

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

LABOUR DIVISION

AT ARUSHA

LABOUR APPLICATION NO. 4 OF 2021

(C/F CMA/ARS/ARB/223/2016)

REHEMA RAMADHANI NDAKIMASI.....APPLICANT

VERSUS


HITESHI ODEDRA BABOO.....RESPONDET

RULING

15.06.2022 & 13.07.2022

N.R. MWASEBA, J.

The applicant herein is seeking for revision of an award of the Commission for Mediation and Arbitration (CMA), Arusha in Labour Dispute No. CMA/ARS/ARB/223/2010. The application is supported by an affidavit sworn by the applicant herself.

The application was objected by the respondent who filed counter affidavit on 21st day of June 2021. 

Prior to the hearing of the application on merit, the respondent's counsel raised an objection to wit;

- i) The Application is incurably defective for being brought under a non-existing order of the court.

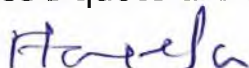
At the hearing of the raised preliminary objection Ms Francisca Lengeju, learned advocate represented the applicant whereas Mr Fredrick Isaya, learned advocate represented the respondent. Both parties prayed for the preliminary objection to be disposed of by way of written submission and the court granted their prayer. I commend both parties to adhere to the schedules.

Submitting in support of the raised preliminary objection, Mr Isaya argued that under paragraph 10 of his affidavit supporting the application the applicant deposed that he was granted leave by the court to re-file the matter after seeking extension of time which was wrong. The Hon. Judge on 09.03.2021 only advised the applicant to file an application for extension of time so that the matter can be dealt with on merit not otherwise. He added that the applicant only wanted to justify her delay. To support his argument, he cited the case of **Sarbjit Sigh Bharya and Another Vs Nick Bank Tanzania Ltd and Another**, Civil Appeal No. 94 of 2017 (CAT- Unreported).

Responding to the raised point of preliminary objection, the counsel for the applicant submitted that the raised point of objection is not a pure point of law. The raised point is based on paragraph 10 of an affidavit supporting the application thus, it was her submission that the lamentation does not amount to preliminary objection and that the aim of paragraph 10 is to inform the court that the applicant was advised by Hon. Massara J to file an application for extension of time before filing a revision. She added that the applicant understood well what was advised by Hon. Judge that's why she filed the present application. So, she prayed for the preliminary objection to be overruled as the respondent's counsel is aiming at delaying the hearing of the application on merit. She buttressed her point by citing the case of **Biscuit manufacturing Co. Ltd Vs West End Distributors Ltd** [1969] EA 696.

Having carefully considered the rival submissions from both learned counsels, the main issue for determination is whether there is merit on the raised point of Preliminary Objection.

Having seen the point of objection raised by the respondent and submission made in his written submission this court concurs with the counsel for the applicant that the same is not pure point of law as it calls for evidence to prove it. For easy reference I quote the said paragraph:



"That, on 12th April, 2019 the applicant filed an application for revision No. 20 of 2019 in the High Court which was dismissed by his Lordship Massara J for being out of time and was granted leave to refile the matter after seeking for extension of time and being granted the same."

From the above paragraph I do not see any point to be argued as a point of law as alleged by the counsel for the respondent. The fact that there is no any part of the judgment (Massara J.) which shows that the applicant was granted leave to file an application is not a point of law. It is a matter to be argued in determination of the application in the normal manner and not by way of preliminary objection. This position was well stated in the case of **Karata Ernest and Others Vs Attorney General**, Civil Revision No. 10 of 2010 (Unreported), in which the Court of Appeal held that:

"At the outset we showed that it is trite law that a point of preliminary objection cannot be raised if any fact has to be ascertained in the courts of deciding it. It only consists of a point of law which has been pleaded or which arise by clear implication out of the pleadings. Obvious examples include, objection to the jurisdiction of the court; a plea of limitation; when the court has been wrongly moved either by non-citation or wrong citation of the enabling provisions of the law."



Guided by the cited authority a preliminary objection cannot be raised based on a certain paragraph of an affidavit which calls for evidence to ascertain it. A preliminary objection needs to be raised based on pure point of law as submitted herein.

In the final analysis and for the forgoing reasons, I find no merit on the raised point of preliminary objection and it is hereby overruled with no order as to costs. The matter will proceed with the hearing on the date scheduled by this court.

Ordered accordingly.

DATED at ARUSHA this 13th day of July 2022.



N.R. Mwaseba
N.R. MWASEBA

JUDGE

13.07.2022