

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT ARUSHA

REVISION APPLICATION NO. 133 OF 2021

(C/F Labour Dispute No. CMA/ARS/ARS/118/2021)

BETWEEN

MASHANGILIO ABITHON CHUSSY & OTHERSAPPLICANTS

VERSUS

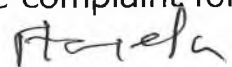
THE TRUSTEES OF TANZANIA NATIONAL PARKS....RESPONDENT

RULING

16.03.2022 & 24.03.2022

N.R. MWASEBA, J.

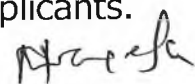
This is an application for revision of an award of the Commission for Mediation and Arbitration (CMA) in labour Dispute No. CMA/ARS/ARS/118/2021 delivered on 22/11/2021. The Applicants, **Mashangilio Abithon Chussy and 2 Others**, filed a complaint at the CMA against their former employer, the respondent herein, claiming for unfair termination. After a full trial, the CMA dismissed the complaint for



want of merit. Aggrieved, the applicants preferred this application seeking to revise the CMA award.

Prior to the hearing of this revision, the counsel for the respondent, raised eight points of preliminary objection, to wit:

- i. That this Hon. court lacks jurisdiction to entertain this matter.
- ii. That this application is incompetent and incurably defective for failure to observe mandatory legal procedures set under the Government Proceedings Act, Cap. 5 of the laws as amended from time to time.
- iii. That the application is incompetent and incurably defective for offending the Employment and Labour Relations (General) Regulations, Government Notice No. 47 of 2017.
- iv. That the application is incompetent and incurably defective for offending **Rule 43 (1) (a) & (b) (3) of the Labour Court Rules**, Government Notice No. 106 of 2007.
- v. That the application is incompetent and incurably defective for non-disclosure of the names of the mentioned 2 other applicants.
- vi. That the application is incompetent and incurably defective for want of the affidavits of the mentioned 2 other applicants.

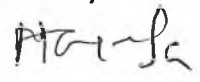


- vii. That the application is incompetent and incurably defective for offending Rule 44 (2) of the Labour Court Rules, Government Notice No. 106 of 2007.
- viii. That the affidavit in support of this application is incurably defective for containing defective verification clause.

The preliminary objection was disposed of orally whereby **Mr. Leonard David**, Personal Representative, appeared for the applicants and **Mr. George Dalali**, learned counsel represented the Respondent.

When the matter was coming for mention on 16th day of March, 2022, the personal representative of the applicants conceded to the raised POs and prayed to withdraw their application with leave to refile.

Responding to what was submitted by the personal representative of the applicants, Mr. Dalali learned counsel told the court that, he had no objection to the prayer of withdrawing this application. However, he prayed to differ with him regarding the issue of leave to refile the application due to the fact that one of the points he conceded lied on the jurisdiction of the CMA which is the notice of intention to file revision under **Regulation 34 (1) of GN No. 47 of 2017** which is normally filed at CMA.



It was his further submission that, the prayer to refile the application is a premature one since there are some procedures of the CMA which need to be adhered to first. The said procedure is for the applicants to apply for extension of time to file notice of intention to file revision at CMA. It was their prayer for this application to be withdrawn with no further orders as prayed by the applicants' counsel.

In a brief rejoinder, Mr. Alex for the applicants insisted for the matter to be withdrawn with leave to file to give room for the application to be determined on merit and avoid technicalities so as the applicants could get the right to be heard.

Having examined closely the submissions made by both parties, I will now deliberate on the point raised by the counsel for the respondent by making a determination on whether the application can be withdrawn with leave to refile or not.

After hearing both parties, I have observed that the applicant has conceded to the preliminary objections raised by the respondent. It is a trite law that once the preliminary objection has been raised, the party cannot withdraw the matter as it will amount to pre-empting the objection which has been raised.

A handwritten signature in black ink, appearing to be 'Alex' or similar, written in a cursive style.

This has been the position in a number of authorities, as it has been set by the Court of Appeal in the case of **Noel Palangyo vs. Tanga Cement Co. Ltd**, Civil Application No. 4 of 2015 (CAT unreported), whereby the applicant in that case had conceded to the preliminary objection and sought to withdraw his application. The Court of Appeal held that:

"To grant a withdrawal is tantamount to pre-empty a preliminary objection. More so, the remedy of the incompetent application is to strike it out. As such the application is accordingly struck out"

That being the legal position, and being guided accordingly, I hereby reject the application for the applicants to withdraw the application but rather, I struck out the application with no order as to costs since this is a labour matter.

Ordered accordingly.




N. R. MWASEBA

JUDGE

24.03.2022