IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT MWANZA

LABOUR REVISION No. 27 OF 2020

(Original CMA/MZ/NYAM/420/2019)

ZEPHANIA O. ADINA ---------- APPLICANT

VERSUS

GPH INDUSTRIES LTD ---------- RESPONDENT

JUDGMENT

24th February, & 21st April, 2021

TIGANGA, J

In this matter the court has been moved under sections 91(1)(a),(b),(2),(a),(b),(3),(4),(a),(b) of the Employment and Labour Relations Act No. 6 of 2004, Rule 24(1),(2)(a),(b),(c),(d),(e),(f), and (3)(a),(b),(c),(d), together with Rule 28 (1),(c),(d) and (e) of the Labour Court Rules, 2007 GN No.106 of 2007. The application has been preferred by chamber summons which was supported by an affidavit sworn by the applicant together with the notice of application and notice of representation. The orders sought in the chamber summons are:-

1. That this Honourable Court be pleased to call for records, revise and set aside the whole CMA ruling on Labour Dispute Number CMA/MZ/NYAM/420/2020 by Hon. Lucia Chrisantus, Mediator issued to the applicant on the ground set forth on the attached affidavit in support of this application.
2. That this Honourable Court be pleased to determine the application in its entirety in the manner it considers appropriate.
3. That this Honourable Court be pleased to give any other relief it deems fit and just to grant.
4. Any relief the court may deem just to grant.

The affidavit filed in support of the application narrated the following sequence of events. That on 29th November 2019 the applicant filed Labour Dispute No. CMA/MZ/NYAM/420/2020, to the CMA Mwanza, against the respondent, in which he was claiming for the breach of contract by the respondent. That application was objected by the Notice of Preliminary objection from the respondent on the ground that the respondent is not located in Mwanza something which is not true.

On 31st of January 2020 the Mediator ruled out the objection in favour of the respondent. The applicant depose that the mediator

misdirected herself by saying that, the applicant referred the dispute out of time while in fact not. Also that the mediator erred in fact for refusing to accept the documentary evidence tendered by the applicant before the Commission for Mediation and Arbitration.

Further to that, it was deposed that, the applicant worked and stayed at the respondent's Camp site at Buhalahala in Geita and not in Bukombe and that the CMA misdirected itself when it held without considering the fact that, the applicant together with the respondent are all official residents of Mwanza therefore the CMA Mwanza had jurisdiction.

The application was opposed by filing the Notice of opposition and the counter affidavit, sworn and filed by Japhet Ngussa, who introduced himself as a principal officer of the respondent company who also appeared in the representation of the respondent. In the counter affidavit, the deponent deposed that, the applicant misunderstood the clear ruling of the arbitrator. The respondent further deposed that, the arbitrator properly analysed the evidence presented before the commission and award was passed basing on the evidence adduced by the parties.

Further more, the respondent states that, the law is clear that the claim must be filed at a place where cause of action arose and not where a

person lives as stated in page 3 paragraph 2 of the ruling hence no legal issues have arisen, in this matter requiring the attention of this honourable court.

At the hearing, parties were represented, where as Mr. Mathias Mwilwa represented the applicant, Mr. Japheth Ngussa appeared representing the respondent. In the submission in chief Mr. Mwilwa, save for few issues which he submitted in explanation, he reiterated the content of the affidavit filed in support of the application. For purposes of brevity, I will not reproduce all what he submitted as most of the facts have already formed part of this judgment in the summary of the affidavit, but will I pick additional explanation only. He in essence submitted that, the arbitrator erred when he ruled that parties should open up cases where the disputes arose. He said the place of resident of the applicant is in Mwanza, and the respondent has its headquarters in Mwanza City along Kenyata Road. To prove that, the counsel urged this court to refer to the address of the respondent in all correspondences which show that it is in Mwanza.

He reminded this court that the arbitrator would have based on the provision of rule 22(2) of the Labour Institutions (Mediation and

Arbitration) Rules, GN. No. 64 of 2007 which provides the commission with powers to determine the venue of Mediation and Arbitration, for that reasons, he prayed the matter to be returned to the CMA Mwanza to be heard on merit.

Mr. Japhet Ngussa, submitted in his reply that, the law requires the dispute to be filed where the employer is, he submitted that the respondent has its Head quarters in Geita at Buhalahala where they base.

Mr. Ngussa submitted that the applicant was employed in Geita and was working there that is why the respondent objected and suggested that the matter be commenced at CMA Geita. He submitted that the decision of CMA Mwanza is clear and it based on the law, that is rule 22(1) of the Labour Institutions (Mediation and Arbitration) Rules, GN. No. 64 of 2007 which in his opinion clearly provide that dispute should be filed where the dispute arose, he in the end submitted that the application be dismissed in terms of section 15 of the Labour Institutions Act, No.07/2004

In rejoinder, the applicant admitted that rule 22(1) provides that the disputes be filed at where the cause of action arose, but sub rule 2 of that rule, provide the CMA with powers to determine the venue, if the applicant has demonstrated reasons sufficient to move the court. Therefore it was

not proper for the CMA to confine itself on rule 22(1) without looking at sub rule 2. He in the end asked this Court to be guided by the wisdom and order that the case be heard before the CMA Mwanza.

