

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA**

LABOUR REVISION NO. 40 OF 2021

*(Arising from an Arbitral Award of the Commission for mediation and Arbitration of Mwanza in Labour
Dispute No. CMA/MZ/NYAM/419/2020 of Mwanza)*

BENARD GALUSS OMOLLOAPPLICANT

VERSUS

TALGWU MICROFINANCE PLC.....RESPONDENT

JUDGMENT

21st June & 10th August, 2022

Kahyoza, J.:

Benard Galuss Omollo was employed by **TALGWU MICROFINANCE PLC**. Benard's employment came to an end. Displeased he instituted a labour dispute. The first dispute Benard instituted was labour dispute No. CMA/MZ/MYAM/280/2020, before the Commission for Medication and Arbitration (the CMA). Before the CMA heard the disputed on merit, Benard applied in writing to withdraw the dispute. However, before the CMA granted his prayer, Benard instituted another dispute. A second dispute was baptized dispute No. CMA/MZ/NYAM/322/2020.

The CMA fixed both applications for hearing on 08/12/2020. Before the hearing, the respondent raised a preliminary objection that dispute No. CMA/MZ/NYAM/322/2020 was "*res judicate*". Benard requested the CMA to withdraw dispute No. CMA/MZ/NTAM/322/2020 and allow the dispute filed earlier to proceed. The CMA, (Hon. Kefa) granted the prayer, he held that-

"tume inakubaliana na maombi Benard Galuss Omollo.

AMRI: Kwa hiyo shauri hili linaondolewa" (marked withdrawn with no leave to refile)

When it came time for hearing dispute No. CMA/MZ/NYAM/280/2020, Benard prayed to withdraw the dispute with leave to refile it. The CMA granted Benard's prayer. It marked dispute No. CMA/MZ/NYAM/280/2020 withdrawn with leave to refile. It ordered;

"Hivyo base, Shauri hili linaondolewa (Marked withdrawn with leave to refile) na mlalamikaji anaweza kuwasilisha upya madai yake kuzingatia ukomo wa muda"

Benard instituted another labour dispute on 16/12/2022, which the CMA baptized as No. CMA/MZ/NYAM/419/2020. Before the CMA heard the dispute No. (CMA/MZ/NYAM/419/2020) on merit, the respondent's advocate raised a preliminary objection, that the dispute was "*res judicate*". The CMA (Kimaro E, Arbitrator) heard the preliminary objection and upheld it. The arbitrator (Kimaro, E) found that Benard instituted labour dispute No.

CMA/MZ/NYAM/419/2020 after the dismissal of CMA/MZ/NYAM/322/2020, which was dismissed without leave to refile.

Benard was not satisfied. He applied for revision. The application for revision was not opposed. The respondent did not file a counter affidavit to oppose the application or appear for hearing. When the application came for hearing, the applicant had nothing to add to his affidavit.

It is on record that the applicant raised three issues for determination. I will consider the third issue which is too general, it covers the first and second issues. The third issue is whether on the entire circumstances of the record of arbitral proceedings manifest errors material to the merits of the dispute before the CMA.

It is true that if a party withdraws a suit or dispute without seeking leave to file it, it amounts to a determination of that suit. That party is precluded from re-instituting the suit. If that party institutes a suit after withdrawing the previous suit, the latter will be caught in the web of the principle of "*res-judicated*." See the provision of Order XXIII R.1(3) and Section 9 of the Civil Procedure Code, Act [Cap. 33 R.E. 2019] (the CPC).

I am alive of the position of the law that the CPC only applies in labour matters, only when the labour laws are silent. In the present circumstance, labour laws are silent, hence, the quoted provisions of the CPC apply.

The arbitrator dismissed dispute No. CMA/MZ/NYAM/419/2020, which was not properly before the CMA, as dispute No. CMA/MZ/NYAM/280/2020 was still pending. The arbitrator stated;

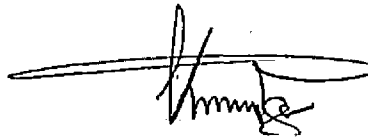
"dhairi kabisa Tume haina mamlaka ya kuendelea kuusikiliza mgogoro No. CMA/MZ/NYAM/419/2020 kwa kuwa mgogoro No. CMA/MZ/NYAM/280/2020 bado upo mbele ya Tume a haujatolewa maamuzi ya maombi yaliyowasilshwa na wajibu pingamizi na kupelekea mgogoro No. 419/2020 kufunguliwa ukiwa na madai yaleyale"

The CMA misdirected herself. It is on record that the CMA withdrew dispute No. CMA/MZ/NYAM/280/2020 with leave to refile on 8/12/2020. The dispute No. CMA/MZ/NYAM/419/2020 was instituted on 16/12/2020 and dismissed on 5/2/2021. It is clear as daylight that on 16/12/2020, when Benard instituted dispute No. CMA/MZ/NYAM/419/2020 labour dispute No. CMA/MZ/NYAM/289/2020 was already marked withdrawn with leave to refile subject to limitation period. To hold otherwise, the CMA misdirected herself and her order was a nullity.

In the end, I find the CMA's award dismissing labour dispute No. CMA/MZ/NYAM/419/2020 was a nullity, quash and set it aside. Subsequently, I restore dispute No. CMA/MZ/NYAM/419/2020 and order the CMA to proceed entertaining the dispute (CMA/MZ/NYAM/419/2020) in accordance with law.

It is ordered accordingly.

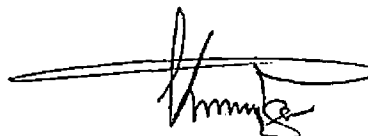
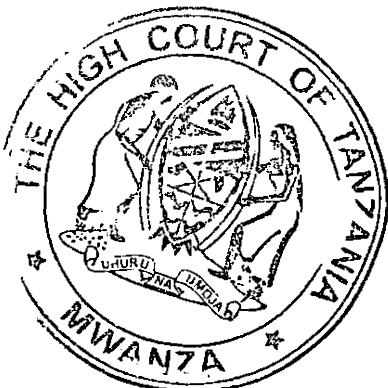
Dated at Mwanza, this 10th day of August, 2022.



J.R. Kahyoza
Judge
10/08/2022

Court: Judgment delivered in the presence of the applicant and in the absence of the respondent. The respondent should be served with the order.

B/C Ms. Jackline (RMA) present.



J.R. Kahyoza
Judge
10/08/2022