant the request instead he adjourned the hearing to 22<sup>nd</sup> May, 2020. On the 22<sup>nd</sup> May, 2020 neither the applicant's advocate nor the applicant's Mara Regional Secretary attended. The arbitrator decided the matter to proceed *ex parte*. On the 27<sup>th</sup> May, 2020 the arbitrator handed down an *ex parte* award.

The applicant filed an application seeking to set aside the *ex parte* award. The arbitrator ordered the application to be heard by way of written submissions. The arbitrator directed the parties to file submissions within seven days from the date of the order. None of them complied with the order. The arbitrator dismissed the application seeking to set aside the *ex parte* award on the ground that the applicant failed to advance sufficient reason for not attending.

Given the above background, the issues for determination is simple, that is whether the CMA was justified to rule out there was no sufficient cause to set aside its *ex parte* award.

Mr. Erick Kahangwa learned advocate represented the applicant while the respondent appeared in person, unrepresented. The Court heard the application orally. I will refer to the submissions while answering the issue.

**Was the CMA justified to rule out there was no sufficient cause to set aside its *ex parte* award?**

Mr. Erick Kahangwa challenged the way and the speed the CMA applied to this matter. He submitted that the CMA speed prejudiced the

applicant. He added that the CMA misdirected herself on the following reasons-

1. Failure to give the advocate the benefit of doubt because at that time there was an outbreak of COVID -19 and he was diligent to inform the CMA;
2. If the adjournment was granted as prayed it would not have prejudice the respondent who was the complainant before the CMA;
3. The speed of the CMA prejudices the respondent before the CMA and she was denied her right to be heard.

The respondent requested the Court to adopt his counter affidavit and added that the applicant was served with summons timely through Mara Regional Secretary of Chama cha Walimu Tanzania. The respondent argued further that the applicant's advocate did not produce evidence to prove that he was directed to quarantine himself.

The respondent concluded that the applicant had no intention to pursue the matter but to cause hardship to him and his family.

In his rejoinder, applicant's advocate reiterated what he submitted in chief.

I went through the record of CMA and considered the rival submissions of both parties. I agree with the applicant's advocate that the CMA conducted the matter at a supersonic speed. The speed would not see no problem with the speed provided the applicant was duly notified of the date when the matter was fixed for hearing. To start with, the CMA fixed the matter for hearing on the 19/5/2020. On that date, the applicant applied for 14 days' adjournment via the applicant's Regional Secretary who submitted a letter requesting for an adjournment. The CMA refused a 14 days' adjournment but granted a three days' adjournment in the

presence of the applicant's Regional Secretary. The CMA fixed the date of hearing on the 22/5/2020.

On the date when the matter was fixed for hearing, the applicant's advocate and the applicant's Regional Secretary were absent with no information to the CMA. The matter proceeded *ex parte*.

The applicant applied for setting aside the *ex parte* award. The CMA directed the application to be heard by way of written submissions. It further directed submissions to be filed within 7 days. The CMA gave the order to file submission on the 29/5/2020 in the presence of the applicant and a person not mentioned who represented the applicant. The applicant defaulted to file the submission as directed. The CMA dismissed the application on the ground that the applicant did not adduce sufficient reasons for setting aside her *ex parte award*. I hope the CMA reached that conclusion on the ground that CWT failed to file the submission.

I have no doubt that the law is settled to the effect that the court shall dismiss the case for want of prosecution if a party fails to file written submission. The question is whether the parties were so ordered. The record reads that on the 29/5/2020 the applicant was present and the respondent was present. The record does not indicate who was present on behalf of **CWT**, the applicant. It is common knowledge that the **CWT** cannot appear in person. The CMA's record prior to the record on 29/5/2020 indicated particulars of the person who appeared for the **CWT**. It is not clear from the record who did appear on behalf of CWT on that date. It is also not clear how the **CWT** served the respondent. Was it by coincidence that both parties found themselves before the **CMA** on that date. Pascal Msafiri averred in his affidavit in support of the application under paragraph seven that he did not enter appearance on that day. He

averred that-

*"That, unfortunately the said application was rejected on the ground that the applicant failed to file written submission before the Commission. It's (sic) Musoma and we even had never appeared in person before him physically but he has been giving instructions on phone. No order was given to dispose Application No 39 by way of written submission apart from the one pertaining to Application No. 47 which we submitted."*

