IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

HIGH COURT OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

LABOUR REVISION NO. 28 OF 2022

(C/F Labour Dispute No. CMA/KLM/M/ARB/14/2022)

THADEY ALOYCE MAGWETI ……..…. **APPLICANT**

VERSUS

DIOCESE OF MOUNT

KILIMANJARO BISHOP ALPHA MEMORIAL

HIGH SCHOOL……..……**RESPONDENT**

JUDGEMENT

Date of Last Order: 30.08.2023
Date of Judgment: 03.10.2023

MONGELLA, J.

The applicant herein has preferred this application under Section 91(1)(a), 91(2)(b) & 94(1)(b)(i) of the Employment and Labour Relations Act No. 6 of 2004 and Rule 24(1), 24(2)(a)(b)(c)(d) (e) & (f) and Rule 24(3)(a) (b) (c) & (d); 28(1)(b)(c) (d) & (e) of the Labour Court Rules, G.N. No. 106 of 2007 seeking for this court to call and examine the records of the Commission for Mediation and Arbitration in Labour Dispute No. CMA/KLM/MOS/M/14/2022 and vary the decision of the mediator. He also prayed to be granted any other reliefs deemed fit by the court.

The brief facts of the case are that: the applicant was employed by the respondent as security guard on 08.07.2020 until his employment was terminated on 26.09.2022. Dissatisfied with his termination which he alleged being unfair, the applicant filed his claim before the CMA and prayed for the respondent to be ordered to pay him benefits worth T.shs. 1,630,000/=. When the matter had gone for mediation, the parties entered into a settlement agreement thus putting an end to the conflict. However, despite the settlement, the applicant was still aggrieved. His thus preferred this application.

The application is supported by his own sworn affidavit in which he raised the following issues for determination:

a. *That, the Honorouble Mediator erred in fact and in law by holding that the Applicant has to be paid only Salary Arrears;*

b. *That, the Mediator erred in fact and in law by holding that the Applicant has no right to be paid one month salary in lieu of notice.*

c. *That, the Honorable Mediator erred in fact and in law for holding that the Applicant has no right to be paid his severances payee.* (sic)

d. *That, the Honorable Mediator erred in fact and in law for holding that the Applicant has no right to be paid his twelve-month salary for unfair Termination done by employer according to labour law;*

e. *That, the Honorable Mediator erred in fact and in law for failure to consider all aspects factors before Termination of employment.*

The respondent in a counter affidavit dully sworn by one, Rev. Prof. David Mnakali, the principal officer of the respondent, strongly opposed the application. He had the position that the applicant was not to be paid anything out of the amount in the agreed settlement.

As I went through the records of the CMA, I required the parties, along arguing the grounds for revision advanced by the applicant in his application, to also address the court on the issue ***whether it was proper for the applicant to file for revision in this court***, following a settlement agreement under mediation in the CMA. Considering that the same was a legal issue and the parties were not legally represented, I gave the parties the liberty to address the court by written submissions.

In his submission in chief, the appellant averred that in the settlement agreement they had agreed that the payment would be effected on 11.10.2022 whereby T.shs. 130,000/- was to be paid and the balance of T.shs. 705,000/- would be paid on 15.11.2022, however the respondent did not honour the agreement which caused him to seek redress before this court. He was of view that filing this application was the correct approach.

In reply, Mr. Mnakali averred that this application is the applicant's way of seeking a second payment as he has already been paid as agreed in the settlement agreement executed at the CMA. He was of view that this court cannot make an order for the respondent to issue another payment as the agreed payments have already been effected. He also attached one payment voucher showing payments of T.shs. 705,000/- being effected to the applicant.

Rejoining, the applicant averred that the respondent failed to prove that she honoured the settlement agreement signed at the CMA on 11.10.2022 in which they had agreed that all payments would be made at the CMA office and witnessed by the mediator. He averred that the payment voucher was irrelevant to this application. That, the respondent dis-honoured the agreement and the only remedy available is for the application to be determined by this court.

Upon considering the submissions of both parties, I have observed that both parties hardly submitted on the legal issue raised by the court. They as well barely addressed the statement of legal issues contained in the applicant's affidavit.

Basically, apart from the issue raised by the court, the applicant's issues fault the decision of the mediator u in the sense that he failed to consider the question whether the termination was fair. He also faults the mediation outcome on the ground that the mediator

erred in denying him payment of salary arrears, severance pay, and twelve months salary as compensation for unfair termination.

