

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

AT SONGEA

LABOUR REVISION APPLICATION NO. 1 OF 2022

(Arising from Labour Dispute No. CMA/SON/SEPT/03/2013)

ADOLF HAMIS.....1ST APPLICANT

BAKARI ALLY.....2ND APPLICANT

VERSUS

SERENGETI FOOD LIMITED..... RESPONDENT

JUDGEMENT

06.06.2022&27.06.2022

U. E. Madeha, J.

The Applicant calls upon this court to revise and quash the decision issued by the Commission for Mediation and Arbitration [hereinafter referred to as the CMA]. That the decision, was issued on 8th, October 2013. Among the grounds raised for the revision under paragraph four (04) of the Applicant's affidavit include the following: **-First**, whether the CMA was legally proper to decide a preliminary objection based on evidence. **Secondly**, the CMA erred in law and fact by failing to evaluate the evidence, which led to an erroneous and unjust decision. **Lastly**, the CMA

and fact when deciding the matter contrary to the law by issuing an award that is unlawful, illegal, and irrational.

In the interest of justice, the Applicant prayed for what has been sought in Chamber Summons to be granted. On contrary, the application is opposed by the Respondent through their filed counter affidavit.

During the hearing of the application, the Applicant was represented by the learned advocate, Mr. Zuberi Mauridi. Whereas, the Respondent enjoyed the service of the learned advocate Mr. Dickson Ndunguru.

Mr. Zuberi Mauridi the Applicant's Counsel submitted that; This is an application that arises from labour dispute **No. CMA/SON/SEPT/03/2013**. The dispute was filed before the CMA on 3rd, September 2013. The Applicant through his Counsel lamented for being terminated from employment unfairly. The learned advocate went on and said that the preliminary objection arose from pleadings when they filed CMA FORM No. 01 on 7th, August 2013. He further submitted that the Preliminary Objection was not heard at the CMA and the objection raised was that the dispute was filed out of time. He argued that the Applicant was dissatisfied with the decision of the CMA whereby he has filed two (02) prayers in the

chambers summons in which he is requesting this Court to conduct revision based on three (03) grounds as elaborated in paragraph four (04) of the Applicant's joint affidavit. He contended further that, the Court to conduct Revision on whether CMA was legally justified and proper to decide on the Preliminary Objection based on the evidence. He further elaborated that the Preliminary Objection has to be raised to the points of the law. In answering the question, he prayed the Court to make reference to the case of **Shose Sinare v. Stanbic Bank Tanzania Limited, ICBC Standard Bank PLC (FORMERLY STANDARD BANK PLC)** Civil Appeal No. 89 of 2020 CAT Dar-es- Saalaam, specifically on pages eleven (11) and twelve (12) when the Court responded to the question of Preliminary Objection. The Court said that; -

"Preliminary Objection must be free from facts calling for proof or requiring evidence to be adduced for its verification. Where a Court needs to investigate such facts, such an issue cannot be raised as a preliminary objection on points of law. The Court must therefore insist on the adoption of the proper procedure for entertaining applications for preliminary objections. It will treat as preliminary objection

only those points that are pure law, unstained by facts or evidence. The objection should not condescend to the affidavit or other documents accompanying the pleadings to support the objection such as exhibits."

The Applicant's Counsel further averred that the determination of the preliminary objection does not need the evidence to support it or anything accompanied by the pleadings to prove it. He made reference to the pleadings which show the termination time under CMA FORM No. 1. He said, the arbitrator confirmed that the dispute was out of time. In other words, the arbitrator said that a Preliminary Objection has merit. The counsel stated that, the Applicant filed the application at the CMA within time. To crown it all he insisted that, the Respondent as the employer has terminated the Applicant's employment. He said, it appears as if the CMA did not do justice by involving witnesses and tendering exhibits during the hearing of the Preliminary Objection.

In relation to, the second (2nd) and third (3rd) points of preliminary objections are as follows: the Applicant's Counsel argued that it is important to note that, the CMA erred in law and facts for failure to evaluate the evidence. As a result, this led to an erroneous and unjust decision; So, the

Commission for Mediation and Arbitration erred in law and facts by issuing the award. He argued that, in a real sense, it is an unlawful, illegal, and irrational award. Eventually, the learned Counsel averred that; the CMA erred in law and fact for failing to evaluate the evidence tendered against it. On the same note, the evidence presented to the CMA was that the employment relationship between the Applicant and the Respondent was terminated on the 6th, of August 2013. This was after the employer's employment between the Applicant and the first (1st) contractor was terminated. He said this does not lead to the termination of the employment between the Applicant and the Respondent. He stated the employer failed to tender the employment contract. It was the employer's burden and responsibility to prove the existence of the employment. He prayed this Court to disregard the CMA's evidence instead to revise and conduct the revision of the case in the award delivered at the CMA.

In responding Mr. Dickson Ndunguru started arguing the first ground by stating that if the appeal was filed within the time, then it is obvious that it was not decided by the CMA when deciding the Preliminary Objection. That the CMA called witnesses to acknowledge if the application was received or not. He further said that the CMA should have decided on the issue of

objections raised and not called the witnesses at the Preliminary Objection hearing. He contended that, the CMA was required to hear the parties and not to call witnesses during the preliminary objection hearing. That, it was inappropriate to call the witnesses at the Preliminary Objection hearing. He reasoned that if you call witnesses who are supposed to give evidence that ceases to be a Preliminary Objection. The advocate agreed with the Applicant's learned advocate that the case was pending in that regard witnesses should not be called during the Preliminary Objection hearing. He argued further that, it is worth considering that, the CMA has the authority and mandate to hear the Preliminary Objection by considering a different case study.

