IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

(TANGA DISTRICT REGISTRY)

AT TANGA

MISC. LABOUR APPLICATION NO. 25 OF 2022

VIETEL TANZANIA PLC.. APPLICANT

VERSUS

ISHMAEL FRANCIS MTWEVE .... RESPONDENT

(Originating from Labour Revision No 21 of 2018, Misc. Labour Application No. 7 of 2022)

RULING

14/12/2022 & 14/02/2023

NDESAMBURO, J

The applicant having dissatisfied with the decision of this court in Misc. Labour Application No. 7 of 2022 has lodged the current application seeking the court to review its decision. The application has been preferred under Rule 27(1), (2) (b), (c), (5) Rule 24(1) (2) (a), (b), (c), (d), (e), (f), (3) (a) and (d) of the Labour Court Rules, GN 106 of 2007 (GN 106 of 2007) on the ground that there was a mistake or error apparent on the face of the record of the court's decision resulting in a miscarriage of justice against the applicant. An affidavit from Ngamwela Mkalimoto, a senior official of the applicant, supports the application.

Before going on the application's merit, it is apposite to give a brief background. In 2015, the respondent had a contractual employment relationship with the applicant. He was recruited at Tanga City, but later on, he was transferred to Lushoto, where he worked for two years. His last employment contract was one year, which was supposed to end on 31st March, 2018. While at Lushoto, the respondent was transferred back to Tanga City; however, the employer did not pay him a transport allowance to facilitate his transfer. Due to that, the respondent could not report to his new workstation, an act which made the applicant terminate his contract with effect from 9th October 2017.

The respondent was not happy with the termination of his contract and decided to lodge a labour dispute at the Commission for Mediation and Arbitration (CMA) at Tanga. Upon hearing the parties, the CMA ordered the respondent to pay the applicant Tshs. 450,000/= being unpaid leave, Tshs. 2,700,000/= being remained salary for six months contract and Tshs. 5,000,000/= general damages. Claims for repatriation expenses and daily allowance were declined.

The record further reveals that, on the 26th of October, 20218, the parties amicably signed a deed of settlement where the parties agreed to

have their award accruing from the Labour Complaint No. 124 of 2017 be settled. In contrast, the current respondent, among other things, agreed to settle the matter by accepting Tshs. 5,000,000/= and relinquished all claims against the existing application as presented in the application and as awarded on 18th September, 2018.

The respondent was unsatisfied with the decision of the CMA granted on the 18th September, 2018, which declined to award costs for repatriation and daily subsistence pending repatriation to his place of recruitment. The respondent, therefore, applied for revision before the High Court. Unfortunately, the applicant defaulted appearance, and the hearing was ordered to proceed *ex parte.* The applicant's initiative to have the *ex parte* order for hearing to be set aside was rejected. Upon the hearing, the High Court revised the award of the CMA, and the respondent was granted repatriation expenses to the tune of Tshs. 2,300,000/= and Tshs. 12,000,000 being subsistence allowance.

Following the decision of the High Court, as mentioned above, the applicant has approached this court and seeks for it to review its decision on the ground that there is a mistake or error apparent on the face of the record. His main reason is that the High Court was not availed with the

copy of the deed of a settlement reached by the parties, whereas the sum of Tshs. 5,000,000/= was amicably agreed upon and paid to the respondent to settle the award of the CMA 124 of 2017.

By the notice of representation, the applicant was represented by Mr David Kapoma, Personal Representative, while the respondent had the service of Mr Henry John Mlang'a, also a Personal Representative. The matter was argued through a written submission, and both sides adhered to the scheduling order.

Mr David Kapoma submitted that there is a mistake or an error apparent on the face of the record for granting subsistence and repatriation allowances to the respondent. The court was improperly moved to that destination which could not have been reached had it been properly availed with such information. The respondent did not disclose that the parties had executed a deed of settlement, and it was amicably settled for the respondent to be paid Tshs. 5,000,000.

Among the conditions that the parties agreed on in the deed of settlement was that; the respondent shall not demand any other payment from the applicant; the deed settled everything, including the repatriation and subsistence allowance, and the respondent had relinquished all the

claims, including the repatriation and subsistence allowance. To bolster his submission, Mr Kapoma cited the Court of Appeal decision of **Costantine Victor John v Muhimbili National Hospital**, Civil Application No. 188/01/ of 2021. He beseeched the court to review its decision.

He argued that if the court had been availed of the settlement deed information, it would have reached a different decision.

In response, Mr Mlang'a strongly disputed the application. He submitted that the deed of settlement executed by the parties was explicitly meant for the award granted by CMA in Labour Revision No 21 of 2018 and had nothing to do with the decision in Misc. Labour Application No. 7 of 2022 and the repatriation and daily subsistence granted by the court were not part of the executed deed. Based on that, he believed that the application was devoid of merits and asked the court to dismiss it in its entirety.

In rejoinder, Mr Kapoma reiterated his submission in chief and prayed for the application to be granted.

