

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM**

REVISION NO. 240 OF 2017

**H & S IMPLEX LTD.....APPLICANT
VERSUS**

JUMA SUDI MOHAMED.....RESPONDENT

JUDGMENT

Date of Last Order: 13/02/2018

Date of Judgment: 23/02/2018

L.L.Mashaka,J

In this application for revision the applicant is seeking to revise the ruling of the Commission for Mediation and Arbitration [herein to be referred as CMA] dated 19th May 2017 which struck out claims for overtime for being time barred and directed to follow proper procedures in pursuing them. The application is made by Notice of Application, Chamber Summons under Section 91(1)(a)&(b) of the Employment and Labour Relations Act ,2004 Rule 24(2)(a)(b)(c)(d)(e)& (f)(3)(a)(b)(c)&(d) and Rule 28(1)(c)(d), (e) of the Labour Court Rules Government Notice No.106/2007 supported by affidavit of Christopher Mumanyi.

The hearing of the application was orally conducted, whereas Mr. Christopher Mumanyi, Personal Representative assisted by Mr. Anthon Kombe, Personal Representative appeared for the applicant and the respondent was represented by Mr. Elias Pazzia from TUICO.

Personal Representative for the applicant submitted that their application was seeking for the Court to go through the CMA records and the ruling by the Hon. Amosi H. Arbitrator at the CMA who did not observe the prayers and claims by the applicant for overtime amounting to Tshs. 8,738,654/76. That on the 20/01/2017, the CMA struck out the claims for overtime for being time barred. That in the said ruling, Hon. Arbitrator directed at the last paragraph of page 3 of the CMA ruling that if the applicant intends to pursue his claims, he has to follow the procedure laid down in pursuing claims which are time barred.

He contended further that the ruling was issued by Hon. Arbitrator while the matter was at the stage of mediation and that after the ruling the dispute proceeded for arbitration before the same Hon. Amosi, H on the same claims. That it is surprising Hon. Arbitrator proceeded to determine a dispute which had been struck out by himself.

However, Mr. Mumanyi prayed to clarify that, the ruling delivered on the 20/01/2017 was by Hon. Batenga as the Mediator of the dispute and he directed the dispute to be instituted afresh according to the procedure for time barred claims. That the Hon. Mediator did not strike out the dispute for being time barred.

He argued further that according to CMA Form No. 1 at paragraph 3 there were other than claims for overtime; there was 48 months compensation and other reliefs the CMA deem fit, which brought a total of Tshs. 8,738,654/76. He insisted that their submission was the claims for

overtime which amounted to Tshs 8,738,654/76 refer paragraph 3 at page 2 of the ruling were for overtime as claimed by the employee.

That since an order was issued by Hon. Batenga, Mediator that the overtime claims were time barred refering ruling delivered on the 20/01/2017, then the CMA Form No. 1 was not supposed to be determined during arbitration. That being the case, Representative concluded that there was no proper CMA Form No. 1 filed for arbitration. He prayed to the Court to revise and set aside the ruling issued by Hon. Amosi, Arbitrator on the 19/05/2017.

In response, Mr. Pazzia, Representative for the respondent prayed to provide clarification on the background of the labour dispute that the respondent before the CMA was the applicant, had two claims before the CMA in CMA Form No. 1 which was duly filled and filed at the CMA on the 17/11/2016. That at paragraph 3 of the said CMA form the applicant showed that the dispute concerned No. 1 and No. 4 on the said paragraph 3 of the CMA Form No. 1.

The dispute was assigned before Hon. Batenga Mediator for mediation whereas during the mediation, the applicant employer raised preliminary objection that the claims on overtime were time barred (utekelezaji wa sheria). That on the 20/01/2017, Hon. Batenga, Mediator delivered a ruling that was served to both parties to the dispute. At page 2, paragraph 5 and page 3 of the ruling, Representative prayed to quote as follows, that " *Ni rai ya Tume kuwa madai ya mlalamikaji ya masaa ya ziada yamewasilishwa nje ya muda na hivyo Tume haina mamlaka*

kuyasikiliza. Kwa mantiki hii madai ya masaa ya ziada yameondolewa. Na kama mlalamikaji ana nia ya kuendelea kudai basi awasilishe madai mbele ya Tume kwa utaratibu sahihi ndani ya siku 14. Madai ya kuachishwa kazi yataendelea kusikilizwa hapa tarehe 02 mwezi wa pili 2017 saa 6.00 mchana."

