IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MWANZA

AT MWANZA

LABOUR REVISION NO.59 OF 2022

(Originating from Labour Dispute No. CMA/MZA/NYAM/178/2022.)

RICHARD JULIUS RUKAIMBURA ..... APPLICANT

VERSUS

TANZANIA LOCAL GOVERNMENT

WORKERS UNION (TALGWU) ..... RESPONDENT

JUDGMENT

23rd March, 2023, & 18th August, 2023

ITEMBA, J.

In this revisional application, Richard Julius Rukaimbura, the applicant herein is challenging the order of the Commission for Mediation and Arbitration (CMA) delivered by Hon. D. Wandiba, Mediator dated 9th September, 2022 in Labour Dispute No. CMA/MZA/NYAM/178/2022. The CMA dismissed the applicants' dispute on ground that it was *res judicata*. The applicant is aggrieved and has advanced this revision application with the following grounds:

1. *That, this court to revise the decision of CMA issued by Hon. D. Wandiba, the Mediator on 9.9.2022 with case no. CMA/MWZ/NYAM/178/2022.*
2. *That, this court to allow this revision and provide justice against the decision of the CMA.*
3. *That, the mediator erred in law by agreeing that CMA/MWZ/NYAM/178/2022 was a res-judicata while it has a different cause of action with the former one, and opted not to consider important aspect on CMA F1.*
4. *That, this court to issue any appropriate orders as it deems fit.*

Before the court, the applicant appeared in person whereas the respondent was represented by Mr. Einhard Mshongi, learned counsel. The application was disposed of by way of written submissions.

Arguing in support of the application, Mr. Rukaimbura submitted that the mediator had no jurisdiction to hear and determine the preliminary objections as per sections 86 (1), (2) (3) a, b and c, (4), (5), (6) a and b, (7) a and b (i), (ii) and (8) of the Labour Relation Act, Act No. 6 of 2004. He cited the case of **Barclays Bank (T) Limited Vs. Ayyam Matessa**. Civil Appeal No. 481 of 2020, arguing that the mediator entrusted some powers which were not bestowed to her by the law.

Submitting on the second and third limbs of the application, he argued that the CMA/MWZ/NYAM/429-197/2018 and CMA/MWZ/NYAM/178/2022 contained two different causes of action, as the former case was about unfair termination and the prayers were different (reinstatement, compensation of 12 months and subsistence allowance) while the latter was about general damages regarding compensation of LAPF/NSSF monthly payment TZS. 400,000,000, compensation of NHIF medical benefits TZS. 300,000,000 and compensation for failure to supply a certificate of service to an employee payments TZS. 100,000,000.

He argued that, the mediator was wrong to state that the applicant was supposed to include his prayers in the former case. That, terminal and retirement benefits are two different things, and his second case was based on retirement benefits. He, therefore, urged the court to nullify the decision issued by CMA dated 9th September, 2022 and order for mediation and arbitration to proceed accordingly.

In his part, Mr. Einhard Mshongi, learned counsel for the respondent contended that, the applicant raised a point of law for the first time in his submission regarding the mediator's jurisdiction to hear and determine the preliminary objection. That, this point was not raised before, be it in the

application for revision or in his affidavit and that it has no foundation whatsoever being raised for the first time.

With respect to *res judicata*, he submitted that, the applicant was not terminated vide letter dated 24th May, 2019 because by that time he was no longer a respondent's employee. That, the applicant was terminated by the letter dated 14th November, 2017 and through that he filed a case CMA/MZ/NYAM/426-197/2018 which was heard on merit and an award was issued in his favour except for the general damage.

He argued further that, after the application was determined, the respondent was paid in full. He stated that, all claims raised by the applicant in CMA/MZA/NYAM/178/2022 ought to have been claimed in the former case of 2018. To buttress his submission that the applicant's case was res-judicata, he cited the case of **Nelson Mrema & 413 Others vs Kilimanjaro Textile Corporation (LART as the Liquidator) & Minister for Labour and Youth (Development)**, Civil Appeal No. 22 of 2002 CAT at Dar es Salaam where it was held that:

> *"In this case, we are satisfied that the issue of terminal benefits was directly and substantially in Inquiry No. 1 of 1992 as well as in Civil Case No. 6 of 2001 in the LART*

Tribunal. It is our view that although the phrase terminal benefits was not specifically used in the relief clause of the LART Tribunal Petition, the word 'terminal dues arising from the wrongful termination of employment' in clause 4 of the petition indicate with certainty that the claim of Sh. 433,703,231/= was for terminal benefit pleaded in clause 4 of the said petition. We are satisfied that the terminal dues were also specifically sought in the relief clause 8 of Inquiry No. 1 of 1992. The issue of terminal benefits, in our view was therefore directly substantially in issue in the present case as well as in Inquiry No. 1 of 1992. In that regard the present case is res judicata'

He further submitted that, claims of compensation on social security benefits LAPF/NSSF, NHIF medical benefits and compensation for failure to supply the applicant with the certificate of service, just like any other terminal benefits fall under general damages of which the applicant was denied in labour dispute CMA/MZA/NYAM/426-197/2018. He finally prayed that the application be dismissed for lacking in merit.

