

**IN THE HIGH COURT OF TANZANIA
(MOROGORO SUB-REGISTRY)
AT MOROGORO**

LABOUR REVISION NO. 19 OF 2021

(Originating from the Award with Ref. No. CMA/MOR/75 & 76/2019 at the Commission for Mediation and Arbitration - Morogoro; Before Hon. Kayugwa H, Arbitrator dated 15/09/2021)

YONA MSOMI 1ST APPLICANT

JOHN CHANGOJA 2ND APPLICANT

VERSUS

REGISTERED TRUSTEES OF SEVENTH DAY

ADVENTISTS CHURCH 1ST RESPONDENT

BOARD OF UFUNUO PUBLISHING HOUSE 2ND RESPONDENT

R U L I N G

29th May & 2nd June, 2023

CHABA, J.

In this application, the Court is being asked to review its decision in Labour Revision No. 19 of 2021 dated 12th day of December, 2022. Applicants made oral application for review seeking for a proper interpretation of the orders issued by this Court on 12th December, 2022 via its ruling (Chaba, J.) in Labour Revision No. 19 of 2021.

This application for review has been brought in Court under Rule 28 of the Labour Court Rules, 2017 based on the point that, the order of the Court was inexecutable for failure to substantiate the real amounts to be paid to the applicants.



At the hearing of the Application for Review on 29th May, 2023, the applicants enjoyed the legal services of Mr. Arafat Kazweba, learned advocate whereas Mr. Isaack Tasinga, also learned advocate entered appearance for the respondents.

Arguing in support of the review, the learned counsel for the applicants submitted that, the Order of this Court has been found to be inexecutable for a reason that the Court did not substantiate on the real amount to be paid as subsistence allowance to the applicants from the date of termination till on the date of full repatriation. He went on submitting that, the parties have compelled or obliged to present this concern before the Court for interpretation of Orders dated 12th December, 2022. To reinforce his contention, the counsel cited the provision of Rule 28 of The Labour Court Rules, 2007 - Government Notice No. 106 of 2007 which provides thus: -

" The Court may, on its own motion or on application by any Revision party or interested person, call for the record of any proceedings which have been decided by any responsible person or body implementing the provisions of this Act and in which no appeal lies or has been taken thereto, and if such responsible person or body appears: -

(a) to have exercised jurisdiction not vested in it by law; or

(b) to have failed to exercise jurisdiction so vested; or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity; or



(d) that there has been an error material to the merits of the subject matter before such responsible person or body involving injustice,
(e) the Court may revise the proceedings and make such order as it deems fit".

Placing reliance on the above provisions of the law and the case of **Richard Julius Lukambula Vs. Tanzania Local Government Workers Union**, Labour Revision No. 55 of 2022, HCT, Mwanza, at page 8, (not relevant to this application for review), Mr. Kazweba prayed this Court to review and correct the mistake apparent on the Court record, that is, the Orders issued by the Court and rectify or interpret the same to make it easier to understand and possibly to properly execute such an order.

In reply thereto, the learned counsel for the respondents Mr. Tasinga strenuously disagreed with the submission advanced by Mr. Kazweba on the following grounds; **One;** That, this audience is illegally because there is no formal application. **Two;** That, the applicants have presented this application while being aware of the matter which is pending before this Court intending to stay the execution of the impugned orders which the same has been set for hearing on 28/06/2023 wherein the reasons for delaying the execution process have been listed. **Three;** There is also an application for review which is pending before this Court and the same have been fixed for necessary orders on 28/06/2023. **Four;** There is also Revision No. 17 of 2021 which is pending before this Court, and according to him, the omission made in the award is not

clerical, but substantive correction. **Five;** The counsel for the applicants has submitted a misleading authority which states that, the CMA Award can only be dealt with by the Superior Court by way of revision. He added that, this Court cannot be moved by Rule 28 of The Labour Court Rules, 2007 (supra) expressed in **Lukambula's case** (supra) but under Rule 26 (1), (2) (a), (b), (c) of the Rules.