Moreover, he stated that concerning the issue of time for filing the dispute, there was the question of jurisdiction. He further added that as per Rule 15 of G.N. No. 64 of 2017, as a labour matter, it does not need anything more than the evidence that the CMA can call witnesses which is allowed by the law and that is supported by the section cited above. Additionally, he contended that looking at Rule 12(2) of the Labour Courts Rules the CMA has got to look at if the document was filed out of time. He argued that it is true that, he was supposed to attach the condonation form. More so, if

the documents were not attached with the condonation form, the CMA has the power and mandate to refuse the document in his dispute. In regard to that, he said that, there is a piece of evidence filed to verify that the dispute was filed out of time. He further contended that for the available evidence, the dispute at the CMA was filed out of time.

He said that the evidence proved that the dispute arose on 31st, December 2022 and not on 07th, August 2013. Had it been that it was filed after seven (07) months, the remedy was to file the condonation form in order to state the reasons for the delay and proceed with the case at the CMA. Additionally, he added that he was supposed to file a complaint to the CMA within sixty (60) days of his employment's termination. He said the CMA called the employer's driver to prove the exact time when the employment was terminated. Untimely, the learned Counsel further contended that he thought that the CMA was right to dismiss the application and prayed that this application to be dismissed.

In rejoinder submissions, Mr. Zuberi Mauridi, contended that; the Respondent's Counsel cited Rule 15 of GN No. 64 to justify his submission that the CMA was right to call the evidence to determine the Preliminary Objection. He argued that the said section is applicable in the following

conditions: if the issue of the jurisdiction to mediate the dispute arose and was not determined normally during the mediation process as per the Court records. The Preliminary Objection on whether the CMA has jurisdiction to hear and determine the dispute. He further contended that surprisingly the dispute from the CMA is on whether the matter was filed within the time and not whether the CMA had jurisdiction to determine the dispute. He stressed that, Unfortunately, the advocate cited Rule 12 (2) of G.N. No. 64 of 2007. Additionally, he submitted that the referral was not accompanied by the condonation form. He said it raises an issue as to whether the dispute was filed within time. The document was submitted and the matter was at the mediation stage for that matter. Lastly, he concluded that the CMA was wrong to decide the preliminary objection based on evidence of witnesses. He, prayed this Court to conduct the revision and quash the CMA award.

Having gone through, the ground for revision I find that they boil down to two (02) issues: **Firstly**, whether the Applicants' filing of the labour disputes at CMA was time-barred. **Secondly**, whether it was the right and proper procedure to hear witnesses and evaluate evidence during the hearing of Preliminary Objections.

To start with the first issue, if you look closely at the records in the CMA, all the Applicants filled in FORM No. 1 that they were employed on 14th, April 2009. At the same time were terminated from employment on 07th, August 2013, twenty-seven (27) days passed ever since they filed a labour dispute, on 2nd September 2013. Therefore, the Respondent filed their labour dispute on time, this is because the labour dispute should be filed within sixty (60) days from the termination of the employment date.

Therefore, since the Applicant filed their case within 60 days, they are not late in filing their labour disputes. This is in line with Rule 12(2) of the labour Courts Rules, which requires that the labour dispute to be filed within sixty (60) days from the Applicant's termination from the employment. This Court is of the view that the CMA was not right to dismiss the Applicant's labour dispute.

On, the second issue that whether it is a proper procedure to hear witnesses and conduct evaluation of evidence during the hearing of Preliminary Objections. The Respondent filed the preliminary objection that the CMA has no jurisdiction to determine the matter because it was filed out of time. The CMA called witnesses to prove that the Applicant's application was filed out of time. On the same note, the Respondent's Counsel averred

that they had to file their application by attaching a condonation form. See the case of **Sino Logistics Co. LTD v. Freco Equipment** Civil Commercial Case No. 57 of 2020. High Court of the United Republic of Tanzania, Commercial division (Unreported). It was clearly stated that;

"The preliminary objection has to be a pure point of law and is argued on the assumption that all points are correct. It is not a preliminary objection if there is a need to ascertain a fact or on a matter for which the Court direction may be exercised."

Also, in the case of **Karata Ernest& others v. Attorney General**, Civil Revision No. 10 of 2010 Court of Appeal (Unreported) was cited whereas the Court of Appeal stated that:

"Where taken point of objection is premised on issues of mixed facts and law, that point does not deserve consideration at all as a preliminary objection. It ought to be argued in a normal manner when deliberating on the merits or otherwise of the concerned legal proceedings."

During the Preliminary Objection hearing, there is a need to discuss each objection raised and after hearing the arguments the steps that follow are the necessary orders. I eventually concur with the Applicant's advocate and find that the arbitrator was not required to hear from the witnesses during the hearing of the Preliminary Objections as the objections are based on the points of law. Reference is made to the case of **Mukisa Biscuits manufacturing company limited v. West End Distributors Limited** (1969) EA 969, the Court of Appeal of East Africa set out what a Preliminary Objection is and what it should contain whereby it stated as follows: -

"A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of out the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by contract giving rise to the suit to refer the dispute to arbitration"

Based on the foregoing reasons, I find this application to be meritorious and in accordance with the powers vested in this Court by Sections 91(2) and 4 (b) of the Employment and Labour Relations Act, Cap

366 (R.E. 2019), read in conjunction to the Rule 28(1)(c)(e) of the Labour Courts Rules G.N 106 of 2007 I eventually, quash the CMA's proceedings and ruling, condone the Court's delay and direct the CMA to begin the dispute with mediation. It so ordered.

DATED at **SONGEA** this 27th day of **JUNE**, 2022



A handwritten signature in blue ink, appearing to read "Madeha", is written over a horizontal dotted line.

U. E. MADEHA

JUDGE

27.06.2022