

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DODOMA

APPLICATION FOR LABOUR REVISION NO. 4 OF 2019

STECOL CORPORATION LTD APPLICANT

VERSUS

SAIMON ABRAHAM & 2 OTHERSRESPONDENT

24/8/2021 & 3/9/2021

RULING

MASAJU, J

There had been labour dispute RF/CMA/DOM/136/2018 between the Respondents Saimon Abrahamu Mwalim & 3 others and the Applicant, Stecol Corporation before the Commission for Mediation and Arbitration (CMA), Dodoma Chambers. When the pleadings by the parties were complete, the dispute was scheduled for preliminary hearing accordingly. The preliminary hearing was not heard on the scheduled dates because the Applicant and her learned counsel, Said Kamsumbile, defaulted appearance before the trial tribunal up to the 12th day of March, 2019 when the trial tribunal ordered that there be *ex-parte* hearing of the dispute under Section 88(8) (b) of the Employment and Labour Relations Act, [Cap 366]. The dispute was so heard *ex-parte* and concluded on the same day the 12th day of March, 2019. The *ex-parte* decision thereof was delivered on the 28th day of March, 2019 in the presence of the Respondents but in the absence

of Applicant. Hence this Application for Revision, made by way of chamber summons under section 91(1) (b), section 91(2) (b) and (c) and section 94 (1) (b) (i) of the Employment and Labour Relations Act [Cap 366 RE 2009, Rule 24 (1), Rule 24(2) (a), (b) (c), (d), (e),(f) & Rule 2(3) (a), (b) (c) (d), Rule 28 (1) (c) and (d) of the Labour Court Rules, GN, 106/2007 supported by the Affidavit affirmed by Said H. Kamsumbile the learned counsel, that the commission for Mediation and Arbitration's award made on the 28th March, 2019 in Labour Dispute No. CMA/DOM/136/2018 be set aside. At the same time in the Notice of Application thereof made under Rule 24(1), Rule 24(2)(a), (b),(c),(d) (e),(f) and Rule 24(3) (a), (b) (c)(d), Rule 28 (1) (c) and (d) of the Labour Court Rules GN. 106/2007 and Section 91(1) (b), section 91(2) (b) and (c) of the Employment and Labour Relations Act, [Cap. 366 RE 2009] the Applicant is for the order thus;

"1. That the commission for Mediation and Arbitration Award made on 28th March, 2019 in Labour Dispute No. CMA/DOM/136/2018 be set aside on the following grounds that is to say;

- a. The award was improperly procured.*
- b. The award is unlawful, illogical or irrational".*

The Respondents Contest the Application and there is their own counter Affidavit to that effect along with the Notice of preliminary objection on points of law that;

"1. the application is incompetent before this Court since contravenes provisions of laws for lack of notice of representation.

2. *The Application is incompetent before this Court since this Court has no jurisdiction to entertain this Application”.*

When the parties were called upon for hearing of the said preliminary points of law, the learned counsel, Mack Chauka, for the Respondents vacated the 1st preliminary point of law and retained the 2nd preliminary point law. The learned counsel Rockus Komba, appeared for the Applicant who contests the said preliminary point of law.

The learned counsel for Respondents argued that the Court lacks jurisdiction to entertain this application for Revision because the Applicant pursuant to section 87 (5) (a) (b) of the Employment and Labour Relations, Act, [Cap 366] ought to have applied to the trial tribunal to set aside the *ex parte* decision and award thereof first instead of coming directly to the Court. that section 87(5) (a) (b) of the Employment and Labour Relation Act, [Cap 366] read together with Rules 29(1) (c) and 31 of the Labour Institutions (Mediation and Arbitrations) Rules, 2007 (GN. 64/2007) and Rule 14 (5) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, 2007 (GN. 67/2007) so guide. That, the Applicant therefore erred in law to file the Application before the Court. The incomplete Application should be dismissed from the Court.

The learned counsel, Rockus Komba, for the Applicant submitted that the alleged point of law was not a point because it required consideration of facts first. That, the Application before the Court was not about setting aside *ex parte* decision made by the trial tribunal, but about quashing the said decision/award for material irregularities. That, the Employment and Labour Relations Act, [Cap. 366] and the Labour Court Rules, 2007 do not

prohibit the Applicant to seek the remedy against *ex parte* decision/award in the Court. That, the legal authorities relied upon by the Respondents relate to the trial tribunal (CMA) not the Court. That, this Court is seized with jurisdiction to entertain the Application in accordance with Rule 28(1) of the Labour Court Rules, 2007. That, the remedy, if any, of filing an Application before the trial tribunal for setting aside *ex parte* award/decision does not deprive the Applicant the right to file Application for Revision of the said Award before the Court pursuant to Rule 28(1) of the Labour Court Rules, 2007. The Applicant ultimately prayed the Court to dismiss the preliminary point of law for want of merit.

That said, the Court is of the considered position that whenever there is *ex parte* decision, the first remedy available for the party aggrieved by such *ex parte* decision is for him to file an Application for setting aside such decision before the very court or tribunal that made such *ex parte* decision/award. And in case of the Labour dispute, Section 87(3) (b) (5) (a) (b) of the Employment and Labour Relations Act, [Cap 366 RE 2019] is very clear and categorical on the procedure. If the trial tribunal refrains from setting aside her *ex parte* decision/award, the aggrieved party thereof comes to the Court for Application for Revision of the said *ex parte* decision made by the trial tribunal. The Court is only seized with revisionary jurisdiction when the aggrieved party has exhausted the other remedy available in the trial tribunal. This Application has therefore been filed before the Court prematurely, hence incompetent Application.

The meritorious preliminary point of law is hereby sustained. The incompetent Application is therefore hereby struck out of the Court accordingly. The parties shall bear their own costs.




GEORGE M. MASAJU

JUDGE

3/9/2021