He further explained that they did proceed with mediation which was not successful and on the 02/02/2017 the mediation certificate for non settlement CMA Form No. 5 was filled by Hon. B. Batenga and signed by both the applicant and the respondent to the dispute. That the employee signed the CMA Form No. 5 and on behalf of the employer Mr. Anton Kombe did the same. On the 02/02/2017 the respondent employee filed a special form with the title "Notice to refer dispute to arbitration under Section 86(7)(b)(i) of Employment and Labour Relations Act No. 6 of 2004." That the dispute was assigned to Hon. Amosi, Arbitrator for arbitration. That the employer applicant raised preliminary objection during arbitration that the CMA had no mandate to determine the dispute because CMA Form No. 1 had defects. On the 19/05/2017, Hon. Amos Arbitrator delivered a ruling and explained the position of the dispute after the ruling delivered by Hon. Batenga, Mediator at page 3, paragraph 1. Hon. Arbitrator ruled out that, "*hivyo basi Tume inatupilia mbali (dismissed) pingamizi hili, na shauri la msingi litaendelea tarehe 29/05/2017 saa 4 kamili asubuhi kwa ajili ya kusikiliza ushahidi wa mlalamikiwa,*" that is to determine the dispute on unfair termination.

Representative for the respondent prayed to the Court to dismiss this application for revision since it is baseless and with no merit and the Court to consider that the respondent is sick attending clinic at the Amana Hospital expecting to undergo surgery soon.

In rejoinder Mr. Mumanyi for the applicant argued that the issue of the respondent being sick and attending clinic, no proof has been tendered in Court to support the claim and prayed to the Court not to consider the claims during its decision as they are unsubstantiated.

For further clarification, the Court asked parties if this labour dispute was still pending at the CMA and both parties responded that the dispute was still pending at the CMA to proceed with arbitration, where the employer has to tender evidence before the CMA.

Having gone through the Court records and submissions by both parties, the issue for determination is whether or not this application is prematurely before this Court. The answer is to the affirmative, the applicant has filed an application to the Court to revise the decision of the CMA which allowed his preliminary objection on time limit for overtime claims and ordered the application to proceed on merit on unfair termination. It is clearly captured from the submission by the respondent contrary to that of the applicant, though the applicant agrees that the labour dispute between the parties is still pending before the CMA.

I appreciate the clarifications by Representative for the respondent which provided a clearer position of what transpired at the CMA.

Under Rule 50 of the Labour Court Rules, GN No. 106 of 2007 limits any appeal, review or revision against an interlocutory orders or decisions which do not bring a matter to finality. The provision states that:-

*"..**No** appeal, review or **revision shall lie on interlocutory** or incidental **decision or orders**, unless such decision had the effects of finally determining the dispute..." (emphasis is mine)*

As clearly noted from the submissions by both the applicant and the respondent, this is a revision application on the CMA interlocutory order and the labour dispute is pending at the CMA for arbitration. On the last date 19/06/2017 when the dispute was called before Hon. Amosi, H. Arbitrator, Mr. Anthon Kombe representative for the applicant employer prayed and I quote " *Kuna maombi kwa ajili ya revision tumepeleka Mahakama Kuu, tunaomba shauri la CMA liwe pending wakati tunafuatilia maombi ya Mahakama Kuu*" and the CMA ordered and I quote " *shauri litakuwa pending kusubiri maamuzi ya Mahakama Kuu.*"

The Court of Appeal of Tanzania, in the case of ***Managing Director Souza Motors Vs. Riaz Gulamali and Another*** (2001)TLR 405 held that *"...A decision or order of preliminary or interlocutory nature is not appealed unless it has the effects of final determining the suit...."*

Employing the above legal position of the Court of Appeal, a binding one to this Court, together with the provisions of Rule 50 of the Labour Court Rules, GN No. 106 of 2007, this Court is of the finding that this

revision application is prematurely before the Court and is hereby dismissed.

I order the CMA file of labour dispute CMA/DSM/TEM/525/2016/19/2017 be remitted immediately back to the CMA and the dispute to proceed as per CMA procedural rules thereto.

So ordered.



L.L. Mashaka

JUDGE

23/02/2018