IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT ARUSHA

REVISION NO. 49 OF 2021

(Originating from CMA Application No. CMA/ARS/ARS/182/2020)

FRANK MSINGIA.....1ST APPLICANT

AMINIEL SARAKIKYA.....2ND APPLICANT

EMMANUEL SUMAYE.....3RD APPLICANT

FRANK MOLLEL.....4TH APPLICANT

THABIT JABIR.....5TH APPLICANT

GERALD MAPANGO.....6TH APPLICANT

SALIMU DELIMA.....7TH APPLICANT

ATHUMAN JUMA.....8TH APPLICANT

ABRAHAM JUMA.....9TH APPLICANT

IBRAHIM ALI.....10TH APPLICANT

EMMANUEL AMIDIUS KISANGA.....11TH APPLICANT

GERAD TANAKI.....12TH APPLICANT

FRANK PAULO.....13TH APPLICANT

DERICK PENIEL MBISE.....14TH APPLICANT

GOODLUCK BENSON MALIZA.....15TH APPLICANT

VERSUS

TANGANYIKA WILDERNESS CAMPS LTD.....RESPONDENT

RULING

31/03/2022 & 23/06/2022

KAMUZORA, J.

The Applicants being aggrieved by the decision of the Commission for Mediation and Arbitration (CMA) preferred this revision under sections 91(1), (a)or(b),91(2)(a) or (b)or(c), section 94(1) (b) (i) of the Employment and Labour Relations Act No. 6/2004, Rule 24(1) 24(2) (a) (b) (c) (d) (e) (f)and 24(3) (a) (b) (c)(d) and Rule 28(1) (a) (b)(c) (d) & (e) of the Labour Court Rules G.N No. 106/2007. The Applicant prays for this Court to be pleased to call for the records and revise the decision in CMA/ARS/ARS/182/2020.

The Applicant's application was supported by an affidavit deponed by all the Applicants. The application was strongly opposed by the Respondent who filed a counter affidavit proceeded by a notice of preliminary objection on points of law which states that: -

1) *That, the application is bad in law for it contravened Rule 44(2) Of the Labour Court Rules, GN No. 106, 2007.*
2) *The application is incompetent for failure to file mandatory notice of intention to seek revision (CMA F10) contrary to Regulation 34(1) of the Employment and labour Relations (General) Regulation GN No 47 of 2017.*
3) *That, the affidavit in support of this application in incurably defective for contravening the provision of Rule 29(3) of the Labour Institutions (Mediation and Arbitration) Rules, 2007 which*

reads together with rule 24(2)(c) of the Labour Rules, G. N No 160, 2007.

The Applicants were represented by Ms. Fransisca A. Lengeju, learned advocate while the Respondent enjoyed the service of Mr. Pedro Munisi and Mr. Mwanili H. Mahimbali both learned advocates. Hearing of the preliminary objection was by way of written submission and both parties complied to the submissions scheduled.

Submitting in support of the points of objection, the Respondent decided to abandon the 1st point of preliminary objection and proceeded to argue for the remaining points as they appear hereunder.

On the 2nd point of preliminary objection, the Respondent's advocate submitted that, the application filed by the Applicant is in contravention of the mandatory requirement of Regulation 34(1) of the Employment and Labour Relations (General) Regulation GN No 47 of 2017 as the Applicant did not first seek and file a mandatory notice of intention to seek for Revision (CMA F10) at the Commission for Mediation and Arbitration. The counsel was of the view that, the effect to that failure is that, the Applicant's application becomes incompetent and with no legs to stand. To cement on this issue, they cited the case of **Unilever Tea**

Tanzania Ltd V Paul Basondole, Labour Revision No 14 of 2020(Unreported) and prayed that the objection be sustained.

Submitting for the 3rd point of preliminary objection, the counsel for the Respondent argued that, Rule 24(2)(c) of the Labour Court Rules GN No. 106 of 2007 requires the notice of application to substantially comply with Form No. 4 of the schedules of the Rules in which it as to be signed by the party bringing the application and contain information amongst others of the reliefs sought. The counsel contended that, the joint affidavit of the Applicants contravenes the law which requires reliefs to be featured in the affidavit. To buttress their submission, they cited the case of **Home African Investment Corporation Ltd v Maiko Nkya**, Revision No. 820 of 2019(Unreported). Basing on the above submission, the counsel for the Respondent prays that the application be dismissed for contravention of the provisions of law.

Responding to the 2nd point of preliminary objection the counsel for the Applicant submitted that, when seeking revision, the law is clear on the requirements to file a notice of motion supported by an affidavit and that there is no such provision of law that require the notice of intention to seek revision as a mandatory condition for one to institute a revision. They insisted that, the wordings of the CMA F10 intends to

notify the CMA that one is dissatisfied with its decision and is seeking for revision in the High Court and so the CMA should forward the proceedings to the High Court for the purpose that the revision to proceed. That the omission in filing the notice has not caused the delay in entertaining the application since the records and the proceedings were forwarded on time.

