

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

**(LABOUR DIVISION)**

**DODOMA DISTRICT REGISTRY**

**AT DODOMA**

**LABOUR REVISION NO. 1 OF 2022**

*(Originating from Labour Dispute No. CMA/DOM /119/2021 in the Commission for  
Mediation and Arbitration at Dodoma)*

**SCOLASTICA SAMWEL MFILINGE.....APPLICANT**

**VERSUS**

**SHIRIKA LA UMEME TANZANIA (TANESCO) ..... RESPONDENT**

*30/6/2022& 4/7/2022*

**RULING**

**MASAJU, J.**

The Applicant, Scolastica Samwel Mfilinge, has filed in the Court a Chamber Summons Application made under Rule 24 (1), (2), (a), (b), (c) (d) ,( e) and (f), (3), (a), (b), (c), and (d) and (11) and 28 of the Labour Court Rules GN No. 106 of 2007 for Revision of the Arbitral Award against the Respondent, Shirika la Umeme Tanzania ( TANESCO), by the Commission for Mediation and Arbitration ( CMA) Dodoma Chambers, in

Labour Dispute No. CMA/DOM/119/2021. The said Chamber Summons application is supported by the Affidavit sworn by the Applicant herself.

The Respondent contests the Application, hence the Counter Affidavit sworn by Norbert Bedder, the Respondent's State Attorney, to that effect. When the Application was heard in the Court on the 16<sup>th</sup> day of May, 2022 both parties were represented. The Applicant was represented by Mr. Francis Kesanta, the learned Advocate while the Respondent was in the service of Mr. Norbert Bedder, the learned State Attorney.

The Applicant prayed to adopt her Affidavit to form part of the submissions in support of the Application. The Applicant further submitted that the labour dispute CMA/DOM/119/2022 by Dodoma CMA is not "*res judicata*" to labour dispute CMA/DOM/36/2016 by Dodoma CMA as so deponed in the Affidavit. That, the dispute is centered on "*Malipo ya Hali Bora*". That Hali Bora benefits ought to have been included in the trial Tribunal's Award in CMA /DOD/36/2016 hence the essence of CMA/DOM/119/2021.

The Applicant prayed the Court to grant the Application accordingly pursuant to **George Shambe V. Tanzania Italian Petroleum Company Ltd** [ 1995] TLR 20 thus;

*" for "Res judicata" to apply not only must be shown that the matter directly and substantially is issue in the contemplated suit is the same as that involved in the former suit between the same parties but also it must be shown that the matter was finally heard and determined by a competent Court"*

On her part, the Respondent contested the Application by adopting the Counter Affidavit and adding that the labour Dispute CMA/DOM/ 119/2021 was "*Re judicata*" to CMA/ DOD/ 36/2016 in terms of section 9 of the Civil Procedure Code[ Cap 33].

That, the Applicant wronged herself in the former dispute when she just prayed for reinstatement only forgetting that the employer under section 40(3) of the Employment and Labour Relations Act [Cap 366] was also entitled not to reinstate her to employment. That, her evidence did not include the alleged "*Hali Bora*" Collective Bargain Agreement benefits

which applies during the pendency of one's employment. That, the Respondent was paid her "**Hali Bora**" benefits.

That since the CMA decided on her terminal benefits and the same paid by the Respondent, thus, the latter dispute is "*Res Judicata*" pursuant to **Mariam Khalfan Ntoro V. TANESCO** ( HC) Labour Division, Revision No 36 of 2018, Morogoro Registry. The Respondent prayed the Court to dismiss the Application for want of merit.

In Rejoinder, the Applicant maintained her submissions in chief and added that under section 40 (3) of the Employment and Labour Relations Act [Cap 366] the Respondent was duty bound to pay the Applicant all the benefits, **Hali Bora** inclusive whether or not the same were claimed in the trial Tribunal, for the same was her statutory and Collective Bargain Agreement Right under part VI of the Employment and Labour Relations Act[ Cap 366]. The Applicant prayed the Court to grant the Application.

That is what was shared by the parties in support of, and against the Application in the Court.

The Applicant successfully filed labour Dispute No. CMA/DOM/36/2016 (not labour Dispute No. CMA/DOM/36 /2021 as stated in

the Applicant's Affidavit before the Commission for Mediation and Arbitration (CMA), Dodoma Zonal chambers against the Respondent for reinstatement to her employment after being terminated unlawfully. The CMA ordered the Respondent either to reinstate the Applicant or in the alternative to pay her all her rights and benefits. The Respondent decided to terminate the Applicant and to pay her rights and benefits.

The Respondent allegedly paid some of the Applicant's rights and benefits. That, the parties had a Collective Bargain Agreement of "**Hali Bora**" (Annexure S2) which benefits ought to have been paid to the Applicant. That, the Applicant made several unsuccessful follow ups thus decided to pray for extension of time at the CMA vide CMA/DOM/119/2021 for her to file a fresh labour dispute and claim benefits from the "**Mkataba wa Hali bora**". The Application was dismissed for allegedly being "*res judicata*", hence the Application for Revision in the Court.

Section 40(3) of the Employment and Labour relations Act, [ Cap 366] provides that;

*" 40(3) where an order of reinstatement or re engagement is made by an arbitration or Court and the employer decided not*

*to reinstate or re-engage the employee, the employer shall pay compensation of twelve months wages in addition to wages due and other benefits from the date of unfair termination to the date of final payment"*

The provision of law is clear that since the Respondent decided not to reinstate the Applicant hence duty bound to pay her all her benefits, the "*Mkataba wa Hali Bora*" inclusive thus, the Applicant ought to enforce her arbitral award in CMA/DOD/36/2016 and not institute a fresh labour dispute against the Respondent. The trial Tribunal rightly decided the Labour Dispute CMA/DOM/119/2021 to be "*res judicata*" to CMA/DOM/36/2016. Nevertheless, the Applicant is entitled to "*Mkataba wa Hali Bora*" benefits, if any, in case she had not been paid such benefits by the Respondent upon termination of employment. Otherwise, save for this conditional observation, the Application is hereby dismissed accordingly.

The parties shall bear their own costs.



GEORGE M. MASAJU

**JUDGE**

4/7/2022