

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**TABORA DISTRICT REGISTRY**

**AT TABORA**

**MISCELLANEOUS APPLICATION NO. 8 OF 2020**

**MARTIN NTUI ..... APPLICANT**

**VERSUS**

**MUNICIPAL EXECUTIVE DIRECTOR.....RESPONDENT**

**RULING**

*Date: 06/04/2022 & 20/5/2022*

**BAHATI SALEMA, J.:**

The applicant herein named Martin Ntui filed this application under Rule 28(i) (b), (c) and (d) of the Labour Court Rules, 2007, G.N. No. 106 of 2007 and Section 91(1) of the Employment and Labour Relations Act, Cap. 366 [R.E. 2019], Seeking revision of the decision of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/TAB/TBR – MJ/109/2018. The applicant prays for five reliefs namely: -

1. That, the High Court Labour Division be pleased to call for and examine the records of the Commission for Mediation and Arbitration for Tabora in its Order dated 30th March of 2020 Labour Dispute No. CMA/TBR – MJ/109/2018 for purpose of satisfying itself as to the corrections, legality or propriety of the same.
2. Subject to (i) above, this Honourable Court be pleased to revise, quash and set aside the decision of the Commission for Mediation and Arbitration for Tabora in its Order 30th March of 2020 Labour Dispute No. CMA/TAB/TBR – MJ/109/2018.
3. That, the costs of this application to be provided for.
4. Any other relief(s) this Honourable Court shall deem fit and just to grant.

With the leave of the Court, the matter was argued by way of a written submission. The applicant enjoyed the services of Mr. Kashindye Lucas, learned counsel, whereas the respondent was represented by Mr. Kulaba Doto, Municipal solicitor.

Before going into submissions made by both parties, I find it prudent to give a brief history leading to the application. As per the record found in the case file, the applicant was employed by the

respondent on the 2<sup>nd</sup> day of April, 2012 as an Education Officer Grade II on permanent terms in the Teachers' Services Department.

On 13 October, 2017 he was charged before the Teachers Services Commission at District level and terminated from employment for alleged misconduct of truancy in Disciplinary Charge No. 03/01/2017/2018. He was suspended from employment for being out of the workstation for 350 days.

That, being dissatisfied the Applicant preferred an appeal to the Teachers' Services Commission on the 6<sup>th</sup> day of November, 2017. The Commission determined the appeal in the applicant's disfavour.

The applicant was also aggrieved by the decision and orders of the Commission. He appealed to the President for determination on the 16<sup>th</sup> day of June, 2018. The President determined the appeal by upholding the decision of the Commission on the Applicant's disfavour.

After the President had confirmed his termination, the applicant referred an application to the Commission for Mediation and Arbitration for Tabora, Labour Dispute No. CMA/TAB/TBR-MJ/109/2018, claiming *inter-alia* for reinstatement or engagement against the respondent.

In the course of Mediation Proceedings in a Labour Dispute before the CMA, the respondent raised a preliminary point of objection that the CMA had no jurisdiction to determine the labour dispute since the matter had been determined by the President, whose decision is final. The CMA ended up striking out the application for the reason of absence of jurisdiction to adjudicate on the matter.

Aggrieved, the applicant brought this application for revision of the decision of the CMA, which was procured on the 4th of April, 2019.

Supporting his application, Mr. Kashindye submitted that the applicant had exhausted all remedies available under the Public Service Act, Cap. 298 [R.E 2019]. He went on to submit that the CMA was clothed with jurisdiction since the respective public servant had exhausted remedies under the Public Service Act.

He referred the case of *Joseph Khenani Vs Nkasi District Council, Civil Appeal No. 126 of 2019 at Mbeya* (unreported) on page 9 stated:

*"We would have gone straight away into the determination of the nagging issue and addressed the confusion with a view to settling the dark."*

It was further stated at page 14.

