

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
LABOUR DIVISION  
AT ARUSHA**

**REVISION APPLICATION NO. 90 OF 2020**

*(Original CMA/ARS/ARS/367 & 368/2020)*

**STEPHANO MOLLEL ..... 1<sup>ST</sup> APPLICANT**  
**PETER JUSTINE ..... 2<sup>ND</sup> APPLICANT**  
**JOSEPH NGOWI ..... 3<sup>RD</sup> APPLICANT**  
**ZUWENA NGOMA ..... 4<sup>TH</sup> APPLICANT**  
**NASMA HASSAN ..... 5<sup>TH</sup> APPLICANT**

**VERSUS**

**A1 HOTEL AND RESORT LTD. .... RESPONDENT**

**JUDGMENT**

19/05/2022 & 14/07/2022

**KAMUZORA, J.**

This application has been preferred by the Applicant under section 91(1)(a), (2) (b) and 94 (1) (b) (i) of the Employment and Labour Relation Act No. 6/2004 and Rule 24(1), (2) (a) (b) (c) (d) (e) and (f), Rule 24(3) (a) (b) (c) and (d), Rule 28(1) (b) (c) (d) and (e) of the Labour Court Rules GN No 106/2007. The Applicant seeks for this court to revise the proceedings of CMA in Labour Dispute No. CMA/ARS/ARS/367 & 368/2020 and the ruling issued therein. The application was supported by an

affidavit sworn by Frank Maganga the Applicants' personal representative and contested by the Respondent through a counter affidavit sworn by Mr. Eric Stanslaus, the Respondent's counsel.

The facts of the dispute as per the CMA records is such that, the Applicants instituted a complaint against the Respondent at the CMA claiming against the Respondent for unpaid leave and unpaid salaries. While the complaint was at the mediation stage the Respondent raised a preliminary objection to the effect that the matter was res-judicata. The CMA after hearing both sides issued a ruling to the effect that, the matter before it was res-judicata. Being dissatisfied by the CMA decision the Applicant preferred this application on the following reasons: -

- i) That, the Honourable Mediator erred in fact and in law by dismissing both disputes and concluding that are res-judicata while are different disputes and occurred in different times and the same were not decided with any court.*
- ii) That, the Honourable mediator erred in fact and in law for failure to define properly what is res-judicata and hence misleading himself.*
- iii) That, the Honourable mediator erred in law and in fact for entertaining the preliminary objection that are not pure point of*

*law and denied the Applicants' right to be heard due to the fact that the objection needed further evidence.*

Hearing of the revision application was by way of written submissions and as a matter of legal representation the Applicants were represented by a personal representative by the name of Frank Maganga while the Respondent was ably represented by Mr. Eric Stanslaus, learned advocate. Both parties filed their submission as scheduled save that the Applicants decided not to file rejoinder submission.

Submitting in support of the application Applicants argued on the first ground that, on 8/7/2020 the Applicant instituted a Labour Dispute No. CMA/ARS/ARS/317/2020 between **Peter Justin and 4 others Vs. A1 Hotel** and claimed for unlawful leave. That, the CMA held that the same was time barred hence was struck with direction that, whoever wanted to proceed with such application was to comply with limitation procedures. That, the Applicants decided to lodge against the Respondent a claim for salaries arrears and for unpaid leave vide CMA/ARS/ARS/367/2020 and CMA/ARS/ARS/368/2020 respectively. That, those disputes occurred on 24/6/2020 and 29/07/2020 hence claim made within time, meaning 60 days. That, the CMA erred to declare the matter as being res-judicata while

it had not been decided and the Applicant lodged the claims before the expiry of 60 days-time.

The Applicants further submitted that, to conclude that the matter is res-judicata, the same issue must have been heard and finally decided. That, that the current matter was not fully decided as the same was initially struck out by the CMA. That, the first dispute is not similar with the second as they occurred at different times.

Arguing for the second ground the Applicants submitted that, the word res-judicata is the principal that a cause of action may not be reiterated once it had been determined on merit to its finality. That, the arbitrator did forget that there was no any matter which was heard and determined on merit as per the provision of section 9 of the Civil Procedure Code.

Submitting in support of the third ground the Applicants argued that, the Preliminary objection which needs evidence is not a point of objection. To cement their argument, they cited the case of **Shose Sinare v Stanbic Bank (T) LTD and another**, Civil Appeal No 89/2020 CAT at Dar es Salaam (Unreported). In concluding, the Applicants pray for this court to

vary and set aside the CMA ruling and order the matter to be heard on merit.