Now from the affidavit and the submissions made by the representative of the parties, there is only one issue which calls for determination by this court that is "whether the trial CMA was justified to rule that it has no jurisdiction to hear the dispute on account that the dispute arose in Geita, so the same was supposed to be filed before the CMA Geita."

It is a trite law that, except where the court is exercising inherent jurisdiction, all other types of jurisdictions are conferred to the court by statutes. In labour cases, jurisdiction is exclusively conferred to the Labour Institutions which includes CMA as provided by the Labour Institutions (Mediation and Arbitration) Rules, and GN. No. 64 of 2007 provides as follows;

> *"Rule 22(1) A dispute shall be mediated or arbitrated by the Commission at its office having responsibility for the area in which the cause of action arose, unless the commission directs otherwise.*

(2)The commission shall determine the venue for mediation or arbitration proceedings."

From the plain interpretation of the provision, it goes without saying that the dispute must be filed before the commission established in the area in which the dispute arose. In this case, it is not disputed that the dispute arose in Geita where the applicant was working; the commission has already established its office in Geita which is responsible for settling disputes arising from Geita Region. Therefore in the circumstances the commission with jurisdiction to entertain the dispute, to mediate and arbitrate the parties is in Geita Region.

As earlier on hinted, the applicant complains that the commission should not have confined its finding to sub rule 1, it ought to have gone to sub rule 2 which empowers the commission to determine the venue to conduct mediation or arbitration proceedings. I entirely agree with the counsel that, that is what the sub rule 2 provides. However, with all due respect to the applicant, I think he has misconceived the provision. The provision empowers the commission only to determine the venue for mediation or arbitration proceedings. The catch phrase here is the "venue for mediation or arbitration proceedings." Now what does the term "venue"

mean? The term is not statutorily defined, but in Backs Law Dictionary, 9th Edition, Bryan A. Garner, 2009, Thomson Reuters, define it as follows;

> *"Venue means the proper or a possible place for a lawsuit to proceed, because the place has some connection either with the events that gave rise to the lawsuit or with the plaintiff or defendant. The territory, such as a country or other political subdivision, over which a trial court has jurisdiction"*

In further distinguishing the venue with jurisdiction, the dictionary went further that;

> *"Venue must be carefully distinguished from jurisdiction. Jurisdiction deals with the power of a court to hear and dispose of a given case, Venue is of a distinctly lower level of importance; it is simply a statutory device designed to facilitate and balance the objectives of optimum convenience for parties and witnesses and efficient allocation of judicial resources."*

Jack H. Friedenthal *et al*, Civil Procedure 2.1, at 10 (2d ed. 1993).

> *"The distinction must be clearly understood between jurisdiction,* ***which is the power to adjudicate,*** *and venue, which* ***relates to the place where judicial authority may be exercised*** *and is intended* ***for the convenience of the litigants****. The most important difference between venue and jurisdiction is that a party may consent on the venue for the adjudication to take place, but can not just consent on the*

jurisdiction as jurisdiction be conferred by the parties, if it has not been granted by the law."

From this definition, the venue may be chosen from within the court's geographical jurisdiction, either after the proposition of the parties, or by the court or tribunal basing on two considerations, namely; **one** to facilitate and balance the objectives of optimum convenience for parties and witnesses and **two,** for efficient allocation of judicial resources.

It means venue can be chosen or selected only within the geographical jurisdiction of the court or tribunal.

It is trite law, that, the first thing for the court or tribunal to consider when approached is whether it has jurisdiction or not. If it is satisfied as to whether it has jurisdiction, it is when it can choose or determine the venue where the proceedings (mediation and arbitration) may be conducted. From the fore going, it goes without saying that, without first having jurisdiction, the CMA could not have chosen the venue to be Mwanza. If a venue, it was supposed to be selected within Geita region, where the CMA Geita has jurisdiction. In the case of **Fanuel Mantiri Ng'unda vs Herman Mantiri Ng'unda & 2 others** [1995] TLR 155 CAT – stressing on the importance of jurisdiction held *inter alia* that;

the application is therefore dismissed for the reasons given. Since this is a labour matter, no order as to costs is made. It is accordingly ordered.

DATED at **MWANZA** this 21st day of April, 2021

J. C. Tiganga

Judge

21/04/2021

"The question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature. In our considered view the question of jurisdiction is so fundamental that the court must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial.

....The reason for this is that, it is risky and unsafe for the court to proceed with the trial of the case on the assumption that the court has jurisdiction to adjudicate upon the case. For the court to proceed to try the case on the basis of assuming jurisdiction has the obvious disadvantage that the trial may well end up in futility as a null and void on ground of lack of jurisdiction when it is proved later as a matter of evidence that the court was not properly vested with jurisdiction"

From the above analysis the learned Arbitrator was justified to hold that since the cause of action arose in Geita, under rule 22(1) the commission with jurisdiction was that of Geita. The dispute was therefore supposed to be filed in Geita, and had the applicant needed the same to be heard in Mwanza for convenience purpose, he would have moved the CMA Geita to transfer the dispute if possible so that the dispute can conveniently be heard before CMA Mwanza. Basing on the findings above,