

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT ARUSHA

REVISION APPLICATION NO. 126 OF 2021

(Originating from Labour Dispute No. CMA/ARS/ARS/29/2020)

FRANCIS SHENYANGWA.....APPLICANT

VERSUS


MOBISOL UK LIMITED.....RESPONDENT

RULING

17/08/2022 & 28/09/2022

MWASEBA, J.

The applicant is seeking for Revision of Arbitrator's award dated 12th day of November, 2020 for the legal issues as depicted from paragraph eight (8) to nineteen (19) of affidavit supporting the application sworn by the applicant himself. Her application was objected by a counter affidavit sworn by Mr Scheck Mfinanga, counsel for the respondent.

Prior to the hearing of the application the counsel for the respondent raised points of preliminary objection, to wit: 

1. That, this application be dismissed in its entirety for lacking a duly filed and saved Form CMA F10: Notice of intention to seek revision of an award.
2. That, this Application be dismissed in its entirety for lacking a Notice to refer the dispute to Arbitration CMA F8.
3. That, this Application for Revision be dismissed for lack of merit.
4. Any other reliefs this Honourable Court deem fit and just to grant.

When the application was called for hearing on 17/08/2022, Mr Allen Godian, learned Counsel represented the applicant whereas Mr. Sheck Mfinanga, represented the respondent. The POs was argued orally.

Submitting in support of the application, Mr Mfinanga averred that this application is void ab initio for noncompliance of Regulation No. 34 (1) of the Employment and Labour Relation (General) Regulation No. 47 of 2017 particularly failure to file Form No. 10 which is a Notice of intention to seek revision of an award. It was his further submission that the said form is filed with a party who is aggrieved with CMA decisions so that a Commission could prepare documents to be forwarded to this court, the obligation which was not conducted by the applicant herein. Further to that the said provision imposes a mandatory requirement by the word "shall" therefore, form No. 10 must be filed at CMA prior to the institution of revision to this court. To buttress his point, he cited the case of **Frank**

Frank

Msingia and 14 Others Vs Tanganyika Wilderness Camps Ltd,

Revision No. 49 of 2021 (HC- reported at Tanzlii) and prayed for the application to be struck out.

Responding to what was submitted by the counsel for the respondent, Mr Godian told the court that, **Rule 24 of the Labour Court Rules**, GN 106 of 2007 is very clear that if one wants to file a revision to this court he must have Notice of Application, Chamber Summons and Affidavit supporting the application and in this application all the requirements were met. He cited the case of **Ferdinand Nsakuzi Vs Director General PCCB**, Revision No. 07 of 2018 (HC- reported at Tanzlii).

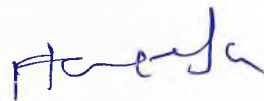
It was his further submission that, as the essence of filing the said Form No. 10 is to inform the CMA to prepare documents to be filed in this court, the same was done by the applicant that's why the records of CMA are already before this court. In order to prove if the Form was filed at CMA or not invites them to bring the said form to prove whether the form was filed or not which means this point will not qualify to be raised as a preliminary objection. He cited the case of **Alex Situmbura Vs Mohamed Nawayi**, Revision No. 13 of 2021 (HC-reported at Tanzlii) to buttress his point. He prayed for the objection to be overruled so that they proceed with the hearing of the application.



In his rejoinder the respondent's counsel apart from reiterating what he had already submitted, he insisted that Rule 24 of GN 106/ 2007 cannot be read in isolation of Regulation 34 of GN 45/2017 since both of them provides directives before filing a revision to this court and CMA. He added that the said form need not to be brought by parties but it needs to be seen on records as alleged by the counsel for the applicant and maintain his prayer for the application to be struck out.

Having gone through the submissions made by the counsels as well as the records before the court, the issue to be determined is whether the raised preliminary objection has merit.