Regarding to the cited case of **Unilever Tea Tanzania Ltd** (Supra) the Applicants' stated that, the decision of the High Court is not binding but only persuasive. They pointed out that, there are conflicting decisions on whether the omission in filing CMA F10 renders the application incompetent. Referring the case of **Adam Lengai Massangwa and another Vs Mount Meru Hotel,** Labour Revision No. 1 of 2018 HC at Arusha, they claimed that the High court sustained the application even with the lack of filing CMA F10 for reason that the formality did not cause any injustice and can be saved by the overriding principle.

The counsel for the Applicants insisted that, the principle of overriding objective require the court to deal with the case justly, speedy and to have regard to substantive justice and avoid prioritization of procedural technicalities in the process of justice administration. To

cement on this point, she cited the case of **Kiko Rajabu Kiko and another V Bakari Rajabu Kiko**, HC Moshi 2019 (Unreported) and Article 107(a) (2) (e) of the Constitution of the united republic of Tanzania as amended from time to time.

Responding to the 3rd point of preliminary objection, Ms. Francisca argued that, the Notice of application by the Applicants stipulates what reliefs are seeking from this court that is; the court to revise the proceedings and ruling of the CMA and the matter be heard on merit and any other relief that this court deems fit and just. That, the last clause of reliefs in the affidavit is that, the Applicants are seeking for the court to grant the prayers sought in the notice of Application. The counsel for Applicant prays that, this court should not to be tied by technicalities and allow the application to be heard and the points of objection to be disregarded.

Upon a brief rejoinder the counsel for the Respondent reiterated their submission in chief and further added on the 2nd point of preliminary objection that, the Applicant lodged this revision application prior to the seeking and filing the mandatory notice of intention to seek revision as required by law. They invited this court to be guided by the decision in the case of **Unilever Tea Tanzania Ltd (supra).** On the 3rd

point of preliminary objection the Respondent's counsel reiterated their submission in chief and prayed that the application be dismissed based on contravention of the mandatory provision of law.

Having read the submissions made for and against the preliminary objections the question for determination is whether the points of objection raised have merit. Regarding the 2nd point of preliminary objection it was contended that the application is incompetent for failure to file mandatory notice of intention to seek revision (CMA F10) contrary to Regulation 34(1) of the Employment and Labour Relations (General) Regulation GN No. 47 of 2007. I find it useful to quote the said provision of law as hereunder,

> "*The forms set out in the Third Schedule to these Regulations* ***shall*** *be used in all matters to which they refer" (emphasis provided).*

Among the forms set out under the third schedule is CMA F.10 which is a notice of intention to seek for revision of award. The provision of Regulation 34(1) imposes a mandatory requirement to use F.10 in making a notice of the intention to seek revision as it uses of the word *'shall'*. With the wording of the provision, the CMA F.10 must be issued prior to the institution of a revision to this court.

I have read the CMA records and it is not in dispute that the Applicants herein had never filed the CMA F.10 at the CMA as required by the above cited provision of law and even in the Applicants' submission they acknowledge not to have filed the said form. They however regard the omission as minor and that the court should not be tied with technicalities but rather apply the overriding objective and proceed in determination of the application on merit.

The same objection was raised in other cases; **Unilever Tea Tanzania Ltd Vs Paul Basondole**, Labour Revision No 14 of 2020 (Unreported), **Anthony John Kazembe Vs inter Testing Services (EA) (PTY) Ltd,** Revision application No. 391 of 2021 and **Arafat Benjamin Mbilikila Vs NMB Bank PLC,** Revision No. 438 of 2020 HC at Dar es Salaam. In all these cases, this court found that filing the notice to seek revision prior to filing revision application is a mandatory requirement and that failure to file the notice makes the revision application incompetent. In **Arafat Benjamin Mbilikila V NMB Bank PLC,** (supra) the court at pg.9 had this to say: -

> *"As far as the records are and taking from the submissions of Mr. Seka, it has not been disputed that the said Form No. CMA F.10 was not lodged at the CMA prior to the filing of this revision application. Since the word "shall" has been used in the Regulation*

that created the Forms, the omission to do so is a fatal defect that cannot be cured by a simple argument. Owing to that I find the application before me to be fatally defective for failing to comply with the mandatory provisions of the Regulation 34(1) of the Regulation and consequently, the application is hereby struck out."

Applying the same principle to this application, I find that this application is incompetent with no legal legs to stand before this Court for contravening the provision of Regulation 34(1) of the Employment and labour Relations (General) Regulation GN. No. 47 of 2017.