I shall first resolve the issue raised by the court, that is, on ***whether it was proper for the applicant to file for revision in this court*** and if need be, I shall determine the rest of the issues advanced in the applicant's affidavit. It appears that the applicant preferred this application claiming that the respondent did not comply with the terms of the settlement deed and that is why he is seeking redress of this court to wit, that the decision of the mediator be varied, quashed and set aside. On the other hand, the respondent claims that they had complied with the terms in the settlement agreement and is of considered view that the applicant is using this application to demand another payment which if granted, would be unjust on her part. In the premises, I am of the finding that the parties did not understand the issue raised by the court for them to address. They were to address this court on the propriety of the application at hand, but they failed to do so. Nevertheless, I shall address the issue.

It is undisputed that pursuant to **Section 14 (1) (a) of the Labour Institutions Act, 2004,** the CMA is vested with the power to mediate any dispute referred to it. The Mediation process before the CMA is governed by the **Labour Institutions (Mediation and Arbitration Guidelines) Rules, 2007 G.N. No. 67 of 2007.** The explanation of the process and what mediation entails is found under **Rule 3 (1)** of the said Rules which states:

> "**3. (1)** Mediation is a process in which a person independent of the parties is appointed as mediator and attempts to assist them to resolve a dispute and may meet with the parties either jointly or separately, and through discussion and facilitation, attempt to help the parties settle their dispute."

The above provision entails that mediation is a process that can only be successful where both parties reach an amicable and consented agreement. Where parties reach an agreement, the mediator then drafts a settlement agreement which is signed by both parties. This process is well explained under **Rule 13 of G.N. 67 of 2007**. The settlement agreement is binding on both parties and execution may be sought to enforce the terms of the agreement as the same is deemed to be a decree of the court of law. This is stated in **Section 88 (7) of the ELRA**;

> "**88. (7)** A mediator may, by an agreement between the parties or on application by the parties, draw a settlement agreement in respect of any dispute pending before him, which shall be signed by the parties and the mediator, and such agreement shall be deemed to be a decree of the Court."

The question now stands as to whether a party to the settlement agreement can challenge the same. In my considered view, since a settlement agreement is enforceable as a decree of the court,

where there are questions on execution of the terms of the agreement, then the parties can seek to execute the agreement in the court of law. A party cannot challenge a settlement agreement by faulting the mediator through revision as done by the applicant herein. The agreement is a consensual agreement between parties rendering them bound by it.

Further, in this matter, the applicant is unclear as to what he exactly wants. On one hand, he is challenging the settlement agreement by faulting the terms in the same in which he blames the mediator for failing to award him payment of salary arrears, severance pay, and twelve months salary as compensation for unfair termination and consequently, seeking for the settlement to be varied. On the other hand, he has dedicated his whole submissions is arguing that the respondent failed to uphold her part of the bargain. For reasons I have stated herein, I am of considered view that this application focuses on compliance with terms of settlement agreement between the parties.

The position is and will always be that parties are bound by the contracts they have signed and courts have the duty to protect and cherish contracts entered freely by the parties. See: **Harold Sekiete Levira and Another vs. African Banking Corporation Tanzania and Two Others** (Civil Appeal No. 46 of 2022) [2022] TZCA 754 TANZLII; **Robert Scheltens vs. Sudesh Kumar Varma & Others** (Civil Appeal No. 203 of 2019) [2022] TZCA 508 TANZLII and; **Joseph**

F. Mbwiliza vs. Kobwa Mohamed Lyeeselo Msukuma & Others (Civil Appeal No. 227 of 2019) [2022] TZCA 699 TANZLII.

Courts can only interfere with contracts made between parties when the same was procured improperly by misrepresentation or fraud. This is however not the gist of this application. In the duly signed settlement agreement, the applicant agreed to payment of salary arrears totaling at T.shs. 835,000/- which was to be paid in two instalments; on 11.10.2022 and 15.11.2022. While it is unclear as to whether the payments were effected, I am of the considered view that the same being a question of execution, it ought to be determined in an application for execution.

In the circumstances, I am of the stance that this application should not have made its way into this court vide an application for revision against an arbitral award that does not exist. I therefore dismiss this application for being untenable before this court. No orders as to costs, for it being a labour matter.

Dated and delivered at Moshi on this 03rd day of October 2023.

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

X

L. M. MONGELLA
JUDGE
Signed by: L. M. MONGELLA