

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**LABOUR DIVISION**

**(TANGA DISTRICT REGISTRY)**

**AT TANGA**

**LABOUR REVISION NO. 08 OF 2023**

**AMBONI PLANTATIONS LIMITED.....APPLICANT**

**VERSUS**

**STEVEN GERALD JACOB.....RESPONDENT**

*(Originating from Labour Dispute No. CMA/TAN/136/2021/28 of the Commission for  
Mediation and Arbitration for Tanga at Tanga)*

**JUDGMENT**

*14/09/2023 & 31/10/2023*

**NDESAMBURO, J.:**

The respondent instituted a labour dispute before the Commission for Mediation and Arbitration (CMA) for Tanga against the applicant. Initially, the respondent was employed by the applicant via a contract duly signed by both parties with effect from 25<sup>th</sup> February 2013. However, the applicant's employment was terminated on 11<sup>th</sup> September 2021 following a disciplinary committee meeting

conducted on 31<sup>st</sup> August 2021. The respondent referred the dispute before the CMA which ruled in his favours.

Feeling aggrieved, the applicant filed the present application seeking for this court to examine the record to satisfy itself as to the correctness of the decision and order made and then revise the said proceedings. The application was supported by an affidavit sworn by David Michael Lukindo, the applicant's human resource manager while the respondent countered it.

Mr. Lucas chose to abandon his other grounds in the affidavit and retained grounds under paragraphs 17, 18(d) and (e) which pertain to the competence of the application before the CMA following the respondent's admission during cross-examination that he did not sign CMA F1. Therefore, the ground is as follows:

*That the CMA erred in law for failure to address the legal issue raised by the applicant's counsel in the closing argument on whether the matter before the CMA was competent.*

The applicant was represented by Mr. Yona Lucas, a learned counsel, whereas Mr. David Kapoma, a Personal Representative,

represented the respondent. By consent, the hearing proceeded by way of written submission.

In support of the application, Mr. Yona argued that the application for revision was filed in accordance with the Employment and Labour Relations Act, Cap 366 R.E 2019, specifically sections 91(1)(b)(i), as well as Rules 24(1)(2), 24(3)(a)(b)(c)(d), and 28(1)(b)(c) and (d) of the Labour Court Rules G.N 106 of 2007.

He submitted that in his closing argument pursuant to Rule 26(1) – (4) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, 2007 GN No. 67 Of 2007, he raised a legal issue concerning the respondent's failure to sign CMA F1, a form used to initiate the labour dispute before the CMA. He argued that this omission rendered the dispute before the CMA legally incompetent. Mr. Lucas emphasized during his submission that the CMA ought to have struck out the labour dispute based on the respondent's admission, during cross-examination, that the signature on CMA F1 did not belong to him. However, the arbitrator did not address the concern raised before him at all. Further, the arbitrator did not comment on whether the signature appearing on Exhibit D6



resembled the one on CMA F1, as attested by the respondent during cross-examination by the learned counsel. To bolster his stance, Mr. Yona cited the case of the Court of Appeal of **Melau Mauna and 24 Others v The Registered Trustees of the Evangelical Lutheran Church in Tanzania (ELCT) and another**, Civil Application No. 89/02 of 2021 and **Ulimwengu Hamis Kabwe v National Housing Corporation and 3 Others**, Land Case No. 11 of 2021 HC.

Based on the above, the applicant urges this court to allow the application, to step into the powers of the CMA and strike the complaint, nullify the proceedings and award thereof.

In response, the respondent opposed the application and maintained that there was no definitive admission during cross-examination that the signature on CMA F1 did not belong to the respondent. The respondent pointed out that during re-examination, he affirmed that the claims in the form were indeed his, implying that he was the one who had signed the said document. The respondent further argued that the purpose of re-examination is to correct or

rectify any aspects of the evidence that were discussed during cross-examination, and that is precisely what he did.

In addition, the applicant had an opportunity to raise the issue during the opening statement under Rules 24(1)(a)(b) and (C) and 24(4) of GN 67 of 2007 but he forfeited it to his peril.

Furthermore, the respondent contended that the applicant's decision to introduce the alleged legal issue during the closing argument was irrelevant and unusual within the context of labour laws, especially Rules 26(1)(3)(a)(c) of GN No. 67 of 2007.

He distinguished the cited cases but Mr. Yona as those cases were about unsigned documents while the instant matter was signed and rectified during cross - examination. Finally, he requested this court to dismiss the application with no order as to costs due to its nature.

In rejoinder, Mr. Yona argued that Mr. Kapoma's re-examination was not intended to resolve the doubt about the differences in the signatures on the two documents of the same person. Instead, it was focused on explaining the nature of the

document. Mr. Yona emphasized that the respondent's testimony, stating that the document contained his claims, should not automatically imply that the signature on CMA F1 was his. He firmly maintained that the CMA had erred by not addressing the legal issue and urged the court to grant the application.

