

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**TABORA SUB-REGISTRY**  
**AT TABORA**  
**LABOUR REVISION NO. 01 OF 2023**  
*(Arising from the Commission for Mediation and Arbitration, in Labour Dispute No.*  
*CMA/TAB/NZG/50/2022/01/2023)*

**THE REGISTERED TRUSTEES OF FPCT ..... APPLICANT**  
**VERSUS**  
**FRANCIS JOHN KIFUTUMO ..... RESPONDENT**

**RULING**

*Date of Last Order: 21/04/2024*  
*Date of Judgment: 17/04/2024*

**KADILU, J.**

Before the Commission for Mediation and Arbitration (CMA) for Tabora, Francis John Kifutumo (the respondent herein) lodged a claim against his employer, the Registered Trustees of Free Pentecostal Church of Tanzania (the FPCT). It was a complaint for unfair termination of employment that was CMA/TAB/NZG/50/2022/01/2023. Before hearing of the said dispute, the applicant raised a preliminary objection on the point of law to wit, that the dispute referral form (CMAF.1) was not signed by the complainant. The respondent's Advocate Mr. Moses Gumbah conceded to the point objection and prayed for the CMA to grant the respondent 14 days' leave to rectify the anomaly and refile the complaint.

The CMA struck out a dispute upon the concession by the respondent's Advocate acceding to a preliminary objection that the referral form was not signed by the respondent as required by the law. It went further and granted the respondent 14 days to refile the dispute as prayed. Aggrieved by the decision, the applicant has lodged this

application for revision under the provisions of Section 91 (1) (a) and Section 94 (1) (b) (1) of the Employment and Labour Relations Act, [Cap. 366 R.E. 2019], Rules 24 (1),(2), (a),(b),(c),(d),(e), (f), 24 (3) (a) (b) (c) (d) and Rule 28 (1) (a) (c) and (e) of the Labour Court Rules, 2007 G.N. No. 106 of 2007 raising the following issues:

- i. *Whether it was legally right for the arbitrator to condone the respondent's late referral to the CMA without compliance with the law.*
- ii. *Whether the arbitrator had the legal capacity to condone the referral even after having struck out the dispute.*

The applicant prays this court to revise and set aside the decision and order of the CMA on the above grounds. Hearing of the application proceeded by way of written submissions. Mr. Linus Munishi, the learned Advocate represented the applicant while Mr. Moses Gumbah also the learned Advocate represented the respondent. The submissions of both sides will be considered in due course of writing this ruling.

Having analyzed the records of this application as shown, there is one issue to determine because the issues raised by the applicant are interrelated. The framed issues are *whether it was legally right for the Arbitrator to condone the respondent's late referral to the CMA and whether he could do so even after having struck out the dispute*. Starting with whether it was legally right for the arbitrator to condone the respondent's late referral to CMA without compliance with the law, it was the applicant's stance that the CMA may only condone a late referral when there is a good cause provided for the late referral.

I wish to state at the outset that the application before the Arbitrator was not for an extension of time (condonation). The CMA was, at that stage resolving a preliminary objection raised by the Advocate for the respondent in that application. For this reason, Advocate for the applicant has argued that in the impugned order of the CMA, the Arbitrator did not state the cause for condoning the complaint. He referred to the case of ***Said Abdallah Doga v Rose Fridoline Mwapinga & Another***, Civil Revision No. 1 of 2020 in which the Court of Appeal held that:

*"... if we assume that the appeal was properly placed before Shaidi, J., which is highly doubtful, it is evident that the learned High Court Judge awarded a relief that was neither pleaded in the pleadings nor prayed by the applicant. This is, in our considered view, an irregularity and a deviation from the settled position of the law, underscored in many of our decisions, that reliefs must be founded on the prayers made by the parties ..."*

In reply, Mr. Gumbah submitted that the records show that the respondent filed his referral dispute at the Commission on 22<sup>nd</sup> November 2022 challenging his termination by the applicant which happened on 24<sup>th</sup> October 2022, twenty-nine (29) days after the termination so, the referral was well within time. He relied on Rule 10 (1) of G.N. No. 64 of 2007 which provides that dispute about the fairness of an employee's termination of employment must be referred to the CMA within thirty days from the date of termination or the date the employer made a final decision to terminate or uphold the decision to terminate.