Mr. Tasinga went on submitting that, in his opinion, it is not the task of this Court to compute the figures as prayed by the applicants' advocate, as the applicants were required to compute the required amounts through their affidavit. He stressed that, once the judgment or ruling of the Court is delivered, the Honourable Judge is *functus officio* to deal with the matter.

In the end, the learned advocate underlined that, since there is an application for stay of execution in respect of Labour Revision No. 19 of 2021 and at the same time, there is an application for review in respect of similar matter, then in his opinion, this application is untenable in law and non-meritorious.

In his brief rejoinder, Mr. Kazweba echoed his submission in chief and substantiated that, this Court has inherent power to interpret its own decision or orders. He stressed that, the alleged application for stay of execution has nothing to do with what it is being sought in this Court by way of review.

He added that, it is not true that the Honourable Judge is *functus officio* for the said orders issued by the Court. He concluded by praying the Court to



consider his submission and proceed to interpret the Orders issued by the Court through its ruling dated 12th December, 2022.

I have earnestly gone through competing submissions advanced by both parties, and further I had ample time to read the Court records, ruling and the impugned Orders which are subject of this review and or interpretation thereof. In my considered view, the main issue for consideration and determination is whether the applicants' application for review is meritorious.

Before going into the merit or demerit of the instant application, I find it apposite to remark here that, the present Application for Review stemmed from this Court's Orders in Labour Revision No. 19 of 2021 which reads as hereunder quoted: -

"..... Under section 91 of the Employment and Labour Relation Act, this Court revises the CMA Award to the extent of ordering the applicants to be paid subsistence allowance according to the law. Where there were arrears and apprehension of constructive termination for the first applicant, the months for which the CMA Awarded salary arrears (unpaid) should be excluded.....".

Wherefore, the final Orders of this Court as shown in the Drawn Order was to the effect that: -

1. *This application is granted,*



2. *The CMA Award is revised to the extent that the applicants are entitled to subsistence allowance in addition to the other Awards issued,*
3. *No costs awarded.*

From the excerpt of the final Orders of this Court, it is worth noting that, ahead of dealing with the present application for review of the orders issued by this Court as alluded to above, I find it appropriate to firstly state that, the power of review vested in this Court can be exercised for correction of a mistake apparent on the face of the record and not to substitute a view that may result into a different interpretation. This means that, Courts have power to review its decision, when there is an apparent error on the face of the record that does not need reasoning. Thus, the law in respect of an applications for review is now well settled. In the case of **Karima Kiara Vs. Republic**, Criminal Application No. 4 of 2007, CAT sitting at Dodoma (unreported), the Court observed that: -

"The principle underlying review is that the court would have not acted as it had if all the circumstances had been known. Therefore, review would be carried out when and where it is apparent that- First, there is a manifest error on the face of the record which resulted in a miscarriage of justice. The applicant would therefore be required to prove very clearly that there is a manifest error apparent on the face of the record. He will have to prove further, that such an error resulted in injustice (See: Dr. Aman Walid Kabourou vs The Attorney General and Another –



Civil Application No. 70 of 1999 - unreported). Second, the decision was obtained by fraud. Third, the applicant was wrongly deprived the opportunity to be heard. Fourth, the court acted without jurisdiction (see C.J. Patel vs Republic – Criminal Application No. 80 of 2002)."

It follows therefore that, from the above excerpt of the decision of our Apex Court, what amounts to "**a manifest error on the face of the record**", this fact has been a subject of discussion in a number of cases. Of particular significance in this jurisdiction, is the case of **Chandrakat Joshubhai Patel Vs. Republic [2004] TLR 218**, where the Court held:

"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 they may be conceivably be two opinions. But it is no ground for review that the judgement proceeds on an incorrect exposition of the law..... A mere error of law is not a ground for review.... That a decision is erroneous in law is no ground for ordering review."