Upon a comprehensive examination of the record, the arguments presented, and the legal precedents referenced by both parties, the central issue to be decided revolves around the respondent's testimony during cross-examination, specifically about the claim that the signature in question was not his, and any legal consequences that may arise from this assertion.

In accordance with Rule 5(1) of the Labour Institutions (Mediation and Arbitration) Rules, 2007, a party or any other individual authorised by the Act or the Rules to act on behalf of an employee is required to sign a document that initiates a labour dispute before the CMA. The Rule provides:

*"A document shall be signed by the party or any other person entitled under the Act or these rules to represent that party in the proceedings."*



Additionally, Rules 12(1)(2)(a) and 3 of the same Rules outline the specific method and procedure by which labour disputes may be referred to the CMA. The Rules state:

1. *"A party shall refer a dispute to the commission for mediation by completing and delivering the prescribed form ("the referral document")*
2. *The referring party shall:*
  - a) *Sign the referral document in accordance with rule 5;*
  - b) *...*
  - c) *....*
3. *The commission shall refuse to accept a referral document until the requirements of sub-rule (2) have been complied with".*

Based on the provisions mentioned above, it is evident that a party seeking to file a labour dispute with the CMA must adhere to these requirements by ensuring that the referral form is appropriately signed by the party himself or by an authorized representative as specified in the Act or Rules. Failure to meet these criteria obligates the CMA to refuse the document filed.

Having delineated the legal provisions governing the initiation of a labour dispute, let this court now analyze the matter filed for revision. In this application, the central issue at hand pertains to whether the CMA was justified in overlooking the legal issue raised in the final submission concerning the competency of the dispute brought before it.

Paragraphs 17 and 18(d) and (e) of the affidavit unambiguously articulate that the applicant's concern pertains to the CMA's omission to address the raised issues by Mr. Yona regarding the competence of the labour dispute, specifically regarding the testimonies of the respondent during cross-examination about his signature on CMA F1. In the counter affidavit, Mr. Kapoma argued that these concerns lacked merit.

To gain a comprehensive understanding of the matter, this court will now quote the relevant excerpt from the cross and re-examination of PW1, which unfolded as follows:

***Cross-examination of PW1 by Mr. Yona***

*S: Je CMA F1 sahihi ni ya nani*

*JB: Siyo yangu*



***Re-examination of PW1 by Mr. Kapoma***

*S: CMA F1 inahusu nini*

*JB: madai ambayo nimejaza mimi".*

Respectfully, Mr. Kapoma's argument does not align with the interpretation he wants this court to adopt. In the respondent's response, when he stated, "*madai ambayo nimejaza mimi*" it implies that he filled out the claim, not necessarily that he signed the form. As correctly pointed out by Mr. Yona, the question in re-examination was not aimed at definitively resolving the doubt regarding whether the signature on CMA F1 belonged to the respondent. Instead, its primary purpose was to elucidate the nature of CMA F1.

Given the circumstances, it is evident that the respondent acknowledged that the CMA F1, which initiated his labour dispute, was not signed by him. Regrettably, the respondent was not asked to testify regarding whether the signature on CMA F1 was affixed by a person duly authorized by him. In the absence of any explanation, it remains clear that the labour dispute brought before the CMA was legally incompetent, as it contravened Rules Rule 5(1) and 12(2)(a) of the Labour Institutions (Mediation and Arbitration) Rules, 2007.

That being the case, CMA ought to have invoked its powers under Rules 12(3) of the same Rules by rejecting the dispute.

Considering the circumstances, I have carefully reviewed the CMA award to ascertain whether the issue was indeed not determined, as raised by Mr. Yona. Regrettably, the CMA did not address the issue in any manner. Mr. Kapoma contends that the applicant should have raised this point in the opening statement, and due to his failure to do so, he has waived his right to address it. I am afraid, that is not correct as the issue emerged during the cross-examination while the applicant may not have been aware of it during the opening statement. Additionally, he argued that the applicant's choice to introduce the alleged legal issue during the closing argument was deemed irrelevant and unconventional within the framework of labour laws. However, in this case, where the matter pertains to the legality and competence of the issue before the CMA, I do not concur with Mr. Kapoma's assertion that it is irrelevant. Given the above, it is clear that the CMA made an error by not considering the applicant's closing argument, which addressed this critical legal point.

Based on the above analysis, I conclude that the application has merit. Therefore, the award made by the CMA is hereby revised. The proceedings and award are nullified and set aside. The respondent is granted the liberty to initiate the labour dispute in accordance with the law. Each party is to bear its costs.

It is so ordered.

**DATED** at **TANGA** this 31<sup>st</sup> day of October 2023.



A handwritten signature in blue ink, appearing to be "H. P. Ndesamburo".

H. P. NDESAMBURO

**JUDGE**