IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MOSHI

AT MOSHI

LABOUR REVISION NO. 27802 OF 2023

(Originating from CMA at Moshi in Labour Dispute Award No. CMA/KLM/MOS/ARB/20/2023)

ENG. GURISHA ELLY MRUMA .....APPLICANT

Versus

BUILDERS AND LIMEWORKS CO. LTD.....RESPONDENT

RULING

29th April & 13th June 2024

A.P. KILIMI, J.:

The applicant hereinabove claimed at the Commission for Mediation and Arbitration at Moshi that he was employed by the Respondent mentioned above in a position of structure Engineer stationed at Ndungu for Road Construction in September 2022. He served for him for six months, however it is alleged on 9/02/2023 the respondent terminated his employment. Being aggrieved the way he was terminated he referred the matter at CMA at Moshi wherein he lost the case. Thereafter the applicant decided to move this court by way of Revision praying for the following orders;

1. That, this court be pleased to call for and examine the record of and proceeding of the Commission for Mediation and Arbitration at Moshi in Labour Dispute CMA/KLM/MOS/ARB/20/2023.
2. That, the Honorable Court be pleased to revise the records of CMA and the award with Labour Dispute CMA/KLM/MOS/ARB/20/2023 delivered to him on 1st Dec. 2023 before Hon. Lomayan Sumley (Arbitrator) on the following grounds.
   (a) That the award by arbitrator was improperly procured due to unfair hearing.
   (b) That the award by Arbitrator was unlawful and irrational.
3. The Honorable court be pleased to grant any other order claims proper and fit to grant.

In reply to the above, together with his notice of opposition, the respondent filed also a notice of preliminary point of objection to the effect that:

> This Application is incompetent before this court as it contravenes the provision of Regulation 34(1) of the Employment and Labour Relations (General) Regulations GN. No. 47 of 2017 as the application was filed without notice of intention to seek for revision of an award.

With the leave of this court, it was agreed the objection be argued by way of written submissions. Mr. Joseph Peter learned advocate stands representing the respondent while Eng. Gurisha Elly Mruma, the applicant had no representation, thus stood himself.

It was Mr. Peter's submission that the application is incompetent for failure to file a mandatory notice of intention to seek revision (CMA F10) contrary to Regulation 34(1) of the Employment and Labour Relations (general) Regulation GN. 47 of 2017 which requires the forms set out in the third schedule to the regulations to be used in all matters to which they refer.

Arguing further the learned counsel submitted that the said provision is couched with the word SHALL to mean that it is mandatory to file the notice of revision failure of which is incurable just like other notices of appeal in both civil and criminal matters. It was his submission that absence of the notice makes the appeal incompetent and liable to be struck out.

Mr. Peter further contended that when a law provides for a certain word especially shall according to the Interpretation of Laws Act, it means mandatory and not an option. He submitted further that the applicant has failed to abide with that condition as the mandatory legal requirement hence allegation regarding overriding lacks merit. Thus, that leads to his application for revision to be incompetent before the court and that the

available remedy is for this court to struck it out. To substantiate his assertion he invited this court to refer the case of **Amina Sangali & 200 Others vs St. John's University of Tanzania** [2023] TZHCLD 1382 (TANZLII).

In his reply submissions, the applicant Eng. Gurisha Elly Mruma principally has reproduced the verdict of the case of **Tanzania Revenue Authority vs Mulamuzi Byabusha** [2022] TZHCLD 597 (TANZLII). But further insisted that in that case the wording in that provision to wit "word shall be used to matter which they refer", was interpreted to be plain and need no construction, and further the court said there is nowhere in the law, where it is categorically says that CMA F10 institute a revision before this court, thus he adopted the wording of that case at page 11 that failure to file a notice under regulation 34(1) is not an incurably fatal illegality. Then prayed this application to be allowed to proceed.

