

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

LABOUR REVISION NO. 3 OF 2022

BOART LONGYEAR LIMITEDAPPLICANT

VERSUS

JAPHET DIARA SIMONRESPONDENT

[Application from the decision of the Commission for Mediation and
Arbitration for Kahama at Kahama.]

(Hon. A. Massay.)

dated the 27th day of May, 2021

in

CMA/KHM/69/2021

RULING

14th Febr, & 3rd May, 2023.

S.M. KULITA, J.

The Applicant herein filed this labour application by way of chamber summons and notice of application. He prays for this Court to revise and set aside the award of the Commission for Mediation and Arbitration at Kahama in the dispute No. CMA/KHM/06/2021 delivered on 23rd February, 2022. The application is supported with an affidavit sworn by the Applicant's Principal

Officer namely Patricia Tarimo on 24th March, 2022. It has been made under the provisions of sections 91(1)(a)(b), 91(2)(a)(b)(c) and 94(1)(b)(i) of the Employment and Labour Relation Act No. 6 of 2004, and Rules 24(1)(2)(a)-(f) and 24(3)(a)-(d), 24(11), 28(1)(c)-(e) of the Labour Court Rules, GN No. 106 of 2007.

The application was attacked with Preliminary Objections from the respondent on 2 (two) grounds as follows;

1. That, the impugned ruling dated 23/02/2022 is an interlocutory order which did not finalize the matter, hence cannot be challenged as per the instant application.
2. That, this application for revision is incompetent as the impugned ruling is not an award known in labour laws.

The Preliminary Objections was disposed of by way of written submissions. While the Applicant is represented by Ms. Grace Joachim, Advocate from Joachim and Jackobs Attorneys, the Respondent is represented by Mr. Innocent Bernard, Advocate from Rugaimukamu & Kisigiro Law firm and Mr. Lucas M. Bujashi, the Representative from TAMICO Trade Union for Shinyanga Zone.

In his written submission in support of the 1st ground of Preliminary Objection Advocate for the Respondent Mr. Innocent Bernard submitted that the impugned ruling dated 23/02/2022 is an interlocutory order which did not finalize the matter, hence cannot be challenged as per the instant application. The counsel submitted that the ruling granted extension of time so that the parties can be heard on merit. However, before the matter was scheduled for hearing on merit, the applicant lodged the current application for revision which in essence is prohibited by law. He said that Rule 50 of the Labour Court Rules, 2007 GN No. 106 of 2007 prohibits the Appeal, Review or Revision of an interlocutory or incidental decisions or orders which does not determine the dispute to its finality.

The Respondent's Counsel, Mr. Innocent Bernard further submitted that the ruling granting extension of time is one of the interlocutory orders, which does not determine a dispute to its finality, hence categorically fall within the purview of Rule 50 of the Labour Court Rules.

In her reply to this 1st ground of Preliminary Objection Advocate for the Applicant Ms. Grace Joachim submitted that the impugned ruling dated 23/02/2022 is not interlocutory order as it finalized the matter which is application for condonation (leave for extension of time). The said leave, if

granted is followed by the subsequent complaint therein. The Counsel said that the application for unfair termination cannot be heard until the application for condonation is determined and concluded. She added that the implication is that they are two different applications, thus determination of any of them is appellable/revisable. She thus concluded that the application at hand is proper as the same originates from the ruling of the application which was determined to its finality which is grant of the application by the Applicant who is the respondent herein.

The Respondent's Counsel concluded that leave for condonation is not in any way an interlocutory order as its ruling renders disposition of the parties' rights.

My analysis on this ground of appeal is that there is no dispute that the court's order or ruling which is interlocutory is not appellable or revisable. This is a position of the law under Rule 50 of the Labour Court Rules which states;

"No appeal, review or revision shall lie on interlocutory or incidental decisions or orders, unless such decision has the effect of finally determining the dispute"

The issue is whether the impugned ruling is interlocutory. In the matter at hand the application for condonation by the respondent herein was granted by the trial tribunal, which means that leave was granted for him to lodge the intended application which was complaint against unfair termination. The implication here is that the said matter is still on going. The ruling for the dispute No. CMA/KHM/06/2021 in the Commission for Mediation and Arbitration at Kahama delivered on 23rd February, 2022 was just a procedural matter towards the determination of the core issue, that is claim for unfair termination by the Respondent herein.