In his rejoinder, the applicant submitted that the role of a mediator is to mediate and not to decide the case.

From the above submissions and going by the grounds of revision application, the applicant's main complaint is based on the CMA terming his

dispute as *res-judicata* while it was not. Therefore, the main issue is whether the applicant's application number CMA/MWZ/NYAM/178/2022 before CMA was *res-judicata*.

Section 86 (3) of the Employment and Labour Relations Act (ELRA) states that:-

> *"On receipt of the referral made under subsection (1) the Commission shall; -*
>
> *(a) appoint a mediator to mediate the dispute;*
>
> *(b) decide the time, date and place of the mediation hearing;*
>
> *(c) advise the parties to the dispute of the details stipulated in paragraphs (a) and (b)".*

As mediation is the first stage towards arbitration, before any move, it was the duty of the mediator and in this case, she was justified to ascertain if the CMA has jurisdiction or not.

The law governing the principle of *res-judicata* is Section 9 of the Civil Procedure Code, Cap, 33. R.E 2019. It states that;

> *"9. No court shall try any suit or issue in which the* ***matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties*** *under whom they or any of them claim litigating* ***under the same title in a***

court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court".

There are several authorities around this old legal principle among them is the case of **Panieliotta vs. Gabriel Tanaki & Others** [2003] TLR 312, where the Court mentioned conditions for a suit to be *res judicata* as follows:

i. *The former suit must have been between the same litigant parties or between parties under whom they or any of them claim.*
ii. *The subject matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and subsequently in issue in the former suit either actually or constructively.*
iii. *The party in the subsequent suit must have litigated under the same title in the former suit.*
iv. *The matter must have been heard and finally decided.*
v. *That the former suit must have been decided by a Court of competent jurisdiction.*

In emphasizing, The Court of Appeal in the same case of **Panieliotta vs. Gabriel Tanaki** (supra) went further stating that: -

"The object of the principle of res judicata is to bar multiplicity of suits and guarantee finality to litigation. It makes conclusive a final judgment between the same parties or their privies on the same issue by the court of competent jurisdiction in the subject matter of the suit"

Back to the facts of the present case, it is undisputed that in labour dispute No. **CMA/NYAM/429-197/2018** before the CMA, the applicant had referred his complaints for unfair termination against the respondent and the CMA issued an award in his favour. The CMA ordered that the applicant's termination was unfair and that he should be reinstated. It is also undisputed that instead of reinstatement the respondent opted to compensate the applicant to the amount of **TZS. 59,788,896/=** (See the drawn orders issued by CMA). This amount was actually questioned until the High Court Deputy Registrar interfered and drawn orders were prepared and payments were duly made.

The only dispute according to the applicant is that, the second claim made before the CMA for compensation of LAPF/NSSF monthly payment TZS. 400,000,000, compensation of NHIF medical benefits TZS. 300,000,000 and compensation for failure to supply a certificate of service to an employee payments TZS. 100,000,000/=, are 'retirement benefits' and the former, were 'statutory' benefits. And that, this difference makes

the two claims dissimilar and the second application cannot stumble on the ground of *res-judicata*.

I have considered both parties' submissions and briefly, I can state that when the arguments by the applicant are tested against the principle of *res* judicata, they fail. I say this is because the cause of action or the matter directly and substantially in issue in both applications were the same, that is, unfair termination. Although in the CMA form No. 1, the applicant termed the outcome sought as '*General damages for employer's negligence malicious acts resulting to ruin my reputation suffer irreparable loss, wrongful termination',* (sic). I agree with the CMA arbitrator that this was just the use of different words but at the end of the day the complaints were against unfair termination and the CMA having entertained the former complaints, was *functus officio*. Further to that, parties are the same, the CMA had jurisdiction and it had already issued a decision to its finality. The applicant cannot come to court anytime he remembers a new claim against the respondent in respect of the same dispute. The rationale explained in **Panieliotta Vs. Gabriel Tanaki** (supra) is that parties cannot bring claims endlessly before the court and litigations must reach to a finality. Looking at Rule 9 of the CPC, explanation IV states that:

*'Explanation IV: Any matter which **might and ought to have been made a ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue** in such suit.' (emphasis supplied).*

Meaning that, in the present case, the issues of *'retirement benefits'* as opposed to *'terminal benefits',* ought to have been raised by the applicant in the former suit and for that reason, those issues are deemed to have been matters directly and substantially in issue in the former suit, whether they were raised or not. Having said that, the application No. **CMA/MZA/NYAM/178/2022** is *res judicata* to application No. **CMA/NYAM/429-197/2018.**

In the upshot, I hold that this application is barren of fruits and I find no fault in the mediator's order. Accordingly, I dismiss the application.

This being labour proceedings, I give no orders as to costs. It is so ordered.

The right of appeal is duly explained to the parties.

DATED at **MWANZA** this 18th day of August, 2023.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MWANZA DISTRICT REGISTRY

L.J. ITEMBA

JUDGE