I have considered submissions from both parties regarding the preliminary objection raised and now I am called to determine the objection by answering the issue as to whether the objection raised is meritorious or not. In arguing the matter each party has cited a precedent

from this court which favours their particular argument and since the cited cases are from this court, I am not in principle bound by any, rather the decisions can only have a persuasive effect in the course of determining the matter at hand.

The objection raised by the respondent states that this application is incompetent before this court as it contravenes the provision of Regulation 34(1) of the Employment and Labor Relations (General) Regulations GN. No. 47 of 2017 as the application was filed without notice of intention to seek for revision of an award. For ease of reference, I find it useful to quote the said provision of law as hereunder;

> *34.-(1) the forms set out in the Third Schedule to these Regulations* ***shall*** *be used in all matters to which they refer.*
>
> [Emphasis added]

It is trite law that whenever the word *shall* is used in conferring a function, such word shall be interpreted to mean that the function so conferred must be performed. This is provided for under **section 53 (2) of the Law of Interpretation Act, Cap 1 R.E. 2019**. Therefore, when

interpreting the provision above in light of this law, I find that the law is so clear that it imposes a mandatory requirement to use the forms in all matters which they refer.

The applicant in this case does not dispute the fact that he did not file the required notice but he argued that there is nowhere in the law where it is categorically stated that CMA F10 institutes a revision in this court. He is therefore of the opinion that the omission is not fatal. This argument however does not in my opinion do away with the fact that the law has imposed a mandatory obligation upon a person wishing to seek revision in this court to first give a notice of his intention to the Commission in a form prescribed under the Regulation 34 (1) cited above.

Having examining the form in that law closely, it clearly demonstrates the intention of the law that it seeks to facilitate the court before which the revision is filed with the necessary documents to enable the revision process and also informs the other party that the award will be challenged so he can also be aware. Not only that but I also subscribe to the reasoning in the case of **Amina Sangali & 200 Others vs St. John's University of Tanzania** (supra) that the said notice serves both

administrative and judicial, and I find it inevitable to reproduce its extenso at page 10 as hereunder:

> *"It is administrative in the sense that it **alerts CMA to prepare the records as there is an intended revision**. It is judicial in the sense that it gives **alert to the Decree Holder that the Decree cannot be executed**, and it informs the opposite party that revision process has commenced. It follows, therefore, that if the notice is not served it becomes prejudicial to the Respondent."*
>
> [Emphasis added]

Equally in view of this law, the said requirement promotes timely resolving of both the employer and employee disputes since everything will be at place as above. Which in turn enhance the spirit of the Employment and Labour Relations Act No. 6 of 2004 which is to promote economic development through economic efficiency, productivity and social justice.

Therefore, it is my opinion that this legal provision using the word "shall" to create the Forms, the omission to do so is a fatal defect and cannot be cured easily. Consequently, should not be taken as a technical

one which can be avoided by overriding objectives rather it is an important step in dispensation of justice. In the circumstance, I am settled that the omission by the applicant to issue the notice prescribed in the Regulation 34(1) (CMA F10) is a fatal irregularity which cannot be cured in the circumstances of this matter. (See **Arafat Benjamin Mbilikila vs NMB Bank Plc** TZHCLD 411 (TANZLII).

As I said above both cases cited from both parties interpreted the said provision raised objection in this matter, but as reasoned above, I am of the view, the circumstances of this matter deploy me to follow the decision of this court in **Amina Sangali & 200 Others vs. St. John's University of Tanzania** (supra).

In the upshot of all the above, I find the application before me to be fatally defective for failing to comply with the mandatory provisions of the Regulation 34(1) of the Employment and Labour Relations (General) Regulations GN. No. 47 of 2017 and consequently, the application is hereby struck out.

I find the objection with merit and I proceed to struck out the application with no order as to costs.

It is so ordered.

DATE at **MOSHI** this 13th day of June, 2024.

A.P. KILIMI

JUDGE

Court: Ruling delivered today on 13th day of June, 2024 in the presence of Mr. Joseph Peter for Respondent. Applicant is present in person.

Sgd: A. P. KILIMI
JUDGE
13/06/2024