

**IN THE HIGH COURT OF TANZANIA  
SUB-REGISTRY OF GEITA  
AT GEITA**

**MISC CIVIL APPLICATION NO. 6456 OF 2024**

(Originating from the Award of the Commission for Mediation and Arbitration (CMA) at Geita, Labour Dispute No. CMA/GTA/52/2023, before Hon. Mayale, D (Arbitrator)

**MUSSA EZEKIEL KYARAMBA ..... APPLICANT**

**VERSUS**

**NKOME FILLING STATION ..... RESPONDENT**

**RULING**

*Date of last Order: 22/05/2024*

*Date of Ruling: 29/05/2024*

**K. D. MHINA, J.**

In this application for labour revision, the applicant has moved this court under the provisions of Sections 91(1)(a) & (b) and (2)(b) & (c), 94(1)(b)(i) of the Employment and Labour Relations Act, Cap. 366 R.E. 2019 and Rules 26(2)(a) and 28(1)(c), (d) & (e) of the Labour Court Rules, G.N No. 106 of 2007), seeking, *inter alia*, for the following orders:

- i. That this Honourable Court be pleased to call for Records and examine the proceedings of the Commission for Mediation and*

*Arbitration (CMA) in Labour Dispute Number CMA/GTA/52/2023 to satisfy itself as to the legality, propriety, rationality, logical and correctness thereof.*

- ii. That this Honourable Court be pleased to set aside the CMA Arbitration ruling in Number Dispute No. CMA/GTA/52/2023, before Hon. Mayale, D (Arbitrator), dated 3<sup>rd</sup> November 2023.*

The application is supported by the affidavit disposed of by Mussa Ezekiel Kyaramba, the applicant, which expounds the grounds of the application.

Briefly, the applicant is seeking revision against the decision of the Commission for Mediation and Arbitration ("the CMA") for Geita in Labour Dispute No. CMA/GTA/52/2023 dated 03 November 2023.

In that Order, the CMA dismissed, for non-appearance, the applicant's application for an extension of time to file an appeal.

Undaunted, the applicant preferred this application, which he filed on 25 March 2024.

In response, the respondent confronted the application with a notice of a preliminary objection, with the ground that;

- i. This application is premature and incompetent before this Honourable Court since the Applicant is obligated to seek restoration of the dismissed application rather than its revision.*

As it is trite, this Court had to deal with preliminary objections first because once a court is seized with a preliminary objection, it is first required to determine the objection (s) before delving into the merits or the substance of the case or application.

Thus, the objections were argued by way of written submissions duly drawn and filed by the parties.

In support of the objection, the respondent submitted that it is trite that when a case is dismissed by a court or authority due to a party's absence, the recourse for the aggrieved party is to submit an application for restoration before the same body. To support his argument, he cited **Ztrong Security Company vs. Rahim M.Musa et al.** (Revision Application No. 792 of 2021) [Tanzlii], where it was held that;

*"Consequently, I hereby sustain the 1st point of preliminary objection that that the application is incompetent as the applicant is challenging a dismissal order for want of prosecution. The application*

*is hereby struck out."*

He added that the decision of **Ztrong Security Company (Supra)** was made after citing with approval the case of **St. Mary's International School vs. Geoffrey M. Rwekaza**, Revision No.734 of 2019 [Tanzlii], where it was held that;

*"It is an established principle of law that when a matter is dismissed by a court or body for non-appearance of a party, the remedy available to the aggrieved party is to file an application for restoration before the same court."*

Furthermore, the respondent submitted that the decision that forms the basis of this application was a ruling by the CMA dismissing the case for want of prosecution due to the applicant's absence on the fateful date. Therefore, the application is premature and incompetent before this Court since the applicant is obligated to seek restoration of the dismissed application instead of filing this revision.

In response, the applicant submitted that there was no fixed date, and no summons or notification for the parties to appear was issued by CMA; hence, this application for revision is proper.

He further submitted that the Arbitrator acted out of his power to dismiss the application for the condonation while the parties were waiting

for the summons to be issued for hearing of the preliminary objection raised by the respondent herein before the Commission. He cited **Shirika la Usafiri Dar es Salaam Ltd vs. Abbas Kingwaba & others**, Labour Revision Application No. 355 of 2018 (Tanzlil), where it was held that: -

*"Parties who do not appear on a date fixed for hearing having notice jeopardize his/her valued rights of being heard. Court cannot wait for a party to attend hearing, as he/she pleases. Otherwise, court will be accountable for delaying proceedings at the detriment of the parties' rights."*

He elaborated that in the above-cited case, parties were notified of the fixed hearing date as opposed to the case at hand, where there was no summons notifying parties of the fixed hearing date. Still, the Arbitrator proceeded to dismiss the application.