In the application at hand, when the matter was in the CMA there was no prayer by the applicant seeking to be granted 14 days extension

of time. The prayer came up from the bar when the Advocate for the applicant therein was responding to the preliminary objection raised by the respondent's Counsel. The applicant contended that the 14 days were granted to the respondent without having pleaded it. Indeed, the law is settled that parties are not entitled to the reliefs which they did not pray. In the case of **Mway Arego Jombo v NMB Bank PLC**, Civil Application No. 627/08 of 2021, it was stated that:

*"... parties are bound by their pleadings and that any evidence produced by any of the parties which does not support the pleaded facts or is at variance with the pleaded facts must be ignored."*

The applicant added that although the impugned referral dispute was filed within the prescribed time, the respondent's referral to the Commission was not subject to condonation as submitted by the Advocate for the applicant. The applicant's stance is that, after the Arbitrator had upheld the preliminary objection and struck out the respondent's referral for not being signed, he was supposed to end there and let the respondent (then the applicant) take appropriate steps within the ambit of the law. The respondent has sought refuge under the overriding objective principle which requires the courts to deal with substantive justice without being tied up with procedural technicalities.

I fully agree that in the administration of justice especially in labour matters, the courts are not supposed to heavily rely on procedural techniques that do not occasion a failure of justice. In the case of **Yakobo Magoiga Gichere v Penina Yusuph**, Civil Appeal No. 55 of 2017, the Court of Appeal of Tanzania at Mwanza, observed that:



*"With the advent of the principle of Overriding Objective ... which now requires the Courts to deal with cases justly, and to have regard to substantive justice; section 45 of the Land Disputes Courts Act (which prohibits reversing decisions on account of errors which do not occasion failure of justice), should be given more prominence to cut back on over-reliance on procedural technicalities. ... Failure to identify the member who presided over the proceedings of the Ward Tribunal when the Chairman was absent, did not occasion any failure of justice to the appellant."*

Applying the above principle to the present application, I have failed to comprehend how the 14 days granted to the respondent has occasioned a miscarriage of justice to the applicant. In my humble opinion, the Commission exercised its discretion judiciously in granting the respondent fourteen days' leave to refile his complaint after rectification of the identified error. In the case of ***Julius Kweba & 2 Others v The Registered Trustees of Seventh Day Adventist Church & Another***, Land Appeal No. 76 of 2022, this court upheld a preliminary objection over an appeal that was filed in English language instead of Kiswahili and, went ahead granting the appellants fourteen days to refile a competent appeal.

Before me, the applicant complained about the order of the CMA striking out an application and ordering the refiling of a proper application. I am satisfied that the CMA did what the justice of the case in the obtaining circumstances required. In view of the foregoing, I find no basis in the applicant's argument that the arbitrator condoned the respondent's late referral to the CMA without compliance with the law. As submitted by Mr. Gumbah, the Commission was right in exercising its discretion granting leave to refile a proper application.

Having found so, I have no reason to venture on the second issue raised by the Advocate for the applicant. The CMA enjoins acting in a manner it considers expedient in the circumstances to achieve the objectives of the Act and, or the good ends of justice. There is no complaint that the Commission acted inconsistent with the objects of the Act neither is there any suggestion that it acted for any purpose other than meeting the good ends of justice. In the upshot, I dismiss the application for lack of merit.


Having said that, I uphold the decision of the CMA in complaint No. CMA/TAB/NZG/50/2022/01/2023. As the dispute is a labour matter, each party shall bear its own costs.

**It is so ordered.**

  
**KADILU, M.J.**  
**JUDGE**  
**17/04/2024.**

The ruling delivered in chamber on the 17<sup>th</sup> Day of April, 2024 in the presence of Mr. Linus Munish, Advocate for the applicant, and Mr. Moses Gumba, Advocate for the respondent.



  
**KADILU, M.J.,**  
**JUDGE**  
**17/04/2024.**