Having gone through the record and submission from both sides, the issue for determination is whether the ground lodged by the applicant is adequate to justify the application.

The application has been preferred under Rule 27 (2) (b), (c) of GN 106 of 2007, which cloth this court with a mandate to review its decision. For a matter of clarity, the above Rule is provided hereunder:

> *"27 (2) Any person considering himself aggrieved by a judgment, decree or order from which;*
>
> *(a) An appeal is allowed, but from which no appeal has preferred; or*
>
> *(b) On appeal is allowed, and who, from the discovery of any new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the judgment or decree was passed or order made, or an account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the judgment, decree or order made against him,*
>
> *(c) May apply for a review of the judgment, decree or order to the Court.*

From the above Rule, it is clear that the court is vested with discretion to review its decision where there is the discovery of any new and important matter or evidence which the applicant must satisfy the court that, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the judgment or decree was passed, or order made. The court may also review its decision where there is some mistake or error apparent on the face of the record or any other sufficient reason. Therefore, for the application to succeed, the applicant must prove one or both conditions set by the above Rule.

Despite the above mandate, the power and discretion must be exercised within the parameters set for review. The Court of Appeal observed this in the case of **Minani Evarist v Republic**, Criminal Application No. 5 of 2012. The court held as follows:

> *"The court has unfettered discretion to review its judgment or order, but when it decides to exercise this jurisdiction, should not by any means open invitation to revisit the evidence and re-hear the appeal."*

In the instant matter, as hinted above, the application is based on a mistake or an error apparent on the face of the record resulting in the miscourage of justice. Therefore, the applicant is duty-bound to establish that there is an error apparent on the face of the record.

To ascertain whether or not there is a mistake or an error in the court's decision as claimed by the applicant, it is imperative first to establish what amounts to a "mistake or an error apparent on the face of the record." The Court of Appeal in **Chandrakant Joshubhai Patel v Republic** [2004] TLR 218 stated the following:

> *"An error apparent on the face of the record must be such as can be seen by one who runs and reads, that is, an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may conceivably two opinions... A mere error of law is not a ground for review under this rule. That a decision is erroneous in law is no ground for ordering review...It can be said of an error that is apparent on the face of the record when it is obvious and self-evident and does not require an elaborate argument to be established...."*

In the affidavit and submission made in support of the application, the applicant's ground is on a mistake or error apparent on the face of the record based on the fact that there was a deed of settlement where the parties have amicably settled the dispute. Accordingly, the applicant was exempted from all reliefs, including the repatriation and subsistence allowance. As in paragraph 4 of the affidavit, the deed of settlement was discovered after the delivery of the impugned ruling.

In response to the above, the respondent disputes the applicant's claim and states that the executed deed of settlement was explicitly intended to cover the award granted by CMA in respect of Labour Complaint No. 124 of 2017, where the repatriation and subsistence allowance were not part of the subject matter of the executed deed of settlement. Accordingly, he argued that the decision the applicant wishes to review is not part of the deed of settlement.

From the applicant's application and submission, the applicant has not explicitly pointed out the mistake or errors apparent on the face of the record, which can be seen by a person who runs and reads the ruling that the applicant challenges. Instead, he pointed out the existence of the deed of settlement which was not disclosed by the respondent and insisted that

if the deed had been disclosed, the court might not have reached the decision it passed. In short, the court did not consider the terms of the deed of settlement. The submission shows that the court's decision aggrieves the applicant for not considering the deed of settlement and that, to my finding, is not an apparent mistake or an error on the face of record envisaged in **Chandrakant Joshubhai Patel v Republic** (supra).

I have noticed that the applicant, in his notice of the application, has asked the court to re-examine and reconsider the ruling and orders thereof and make necessary orders. With respect, if this court does so, it will be improper as that will amount to the rehearing of an appeal of its case, which will be outside the ambit of review.

In dealing with the application for review, the Court of Appeal in **Dar es Salaam Institute of Technology v Deudedit Mugasha**, Civil Application No. 233/18 of 2019, held:

> *"a review is by no means an appeal, but is basically intended to amend or correct an inadvertent error committed by the Court and one which, if left unattended will result into a miscarriage of justice."*

Yet in **M/s. Thunga Bhandra Industries Ltd v the Government of Andra Pradesh**, AIR 1964 SC. 1372 cited with approval by the Court in **Tanganyika Land Agency Limited and 7 Others v Manohar Lai Aggrawal**, Civil Application No. 17 of 2008 (unreported), it was held that:

> *"A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error without engagement in elaborated argument to establish it."*

From the above-cited discussion, this court is satisfied that the applicant has failed to establish a mistake or an error apparent on the face of the impugned decision. Therefore, I find the application lacking merit and is hereby dismissed. However, being a labour matter, I make no order to costs.

It is so ordered.

DATED at **TANGA** this 14th day of February 2023.

H. P. NDESAMBURO

JUDGE