Furthermore, he submitted that the cases cited by the respondent, elaborating when to file restoration, could only stand if the parties were notified of the date to appear/hearing before the Commission but failed to appear.

In a brief rejoinder, the respondent reiterated what he had submitted earlier, in the submission in chief, that when a case is dismissed by a court

or authority due to a party's absence, the recourse for the aggrieved party is to submit an application for restoration before the same body.

On careful reading and scrutiny of the application, affidavit, affidavits in reply and submissions from both parties, the issue that has to be resolved is:

*"Whether this application for revision is premature and incompetent before this Court."*

Before going into the merits or demerits of the preliminary objection, I should start by observing that it is beyond dispute that this Court is vested with revisional powers. It is empowered to call for and examine the record of proceedings of the CMA for purposes of satisfying itself as to the correctness, legality or propriety of any finding order or any other decision. This includes regularity or otherwise of the said CMA proceedings.

However, the law provides for situations and principles under which it can exercise such powers. Therefore, the question is whether the impugned decision of the CMA falls within the revisionary powers of this Court.

From above, it is essential to revisit the decision which led to the

current state of affairs. I quote what happened at the CMA on 13 November 2023.

*"Tangu tarehe hiyo 05.10.2023 mpaka ninavyoandika uamuzi huu mdogo mleta maombi hakuwahi kuwasilisha majibu yake dhidi ya kiapo kinzani wala kuhudhulia Tume kufuatilia shauri lake, ili hali upande wa mjibu maombi umekuwa ukifika kuulizia muendelezo wa shauri hili kama inavyoonekana kwenye mwenendo wa shauri hili.*

*Nikiongozwa na kifungu cha 87(3) (a) cha Sheria ya Ajira na Mahusiano Kazini Na. 6/2004 , kinachoeleza kuwa; "In respect of a complaint referred under this Act, the mediator may –*

*(a) dismiss the complaint if the party who referred the complaint fails to attend a mediation hearing; (msisitizo ni wangu)*

*(b) Decide the complaint if the other party to the complaint fails to attend a mediation hearing.*

*Kikisomwa pamoja na kanuni ya 29 (9) (11) GN 64/2007 Hivyo natoa uamuzi (Ruling) kwamba naufuta mgogoro huu (I dismiss in its entirety) tangu leo tarehe 31.10.2023, hakuna amri yoyote kuhusu gharama".*

Briefly, the dispute was dismissed for non-appearance under section 87 (3) (a) of the Employment and Labour Relations Act No. 6 of 2004 (ELR

Act), read together with rules 29 (9) and (11) of G.N No. 64 of 2007.

Section 87 (3) of the Act reads that;

*"In respect of a complaint referred under this Act, the mediator may-*  
*(a) dismiss the complaint if the party who referred the complaint fails*  
*to attend a mediation hearing.*

Meanwhile, Rule 29 (9) and (11) read as follows:

*9. The Commission shall allocate a date for the hearing of the application once an affidavit is delivered, or once the time limit for the delivering a counter affidavit has lapsed, whichever occurs first.*

*11. Notwithstanding this rule, the Commission may determine an application in any manner it deems proper.*

The question is whether the decision/order resulting from the cited provisions falls within this Court's revisionary powers.

On this, the law is quite clear. Section 87 (5) (a) and (b) of the same Act (the ELR Act) provides for the procedure. It reads;

*(5) The Commission may reverse a decision made under this section*



*(a) application is made in the prescribed manner; and*

*(b) the Commission is satisfied that there are good grounds for failing to attend the hearing.*

Therefore, as per the cited law, the aggrieved party has to go back to the CMA and apply for the restoration by showing good grounds for the failure to attend.

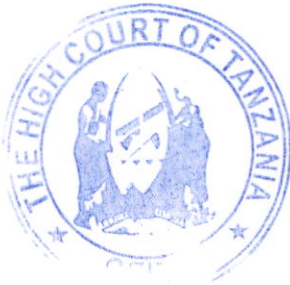
A similar procedure is provided also under the Civil Procedure Act, Cap 33, under Order IX Rule 2. That law provides that when the suit is dismissed for non-appearance, the remedy is to apply for setting aside the dismissal order.


Flowing from above, it is clear that the impugned decision of the CMA sought to be revised is not among the decisions in which this court can exercise its revisionary powers.

The remedy is for the aggrieved party, subject to limitation, to apply for setting aside the dismissal order before the CMA. Therefore, this application is not proper before this Court.

Consequently, the application is struck out for being incompetent and premature. I order no costs.

It is so ordered.



  
**K. D. MHINA**  
**JUDGE**  
**29/05/2024**