

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
(LABOUR DIVISION)
AT MOSHI**

APPLICATION FOR REVISION NO. 16 OF 2020

(Originating from award of the Commission for Mediation and Arbitration at
Moshi in the Labour Dispute No. MOS/CMA/ARB/33/2015)

ELIA SAMSON APPLICANT

Versus

TPC LIMITED.....RESPONDENT

Last Order: 18th Aug, 2021

Date of Ruling: 12th Oct, 2021

RULING

MWENEMPAZI, J.

This application for Revision has been brought under section 91 (1) (b), 91 (2) (a) (b) of the Employment and Labour Relations Act, No. 6 of 2004 (the ELRA) and Rule 24 (1), (2) (b) (c) (d) (e) (f) and (3) (a) (b) (c) (d) and Rule 28 (1) (c) (d) and (e) of the Labour Court Rules, GN No. 106 of 2007.

The applicant, Elia Samson is praying for this Court to revise and set aside an award by Commission for Mediation and Arbitration (CMA) at Moshi in Labour Dispute No. MOS/CMA/ARB/33/2015 and order the (CMA) to hear

the matter afresh. The application is supported by an affidavit sworn by the applicant.

In his affidavit the applicant stated that he was employed by TPC LTD on 01/08/2007 and that he was unfairly terminated from work on 15/01/2013. He stated further that after the termination of his employment he instituted a complaint at the CMA with registration No. Mos/MA/ARB/33/2015. The dispute which was heard ex-parte after failure by the employer to appear before the Commission with no good reason. After hearing the dispute was decided in favor of the applicant and the respondent who is the employer was ordered to pay the applicant Tshs. 3,404,923/=. That the respondent was aggrieved by the decision and decided to file for revision before this court.

The applicant stated further that the revision was heard by Honourable Mipawa J. who ordered for the dispute to be returned to CMA for it to be heard afresh. That the dispute was heard again at the CMA where the respondent raised an objection which after being heard the commission dismissed the application in its decision dated 30/7/2016 which is subject matter of the present application.

The respondent on the other hand filed a counter affidavit sworn by Mr. David Shilatu. In the affidavit contesting the application Mr. Shilatu stated that the applicant was ordered by the honorable Mipawa J, to file a proper application at the CMA by following the procedure. He stated further that in order for a dispute to be heard by the Commission, the Commission is

required to consider what is provided for in CMA Form No.1 and not otherwise. He thus stated that in his application before the CMA, the applicant was required to fill CMA Form No.1 and CMA Form No.7 but he did not so the commission was right in dismissing the application.

Mr. Shilatu further stated that the Commission is governed by law and order thus if the applicant would have complied with the order and procedure of instituting his claim then the matter would not have been dismissed by the Commission. He concluded by praying that the application before this court be dismissed.

When the matter was set for hearing the respondent did not make appearance so the applicant prayed to proceed ex-parte and the prayer was granted. The court also ordered the applicant to file written submission in support of his application. The applicant's submission was prepared and filed by Mr. Manase Mwaungulu.

It was Mr. Mwaungulu's submission in challenging the award that CMA denied the applicant his rights by dismissing the application without considering the rights of the employee and this court's order made by Honourable Mipawa, J. which required the CMA to hear the matter afresh.

It was Mr. Mwaungulu's submission that the CMA was wrong to have dismissed the matter without considering the following; (a) that the dispute was about the rights of the employee. (b) that the matter had taken a long time without being heard. (c) that the CMA was required to resolve the matter as ordered by Honourable Mipawa, J. and not to dismiss the matter.

(d) that they had instituted the matter within 30 days that were granted by Honorable Mipawa, J.

Finally, it was Mr. Mwaulungu's prayer that the court order the matter to be heard afresh by proceeding with mediation and arbitration without having to fill the required form CMA- F1 as it had already been done and the matter was registered with No. Mos/CMA/MED/11/2013 so the matter should proceed with hearing.

For purposes of determining this application I find the only issue need to be answered is whether this application for revision has merit. The applicant's complaint was based on the issue that the CMA erred by dismissing the application while the order of the high court through Honourable Mipawa J, required for the matter to be heard afresh. The applicant was of the opinion that the initial application which was heard ex-parte was correctly instituted as there was no problem with the forms so the only issue was that the respondent was not heard that is why they sought for revision at the high court where they were granted with a right to be heard by ordering the CMA to hear the application. According to the applicant there was no need to fill the forms again because the respondent sought for a right to be heard which was granted by the High Court so the CMA was required to hear the parties and not to dismiss the application since the initial forms had no problem. After going through the CMA records, affidavits and submission made, I have noted that the decision subject of this revision which dismissed the applicant's application was based on the reason that the applicant did not adhere to the order of this

honorable court which required him to institute a fresh application within 30 days. So, the Chairman dismissed the application for failure by the applicant to comply with the order. Now the issue is whether the chairman was right in his ruling.

In order to determine this issue, I find it necessary to look at this court's order given by Honourable Mipawa J. in his judgment dated 14th August 2015. The order stated that, ***...the Respondent Elias Samson is given 30 days from today if still desirous of pursuing the matter to file a proper application to the CMA where by normal procedure of the CMA should proceed as usual.***

Based on the above order of this court, it is clear that the applicant was **required to institute a fresh application if still interested to pursue his right.** The argument by the applicant that the earlier application was within time and was correctly instituted by filing CMA F1 so the Commission was required to proceed hearing the parties is inappropriate. The applicant misinterpreted the order of this court. Failure to follow the proper procedure for instituting the application is as good as there was no application at all. It was necessary to file a fresh application since the one instituted earlier had already been quashed and set aside by this court on 14/8/2015. The order of this court after setting aside the ex-parte award was very clear that if the applicant was desirous of pursuing the matter, then he was allowed to do so within 30 days by following the normal procedures of the CMA. Therefore, it is undoubtedly correct that the proper procedure for instituting the application was not followed as ordered by

this court on 14/8/2015. Failure by the applicant to observe this court's order is what lead to the dismissal of the matter by the commission which in my considered view it was right.

For the foregoing reasons I find the grounds for this revision lacking in merit thus I proceed to dismiss the application with no orders as to cost. I still believe, since the application was not filed properly, the applicant may still do so after following proper procedure according law to institute the application.

It is so ordered.



T. MWENEMPAZI
JUDGE

12th SEPTEMBER, 2021