*"... That the other issues they addressed needed serious attention from the Court, but given the finding, the discussion and determination of them will not only be a mere academic endeavour but also obiter dicta. In the final analysis, we find and hold that the CMA had jurisdiction to entertain and hear the matter the subject of this appeal."*

He continued to submit that the provision of Section 32 A of the Public Service Act, Cap. 298 [R.E 2019] has caused confusion ever since its inception in that its gist is that the CMA may be resorted to even when the President has finally determined the matter.

In his reply, the respondent submitted that Parliament amended the Public Service Act by adding Section 32 A (Miscellaneous amendment Act No. 13/2016), which requires all employees in public service in labour disputes to exhaust internal remedies provided in the Act before engaging in other labour laws.

He submitted further that, the applicant is required to exhaust internal disciplinary matter/local remedies as provided under Section 13 of the Teachers Services Commission Act, Cap. 448 [R.E 2019]. In the case of ***Ebenezer David Mlang'ombe vs. The Board of Trustees of Marine Parks and Reserve Unit, Misc. Application No. 380 of 2018, High Court of Tanzania at Dar-es-Salaam (unreported)***, it states that when a dispute

is determined by the President, an aggrieved teacher (Public servants) has the right to seek judicial review in the High Court.

Finally, he submitted that the proper avenue for the applicant to challenge the President's decision as the final decider would be by way of judicial review in accordance with the provisions of the law reform (Fatal Accidents Miscellaneous Provision) Act, Cap. 310 [R.E. 2019], where Rweyemamu J stated that;

*"The delusion of the Public Authorities can be challenged only by way of judicial review."*

He prays the Court to dismiss the applicant's application for revision.

After considering submissions by both parties, records of the matter, and relevant applicable laws, this Court considers the main issue for determination to be whether the CMA had jurisdiction to entertain the matter brought to it by the applicant.

Section 32A of the Public Service Act, Cap. 298 [R.E. 2019] states that: -

*"A public servant shall, prior to seeking remedies provided for in labour laws, exhaust all remedies provided for under this Act."*

This section requires all public servants to exhaust all remedies available in their employment before going to the Commission for

Mediation and Arbitration to adopt all the necessary procedures provided for by the Employment and Labour Relations Act, Cap. 366 [R.E. 2019].

In the case of ***Asseli Shewally Vs. Muheza District Council Labour Revision No. 6 of 2018 (High Court Tanga)*** (unreported) the Court stated that: -

*"Indeed, it is the law that after exhausting all remedies as provided under the Public Service Act, a party shall have a right to seek remedies provided for under the labour law. The law is; however, extraneous and it subjects the parties to inconveniences." "As the exhaustion of the remedies under the Public Service Act results in the final decision, the CMA is not entitled to admit and determine the matter previously determined by the President of the United Republic of Tanzania."*

In the cited above decision, the procedure governed by Section 32A of the Public Services Act, Cap 298[R.E. 2019] subjects the parties to inconveniences that will cost them time and resources.

In this circumstance, the decision of the President is final. Since the applicant is a public servant, he has to apply for prerogative orders before the High Court, the court which has jurisdiction to harmonize

the conflicts that appear between the laws. That being the case, a proper forum available for the applicant is to seek judicial review before the High Court, as was stated in the Case of ***Ebenezer David Mwang'ombe vs. The Board of Trustees of Marine Parks and Reserve Unit (Supra)***.

Having said that, I uphold the decision of the Commission for Mediation and Arbitration and, consequently, the application is found unmeritorious, hence dismissed.

Order accordingly.



**A. BAHATI SALEMA**

**JUDGE**

**20/5/2022**





Date: 20/5/2022

Coram: Hon. J. Katto, Ag DR

Applicant: Present.

Respondent: Absent.

B/C Grace Mkemwa, RMA

**Mr. Kashindye Lucas:** The matter is for ruling, we are ready.

**Court:** Ruling delivered in presence of applicant's advocate and the applicant in person while the respondent is absent this 20<sup>th</sup> May 2022.

**J. KATTO**

**Ag DEPUTY REGISTRAR**

**20/05/2022**

**Court:** Right of appeal is explained.

A handwritten signature in blue ink, appearing to read "J. Katto".

**J. KATTO**

**Ag DEPUTY REGISTRAR**

**20/05/2022**