

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF MWANZA  
AT MWANZA**

**LABOUR REVISION NO. 7 OF 2023**

*(Arising from the Labour Dispute No. CMA/MZA/ILEM/04/2023, dated 23<sup>rd</sup> of February, 2023.)*

**BERKAHARD INVESTMENT ..... APPLICANT**

**VERSUS**

**ISAYA ELIKANA RIANA ..... RESPONDENT**

**JUDGMENT**

*6<sup>th</sup> & 27<sup>th</sup> October, 2023.*

**ITEMBA, J.**

In this Revision Application, the applicant is challenging the decision of the Commission for Mediation and Arbitration (CMA) which granted condonation to the respondent.

The application is preferred under sections 94 (1), (2) (b), (c) of the Employment and Labour Relations Act, Cap 366 R.E 2019 (ELRA) and Rules 24 (1), (2) (a), (b), (c), (d), (e) and (f), (3) (a), (b), (c), (d) and 28 (1) (a), (b), (c) and (d) of the Labour Court Rules, 2007, GN 106 of 2007. It is supported by an affidavit sworn by Bernard Kajuna, the principal officer of the applicant. He is pleading the court to call the CMA records in CMA/MZA/ILEM/04/2023/ COND and examine the correctness of the ruling and the manner in which CMA conducted and delivered the same.

The application has been strongly opposed by the respondent. Through a counter-affidavit sworn by **Isaya Elikana Riana**, the respondent disputed most of the facts deposed in the affidavit. He held the view that the application was baseless and it should be dismissed.

Brief facts of this matter are to the effect that the respondent was employed by the applicant since 2012. In May 2022, a dispute arose between them the respondent claiming that he has not received his salary for almost 5 months. The respondent referred his dispute for unfair termination before the CMA. A decision was issued on 30/11/2022 and a copy of the said decision was issued to the respondent on 1/12/2022. The respondent moved the applicant to pay his salary through a letter which was never replied. Following that, on 4/1/2023 the respondent went back to CMA and filed an application for condonation before CMA which was granted. The applicant is aggrieved with such a decision hence this application.

At the hearing, Mr. Alex Lwoga, learned counsel appeared for the applicant against Mr. Nyanjugu S. Masoud, personal representative for the respondent.

Briefly, Mr. Lwoga submitted that the CMA erred because the respondent did not account for each day of delay for his application to be granted. The respondent insisted that the CMA decision was justified.

In the course of preparing a judgment. I wanted to satisfy myself on **whether the application is competent**. I thus invited the parties to address the court on the matter. Submitting for the appellant, Mr. Lwoga rightly stated that in terms of Rule 50 of the Labour Court Rules, 2007 G.N 106 OF 2007, this application is prematurely brought before this court because it emanates from interlocutory applications. He prayed for the file to be remitted back to CMA for determination of the main application. In the other side, the respondent, for obvious reasons, did not go far from the applicant. His submission was that the application is incompetent for contravening rule 50 of the Labour Court Rules, 2007 G.N 106 OF 2007.

Having stated the above, **Rule 50 of Labour Court Rules, GN. No. 106 of 2007** provides:

*"No appeal, review or revision shall lie on an interlocutory or incidental decision or orders, unless such decision has the effects of finally determining the dispute."*

According to the Black's Law Dictionary, 8<sup>th</sup> Edition. Condonation is defined to mean: -

***"An order that relates to some intermediate matter in the case; any order other than a final order. Most interlocutory orders are not appealable until the case is fully resolved. But by rule or statute, most***

*jurisdictions allow some types of interlocutory orders (such as preliminary injunctions and class-certification orders) to be immediately appealed. — Also termed interlocutory decision; interim order; intermediate order.”*

Certainly, the decision issued by CMA was an interlocutory one in the essence that it did not finalise the matter. In the case of **Equity Bank (T) Ltd., v. Abuu J. Mvungi**, HC-Revision No. 62 of 2019 (MZA-unreported) and **Vodacom Tanzania PLC v. Planetel Communication Ltd**, CAT-Civil Appeal No. 43 of 2018 (unreported) in which it was held that:

*"We are of the opinion that the ruling and order sought to be revised is an interlocutory order .... because in that order nowhere it has been indicated that the suit has been finally determined."*

Under the circumstances, no revision can be filed against such a decision. See also the case of **Sudi Hamis Sudi and 3 others v Maureen George Mbowe Jiliwa and 3 others** civil application no. 362/17 of 2018, Court of Appeal, Dar es Salaam.

If the respondent's application for condonation was rejected by the CMA that would have been a different situation because the matter would have ended there and parties can file a revision application to this court. In the present case, the applicant ought to have waited until the

application is heard by CMA and reaches into finality and if he still aggrieved file a revision application.

In view of the foregoing, I hold that the CMA's decision dated 23<sup>rd</sup> of February, 2023, was in respect of an interlocutory order, does not have a finality effect and therefore it cannot be reviewed. Consequently, the present application is struck out for being incompetent. Records be remitted to the CMA for the hearing of the pending application.

No order as to costs these being labour proceedings.  
It is so ordered.

DATED at **MWANZA** this **27<sup>th</sup>** day of October, 2023.



**L. J. ITEMBA**  
**JUDGE.**

Ruling delivered under my hand and seal of the court in the presence of both the applicant and respondent in person, Mr. Nyajugu Masoud the applicant's personal representative and Ms. G. Mnjari, RMA.