The averment above quoted confirms my worries that the record on the 29.5.2020 does reflect what took place before the CMA. The record is false. The applicant did not enter appearance on the on the 29.5.2020 and for that reason, the CMA gave the order in the absence of the applicant. I wonder why did the CMA falsify the record to indicate that the applicant was present when she was not. Not only that but also, the order for filing the submissions was ambiguous. It did not specify who and when to file submission. It is very vital that the court's order must be clear and given in the presence of the parties or when their presence may be assumed before parties are condemned for not abiding with it. I will quote the order under consideration for sake of clarity. The order reads-

*"29/05/2020*

*LETA P.E.*

*MLETA MAOMBI YUPO*

*MJIBU MAOMBI YUPO*

*TUME*

*Shauri limekuja kwa hatua ya kusikilizwa maombi ya kutengua uamuzi wa upande mmoja. Mjibu maombi ataleta kiapo kinzani tarehe 15/06/2020. Mawasilisho yatafanyika kwa njia ya*



*maandishi, kwa utaratibu wa kila siku saba (7) kwa kila upande. Uamuzi utatolewa tarehe 21/09/2020.”*

Let us assume, for sake of argument, that the parties were present as the order purports and ask ourselves when was the first party required to file a written submission. Was it seven days from the date of the order on the 29/5/2020? Was it seven days from the date of filing the counter affidavit on the 15/6/2020? Was it seven days from the date the respondent served the counter affidavit upon the **CWT**? In short, the CMA's order dated 29/5/2020 was ambiguous and for that reason unenforceable.

In addition, one wonders why did the CMA hurriedly order the parties to file written submissions within 7 days on the 29/5/2020 and set a ruling date in September. Why did the speed decline?

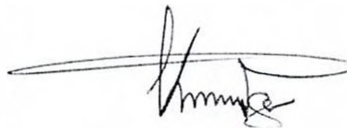
I also considered the ground for adjournment advanced CWT's. The CWT's advocate wrote a letter requesting for 14 days adjournment. The letter was submitted by the CWT Mara Regional secretary who entered appearance before the CMA. The reason for the prayer was that the applicant's advocate was advised to quarantine himself following his trip to Dar es salaam during the COVID-19 outbreak. He quarantine himself in fear that he may have contracted the deadly virus. It was a first time for CWT's advocate to request for an adjournment. He had not prayed for adjournment previously. He applied for an adjournment of 14 days only. The CMA had a duty to consider the conduct of the CWT's advocate before granting or denying the adjournment sought. In the circumstance of this case, it was not reasonable to deny the request and condemn the CWT's advocate for applying delaying tactics.

In addition, the respondent resentfully opposed the application on

the ground that the applicant did not produce proof that he was advised to quarantine himself in fear that he might have contracted COVID-19. It was a common knowledge that there was COVID-19 outbreak in this country for the first time in March, 2020. It was also a common medical advice that once a person has been exposed to areas hit by the virus had a duty to his neighbours to quarantine himself for 14 days before he could intermingle with them. I have said above that the CMA ought have examined the record to establish the applicant's advocate's conduct before deciding on the matter. It was the first time the advocate was requesting for adjournment. I am of the firm view that the CMA should have allowed the applicant's advocate's request. I am afraid to say that the CMA had its agenda and that may be the reason it fabricated the *corum* on the 29.5.2020.

Finally, I find that the applicant adduced sufficient grounds for the CMA to vacate its *ex parte* award. Consequently, I allow the application, quash the CMA award that the applicant had no sufficient reason for his absence and set aside the CMA *ex parte* award. I further, order another arbitrator to hear the application *inter-partes*.

It so ordered



**J.R. Kahyoza,  
Judge  
29/4/2021**

**Court:** Ruling to be delivered in the presence of Mr. Philipo advocate holding Mr. D. Kahangwa advocate for the applicant and in the presence of the respondent in person. B/C Ms. Catherine present.



A handwritten signature in black ink, appearing to read "J.R. Kahyoza". The signature is stylized with a long horizontal stroke extending to the left.

**J.R. Kahyoza,  
Judge  
29/4/2021**