Starting with the 1st and 2nd points of objection, the respondent alleged that the application is nullity and void ab initio for the applicant's failure to issue notice of intention to seek for revision of award (CMA F10) and notice to refer the dispute to Arbitration (CMA F8) as required by **Regulation 34 (1) of the Employment and Labour Relation (General) Regulations** of 2017. Before deliberating on this provision, I wish to illustrate briefly as to whether the above-mentioned Regulations are applicable before this court. The said Regulations are made under **Section 98 of the Employment and Labour Relations Act, Cap 366 R.E 2019** which stipulates that:

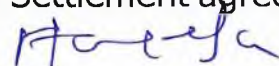


(1) The Minister may, in consultation with the Council, make regulations and prescribe forms for the purpose of carrying out or giving effect to the principles and provisions of this Act.

This provision gives powers to the Minister responsible for labour to make regulations in respect of different matters as listed under **Section 98 (2) of the Employment and Labour Relations Act**. Exercising his powers under this provision, the Minister made the **Employment and Labour Relation (General) Regulations. Regulation 34 (1) of the Regulations** which is subject to the preliminary objection at hand provides that:

"The forms set out in the Third Schedule to these Regulations shall be used in all matters to which they refer. "

Those forms which are listed in the third schedule under **Regulation 34 (1) of the Regulations** are: Referral of a dispute to the Commission for Mediation and Arbitration (CMA F.1), Application for condonation of late referral of a dispute to the Commission for Mediation and Arbitration (CMA F.2), Summons before the Commission for Mediation and Arbitration (CMA F.3), summons for the witness to appear before the arbitration hearing (CMA F.4), Agreement by parties to extend time for mediation (CMA F.5), Certificate of settlement/non settlement (CMA F.6), Settlement agreement



under mediation (CMA F. 7), Notice to refer a dispute to arbitration (CMA F.8), and Notice of intention to seek for revision of award (CMA F.10).

All the listed forms which are alleged to be coached in mandatory way are CMA forms as it is shown in the brackets of each form above. They are forms which are applicable at the CMA from the institution of the dispute to its finality. Thus, CMA Form No. 8 and CMA Form No 10 which are subject to this preliminary objection are less concerned with the lodging of application for revision at the Labour Court. Looking at CMA F.8 is all about the desirous to refer the dispute to arbitration. There is no way this can stand as a point of objection before this court. Further, CMA F. 10 is the notice of intention to seek for revision of award. The same is filed at the CMA as well. Looking at its content, it goes without saying that it is aimed at giving the CMA notice to forward the certified copies to the Labour court. I wonder how do CMA forms apply to the proceedings at this court. It should be kept in mind that the labour court has powers to call for lower court/ tribunal/commission records in case of appeal or revision. See **Rule 28 (1) of the Labour Court Rules**.

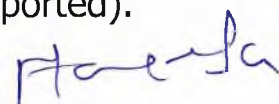
Moreover, the law is very clear on the practice and procedure applicable at the labour court. **Section 55 (1) of the Labour Institution Act, Cap 300 R.E 2019** stipulates that:



"The Chief Justice, after consultation with the Minister, shall make rules to govern the practice and procedure of the Labour Court."

The Chief Justice exercising his powers under the above provision promulgated the Labour Court Rules, 2007. The rules are very clear on the institution of the application for revision of an award of the Commission at the Labour Court. In this, I concur with Mr Allen Godian that their revision application is filed in accordance with **Rule 24 of the labour court Rules** which stipulates how the application should be filed and the required documents to be filed are well indicated. The CMA F.8 and CMA F.10 are not among the listed documents under the said provision. The same rule has been duly complied with by the applicant. Thus the 1st and 2nd point of objection has no merit.

Turning to the 3rd and 4th points of objection, the counsel for the respondent is urging this court that this Application for Revision be dismissed for lack of merit and any other reliefs that the court will find just to grant. With due respect, these does not qualify to be points of objection. See the case of **Karata Ernest and Others Vs Attorney General**, Civil Revision No. 10 of 2010 CA (Unreported).



In the upshot, the raised preliminary objection is hereby overruled for want of merit. The application is properly filed before this court and should proceed on merit.

Ordered Accordingly.

DATED at **ARUSHA** this 28th day of September, 2022.



A handwritten signature in blue ink, appearing to read "N.R. Mwaseba".

N.R. MWASEBA

JUDGE

28/09/2022