

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

AT MOSHI

LABOUR REVISION NO. 28 OF 2021

*(Arising from the decision in Labour Dispute No. CMA/KLM/HAI/ARB/58/2020 before
Hon. G.P. Migire – Arbitrator delivered on 18/6/2021)*

CHARLES JOHN LYIMO..... APPLICANT

VERSUS

MASTER MIND TOBACCO (T) LTD..... RESPONDENT

30/03/2022 & 12/05/2022

RULING

MWENEMPAZI, J:

The applicant, Charles John Lyimo was once employed by the Respondent Master Mind Tobacco (T) Ltd as a Salesman. Initially he was employed as a casual worker from the year 2013 but later in July 2017 he was given a fixed term contract of one year which was to expire on 31st June 2018. After expiration of the contract period, he continued working until 30th March 2020 when his employment contract was terminated due to misconduct. Unsatisfied with the termination, he filed a labour dispute to the Commission for Mediation and Arbitration for Kilimanjaro ("the



commission") challenging the procedure and reasons for termination. After unsuccessful mediation the applicant referred the matter for arbitration.

During the Arbitration hearing the Respondent filed a notice of Preliminary Objection that the dispute was wrongly filed as being of unfair termination of employment instead of breach of contract. The objection was heard and the Arbitrator sustained the objection. Dissatisfied with the decision of the Arbitrator the Applicant filed before this court an application for revision of the decision of the Arbitrator seeking to set it aside.

The Respondent on the other hand filed a notice of opposition accompanied with a counter affidavit. He also filed a notice of preliminary objection on two points as follows: -

1. That the present application is bad in law, fatal and incompetent for contravening Rule 91(1) of the Employment and Labour Relations Act [Cap. 366 R.E. 2019].
2. That the present application is hopeless and incompetent contrary to Rule 50 of the Labour Court Rules GN. 106 OF 2007

Hearing of the preliminary objection was ordered to proceed by way of written submissions. The written submissions by the parties were filled as scheduled by the court. The Applicant was represented by Mr. Benedict Bagiliye learned advocate while the Respondent was represented by Mr. Amos Paul learned advocate.

In his submission in support of the preliminary objection the respondent's counsel submitted with respect to the first point that, the application

before this court was brought under the provision of section 91(1)(a), 91(2)(c) and 94 (1) (b) (i) of the Employment and Labour Relations Act (ELRA), Cap 366 R.E. 2019. He further stated that the substance of the cited legal provisions is the jurisdiction of this court in entertaining revision of an arbitration award delivered by the Commission. He argued however that what is pending before this court is not an award but a ruling. He therefore contended that the Applicant has improperly misled this court into believing that there was an award while in real sense what is before the court is a ruling.

With respect to the second point the learned counsel submitted that the application is incompetent as it contravenes Rule 50 of the Labour Court Rules which prohibits appeals, review and revision on interlocutory decisions. He submitted that the ruling delivered by the arbitrator did not determine the case to its finality because the Applicant was given an opportunity to refile in accordance to the law. He further stated that the Applicant's right of audience at the Commission has not been exhausted since the matter was struck out with an opportunity to refile therefore this court lacks jurisdiction to entertain the matter. To support his submission the learned counsel cited the decision of the Court of Appeal of Tanzania in the case of **Sudi Khamis Sudi & 3 Others Vs. Maureen George Mbowe Jiliwa & 3 Others**, Civil Application No. 363/17 of 2018. In the end Mr. Amos Paul prayed for the application to be dismissed.

Replying to the above submissions, Mr. Bagiliye applicant's counsel submitted that what made him apply for revision of the Ruling of the



Commission is the manner in which his case was struck out based on technicalities and without the Commission invoking the overriding objective so as to help the applicant obtain his benefit after being unlawfully terminated from his employment. Submitting further the learned counsel stated that at the Commission, the preliminary objection was not raised at the earliest stage because the case was heard fully on the side of the Respondent and after the employer's case was closed that is when the respondent raised a preliminary objection. This was another reason as to why they filed the present application for revision.

On the second point, he responded that the test to determine whether an order is interlocutory was specifically provided for by the Court of Appeal in the case of **Vodacom Tanzania Public Limited Company V. Planetel Communications Limited**, Civil Appeal No. 43 of 2018 in which the Court adopted the test in the case of **Bozson V. Articham Urban District Council** (1903)1 KB 547 where Lord Averstone stated that:

"I seem to me that the real test for determining this question ought to be this: Does the Judgment or Order as made finally dispose off the Rights of parties? If it does, then I think ought to be treated as final order: but if it does not, it is then in my opinion an interlocutory order".

He went on submitting that in light of the decision above an Interlocutory ruling or order is not appealable save where it has an effect of finally determining the dispute. He further submitted that the ruling subject to this revision did finalize the case though it gave the applicant chance to

start afresh. Finally, the learned counsel conceded to the preliminary objection and prayed that the case be remitted back to the Commission for Mediation and Arbitration.

To this juncture, when it comes to determination of the preliminary objection raised the applicant has already made it easy by conceding that the objection has merit although he has tried to defend his reasons as to why he filed the application. This however was not necessary because it does not change the fate of the matter. Therefore, I will not waste any more time since the law is very clear as already pointed out by the learned counsel for the Respondent under Rule 50 of the Labour Court Rules G.N. No.106 of 2007. The law provides:

*"No appeal, review or revision shall lie on interlocutory or incidental decisions or orders **unless such decision has the effect of finally determining the dispute**"*
(emphasis added).

I have read the submission by the learned counsel for the respondent and I agree that both points in the preliminary objection have merit. First of all, it is true that according to the law the provisions upon which this application was brought under, this court can only determine a matter on revision where there is an Award from the Arbitrator. An award is only given by the Commission after it has been able to hear the dispute on merit. Looking at the present case the parties dispute before the Commission Cannot be said to have been heard on merit because the applicant as he stated in his affidavit and submission had not yet presented

his evidence. The Commission did not determine the main dispute but a preliminary objection which was raised before hearing of the dispute was complete. That is why the decision which was given was a ruling and not an Award. This means the actual dispute was not determined. Parties' rights with respect to the dispute had not been decided upon. For that reason, it is obvious that the order given was an interlocutory order which cannot be subjected to revision based on Rule 50 of the Labour Court Rules cited above. This brings me to the conclusion that, the application at hand was prematurely brought before this Court.

In final analysis, I find the two preliminary objections raised by the respondent to have merits. They are hereby upheld. The present application is hereby dismissed, I also give no orders as to costs.

DATED and DELIVERED at Moshi this 12th day of May, 2022




T. M. Mwenempazi
Judge

Ruling delivered in the presence in the presence of the applicant in person and absence of the counsel for the Respondent.


T. M. Mwenempazi
Judge