In another case of **Elia Kasalile and Others Vs. Institute of Social Work**, Civil Application No. 187 of 2018, it was held that: -

"A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part



of the court. The error or omission must be self-evident and should not require an elaborate argument be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law."

Given the above principles on the question of review, which I subscribe to, as far as this application for review is concerned, it is hard to accede to the argument submitted by the counsel for the respondents against this application for review. In my considered opinion, no doubt that, truly there is an apparent error on the face of the record that need to be corrected.

Upon going through the Orders of this Court dated 12th December, 2022, it is clear that, this Court allowed the Labour Revision No. 19 of 2021 without expressing and ordering what amounts in respect of subsistence allowance the applicants were entitled to be paid, in particular upon holding that the applicants deserved to be paid such amounts from the date of termination to the date of repatriation, as indicated on item number two (2) of the Court's Drawn Order.

As regards to the question, whether I am *functus officio* or not to review my Orders dated 12th December, 2022, in my considered opinion, the answer is positive, and I have the reason. The question when does a Court become



functus officio was underscored by the defunct Court of Appeal for Eastern Africa in the case of **Kamundi v. R. [1973] E.A 540**, where it was held:

"The Court becomes functus officio when it disposes of a case by a verdict of guilty or by-passing sentence or making some orders finally disposing of the case".

Guided by the above case law, and having found that, there was a mistake apparent on the face of the record, I thus correct the same and consequently, order that, the first respondent, Yona Msomi be granted with the following reliefs: -

- (1) 12 months' salary at the rate of the last monthly salary before termination TZS. 1,082,515/= of which the total amounts are TZS. 12,990,100/=;
 - (2) One month salary in lieu of notice at TZS. 1,082,515/=;
 - (3) Severance allowance payment at TZS. 2,914,463.46/=;
 - (4) Repatriation costs at TZS. 5,910,000/=;
 - (5) Disturbance allowance at TZS. 20,000,000/=;
 - (6) Payment of outstanding employment benefits (housing allowance, annual leave and 30 months' salary) amounting to TZS. 43,222,995/=;
 - (7) Subsistence allowance from the date of termination (21/05/2019) to the date of repatriation (the date he was awarded the repatriation costs by the CMA i.e., 15/9/2021, a total of 27 months and 24 days) amounting to TZS. 36,083,830/=;
- The grand total being **TZS. 122,203,903.46/=**.

As for the second respondent, John Chagonja, he is entitled to the following reliefs: -

- (1) 12 months' salary at the rate of the last monthly salary before termination TZS. 1,059,000/= of which the total amounts is TZS. 12,708,000/=;
- (2) One month salary in lieu of notice at TZS. 1,059,000/=;
- (3) Severance allowance payment at TZS. 1,425,576.92/=;
- (4) Repatriation costs at TZS. 1,585,000/=;
- (5) Disturbance allowance at TZS. 20,000,000/=;
- (6) Payment of outstanding employment benefits (housing allowance, annual leave and 30 months' salary) amounting to TZS. 43,947,000/=;
- (7) Subsistence allowance from the date of termination (21/05/2019) to the date of repatriation (the date he was awarded the repatriation costs by the CMA i.e., 15/9/2021, a total of 27 months and 24 days) amounting to TZS. 29,440,200/=;

The grand total being **TZS. 110,164,776.29/=**.

In the upshot and for the reasons stated above, this application for review is meritorious. Since the review is termed as a formal assessment of something with the intention of instituting change, if necessary, it follows therefore that, the Orders of this Court in Labour Revision No. 19 of 2021 is hereby corrected to the extent that, the respondents are hereby ordered to pay the applicants a

total of **TZS. 232,368,680.38/=** as described above. The payment of each applicant should be made in accordance with the details expressed above.

It is so ordered.

DATED at **MOROGORO** this 2nd day of June, 2023.

A handwritten signature in blue ink, appearing to read 'M. J. Chaba', is written over a horizontal line.

M. J. CHABA

JUDGE

2/06/2023