Contesting the application, the Respondent submitted that, dispute No. CMA/ARS/ARS/317/2020 between **Peter Justine and 4 others Vs. A1**, was found by the CMA to be time barred. That, the Applicant decided to institute other disputes before the CMA that is; CMA/ARS/ARS/367/2020 and CMA/ARS/ARS/368/2020 which were consolidated. That, a preliminary objection was raised and the CMA ruled that the disputes were res-judicata.

On the claim by the Applicant that the subsequent dispute were different as the arose in 24/06/2020 and the complaint was lodged on 29/07/2020, the Respondent submitted that, the Applicants in their pleadings were claiming for all salaries the matter was prior determined by the CMA hence, res judicata. Reference was made to the case of **Badi Mwashia v Managing Directory, Business Machine (T) Ltd**, Lab, Div., DSM Misc. Labour Appl. No. 65 of 2013, 15/11/13, **Amos Shija Vs Ntanza Corperative Union** (1984) Ltd, Lab Div. MZA, Revision Appl No 41 of 2014. The Respondent maintained that, in the case at hand the issue

in both suits is directly and substantially the same as the outcome prayed for by the Applicants in the pleading is payment of salary arrears. That, the parties are the same in both the CMA/ARS/ARS/367 & 368/2020 and in CMA/ARS/ARS/317/2020. That, the matter has been decided in the previous suit as it was struck out for being res-judicata and the court which made that order is a court of competent jurisdiction.

Basing on the above submission the Respondent prays for this court to find that the suit is incompetent and bad in law hence the decision of the CMA be upheld.

I have thorough gone through the records of the CMA and considered the present application, affidavit in support of the application and the submissions from the parties. The issue that needs court determination is whether the CMA was correct to conclude that the dispute before it is res-judicata. Section 9 of the Civil Procedure Code Cap 33 R. E 2019 govern res-judicata rule and the same read: -

*"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim litigating under the same title in a*

*court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court...”*

From the above provision, for a suit to be considered res-judicata, it must be shown that the suit relates to the same issue and is between the same parties. The same issue by the same parties must be conclusively determined by the court of competent jurisdiction. If shown that there was a suit conclusively determined by a court of competent jurisdiction the subsequent proceedings on the same issue and for the same parties cannot be entertained for being res-judicata.

The Applicant claimed that, the arbitrator was wrong to declare the dispute as res-judicata while the same was different based from that which was struck out for being out of time. Upon perusal to the records, I discovered that the first labour dispute that is, CMA/ARS/ARS/317/20 was instituted on the claim for **unlawful leave and salary for the month of April, May and June 2020**. See page 1 of the typed ruling of the CMA in CMA/ARS/ARS/317/20. The same was struck out on 27/07/2020 for being time barred and the Applicant was directed to seek for condonation before filing the same. Subsequently, Labour Dispute No. CMA/ARS/ARS/367/2020

and CMA/ARS/ARS/368/2020 were instituted on 29/07/2020 by the same Applicants claiming for **all salary arrears and unpaid leave.**

From the above analysis, I agree with the Applicant that the matter in issue were the same though in the subsequent dispute the Applicant did not specify the months to which salary arrears were claimed. With the above observation, I do not agree with the argument that the subsequent proceedings were res-judicata. I say so because, despite the fact that the claims were similar, the first dispute was never determined on merit rather it was struck out for want of compliance to the legal requirement. That being the case, the subsequent proceedings which did not comply to the legal requirement of seeking for condonation before being filed was incompetent before the CMA but it was not res-judicata.

The contention by the Applicant that the subsequent disputes were different from the first dispute is baseless. While in the first dispute related to leave and salary for specific months, the subsequent disputes related to leave and all salaries meaning that it still contained the claims for salaries which were prior held to be filed out of time. For that reason, the proper

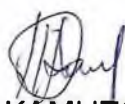


channel was for the Applicant to comply to the Mediator's ruling on the first dispute in CMA/ARS/ARS/317/2020.

I therefore maintain that, the matter in the former dispute and the current disputes are directly and or substantially related but the first dispute was never determined on merit. On that basis, the mediator erred in holding that the matter was res-judicata without satisfying himself as to whether all the tests of res-judicata were met. But much as the subsequent disputes were filed without complying to the previous order of the mediator, the same was incompetent before the CMA. Since this application emanates from the incompetent proceedings of the CMA, it also becomes incompetent. I therefore dismiss the application and in considering that this is a labour dispute, I make no order as to costs.



**DATED at ARUSHA, this 14<sup>th</sup> Day of July 2022.**

  
D.C. KAMUZORA

JUDGE