The argument by the counsel for the Applicant that there are conflicting decisions of the High Court in relation to the applicability of F.10 is wanting. The case of **Adam Lengai Massangwa and another V Mount Meru Hotel,** Labour Revision No. 1 of 2018 HC at Arusha cited by the counsel for the Applicant was not even attached to her submission and the being unreported case I tried to search the same under *Tanzlii* but no result was found. This makes it to uneasy to construe its relevance to this case.

It was contended by the counsel for the Applicant that this court should not be bound by technicalities and Article 107A and overriding objective should be applied to serve the situation. On the issue of technicalities, I will take the approach of this court in the case of

Unilever **Tea Tanzania Ltd**(supra) where the court under page 9 held that: -

> *"It is the finding of the court that the question of notice is not a point of technicalities. It is a handmaid of justice. This Court worth of its meaning cannot ignore the laid down legal procedure of filing notice of revision on the pretext of avoiding technicalities, for doing so would be violating the law. I there for find this application to be incompetent before the court for being preferred without a legal notice."*

On the argument that Article 107 A should be used to cure the defect, I will take the approach on the Court of Appeal in the case of **Sylvester Hillu Dawi and Another Vs. the Director of Public Prosecutions**, Criminal Appeal No. 250 of 2006, where it was held: -

> *"The law on the issue is unambiguous and specific. It might appear harsh and perhaps unjust, ... But we cannot disregard it as gallantly argued... The mandate given to the courts to administer justice in the country by the Constitution is very dear. We cannot circumvent the Constitution. The judiciary as provided under article 107A of the Constitution is the only organ of the state having the final say in the administration of justice in the country. But it does not have unbridled powers. The courts must operate*

within the parameters of the Constitution. The Constitution in Articles 107A and 107B enjoins us to administer justice in accordance with the law of the land being guided by the five principles enunciated in article 107A (2). So, the invitation... to disregard the clear provisions of the law for sake of breaking new ground is not only an invitation to anarch but an invitation to violate the Constitution. We are not prepared to do that... We take it as settled law that if the language of a statute is clear, it must be enforced at all times to the letter. We cannot ignore it for the sake of venturing into the realms of idealism or breaking new grounds of the law. If we attempt to do so we shall only lose the confidence of the society which we are supposed to serve but also our legitimacy. Yes, in appropriate cases, but within the confines of the law, we shall not afraid of breaking new grounds in order to improve the justice we deliver. We are afraid to say that this is not one of those cases".

In concluding I find that filing the notice to seek revision prior to filing revision application is a mandatory requirement under Regulation 34(1) of the Employment and labour Relations (General) Regulation GN. No. 47 of 2017. Failure to file the notice makes the revision application

incompetent. I therefore find merit in the 2nd point of objection and I uphold the same.

Regarding the 3rd point of preliminary objection it was contended that, the affidavit is defective for contravening the provision of Rule 29(3)(d) of the labour Institution (Mediation and Arbitration) Rules, 2007 which is read together with Rule 24 (3) (d) of the Labour Court Rules GN No. 106 of 2007. The Respondent's counsel alleged that the application filed in this court was supported by an affidavit which does not contain the relief sought as required under Rule 24 (3) of the Rules cited above, which renders the whole application defective.

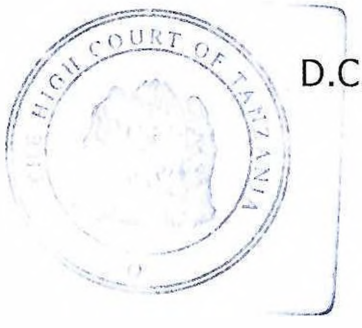
I have gone through the disputed Applicants' joint affidavit and the same does not categorically list the reliefs. It referred the prayer made under the Notice of application by the Applicants that is; the court to revise the proceedings and ruling of the CMA and the matter be heard on merit and any other relief that this court deems fit and just. The last clause of reliefs in the affidavit is that, the Applicants are seeking for the court to grant the prayers sought in the notice of Application. I do not see how referring the reliefs under the notice of application can be an incurable defect. The said notice of application is one of the documents filed in court and much as the prayers under the notice of application

are clear, it becomes obvious that the parties were made aware of what the Applicant was seeking before this court.

In the final result I sustain the 2nd point of the preliminary objection and hold that, non-compliance Regulation 34(1) of the Employment and Labour Relations (General) Regulation GN. No. 47 of 2017 is an incurable defect. The remedy available for the above defects is to strike out the application. Consequently, I struck out this application for being incompetently filed before this court.

Order accordingly.

DATED at **ARUSHA** this 23rd day of June 2022.



D.C. KAMUZORA

JUDGE