The position could be different, had the application for condonation been rejected whereby the Applicant herein could be in a position to appeal or to file Revision against that order/ruling, as the said decision of the trial tribunal could be finally determined. It is unlike the decision for the matter at hand, whereby the time has been extended for the Respondent herein to lodge his application out of time, and the Applicant herein still have a chance to challenge against the merit of the application which the Respondent is going to lodge. And, in case the said intended application succeeds still the Applicant will have a chance to appeal or to file revision on it. In doing so, the Applicant herein will be at liberty to incorporate this claim, that the

condonation was wrongly granted, as among the grounds in the said appeal/revision case.

The interpretation of Rule 50 of the Labour Court Rules as to which order is interlocutory has been made in several cases. In **TANZANIA MOTOR SERVICES LTD & OTHERS V. MEHAR SINGH t/a THAKER SINGH, Civil Appeal No. 115 of 2005, CAT at Dodoma** while seeking for guidance from the case of **BOZSON V. ARTRINCHAM URBAN DISTRICT COUNCIL (1903) 1KB 547** wherein Lord Alverston stated at page 548;

"It seems to me that the real test for determining this question ought to be this: Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then I think it ought to be treated as a final"

The Court of Appeal had the same view that the test for an interlocutory order/ruling is that, it should be the decision that does not finally dispose of the rights of the parties.

Further clarification can be found in **CAMI APPAREL V. BALOZI MSUYA & 231 OTHERS, Labour Revision No. 213 of 2010, High Court Labour Division, at DSM** in which it was held;

"The Appellant had no right to seek for revision of the impugned CMA ruling. The ruling was interlocutory in a sense that it did not finally disposed of the dispute between the parties. The applicant had another chance to raise the issue while challenging the final decision on merit, which would not have caused prejudice to its interests"

See also **Tanzania Electric Company Ltd V. Scolastica Mfilinge, Civil Appeal No. 69/2016** and **The Board of Trustee of the PSPF V. Jalia Mayanja and Another, Revision No. 248 of 2017.**

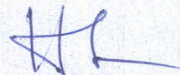
On this, I also prefer to cite the words of the lady Justice Maghimbi, J. who stated while analyzing the same issue in **ABRAHAM SIRAYO V. NYISAEI JULIUS URIO, PC Civil Appeal No. 15 of 2017, HC at Arusha** that;

"The spirit of the law in appeals in that what should be appealable is that which has the effect of finally determining the rights of the parties. Question here is, is the order granting an extension of time to appeal in any way determine the rights of the parties to finality? The answer is definitely NO. Nothing in that order puts finality to the rights of the parties. Had the order been that refusing to grant extension of time then, since the effect would determine the rights of

parties to finality; extension of time may be challenged to see whether that was done judiciously"

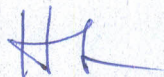
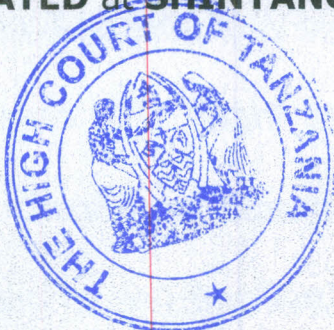
Basing on those reasons, that this application arises from the decision which is interlocutory, I find the 1st ground of Preliminary Objection meritorious, hence sustained. As that finding is sufficient to dispose of the matter, I see no need of dwelling on the remaining ground of Preliminary Objection.

In upshot, this appeal is hereby dismissed. This being the labour dispute, I grant no order as to costs



S.M. KULITA
JUDGE
03/05/2023

DATED at SHINYANGA this 3rd day of May, 2023.



S.M. KULITA
JUDGE
03/05/2023