

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

REVISION NO. 198 OF 2019

BETWEEN

JAMES KAPYATA..... APPLICANT

VERSUS

MCC LIMITED..... RESPONDENT

JUDGMENT

Date of Last Order: 23/04/2020

Date of Judgment: 03/07/2020

A. E MWIPOPO, J

The applicant namely James Kapyata have instituted the present revision application against the decision of the Commission for Mediation and Arbitration in Labour Dispute No. CMA/DSM/TEM/253/2016 delivered by Hon. Mikidadi, A. on 19/02/2019. The applicant is praying for the Court to call for the records of proceedings of Labour Dispute No. CMA/DSM/TEM/253/2016 by the Commission for Mediation and Arbitration at Dar Es Salaam, revise it and set aside the said decision on the ground that the Commission had exercised jurisdiction not vested on it by the Law. The

applicant also is praying for any necessary orders the Court may deem just and fit to grant. The ground for revision is that the arbitrator erred in law to arbitrate a matter which she has no jurisdiction to determine it.

The background of the dispute in brief is that the applicant was employed by the respondent namely MCC Limited in 1992 as Assistant Security Officer and he retired on 03/06/2016. Upon retirement, the applicant was paid terminal benefits but he was dissatisfied with amount of paid as Golden Handshake allowance which he asserts that it was less than amount stated in clause 20 of the Collective Bargaining Contract entered between the Respondent and Communication and Transport Workers Union (COTWU) signed on 28/07/2014. The applicant referred the dispute to the Commission for Mediation where the Commission decided in favour of the respondent. Aggrieved by the decision of the CMA the applicant instituted the present application.

When the case came for hearing on 23/04/2020 the Court ordered the hearing of the application to proceed by way of written submissions. Each party filed his submission within time as ordered by the Court.

The applicant who was represented by Advocate E. R. Nzowa submitted that the dispute which was before the Commission emanates from the implementation of clause 20.2.0 of the collective bargaining agreement between MCC Ltd and COTWU. He submitted that according to section 74 of the Employment and Labour Relations Act, 2004 disputes concerning collective agreements are mediated by the Commission for Mediation and adjudicated by Labour Court. Therefore, the Commission was wrong to arbitrate the matter which it has no jurisdiction to decide. He prayed for the Court to revise, quash and set aside the Commission decision.

The respondent who was represented by Advocate Fredrick Mbise had no objection to applicant's prayer that the CMA Award be set aside for lack of jurisdiction to entertain the matter. He was of the view that setting aside the CMA Award is inevitable.

Following the submission by the applicant which was conceded by the respondent, the issue for determination is whether the Commission arbitrated the matter which it has no jurisdiction to determine.

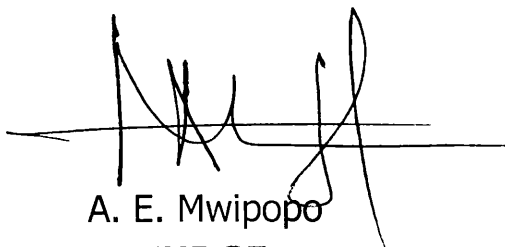
The applicant submitted that the dispute which was before the Commission emanates from the implementation of clause 20.2.0 of the

collective bargaining agreement between MCC Ltd and COTWU. But, according to section 74 of the Employment and Labour Relations Act, 2004 disputes concerning collective agreements are mediated by the Commission for Mediation and adjudicated by Labour Court. On that ground the applicant was of the view that the CMA lacked jurisdiction to arbitrate the matter.

The Employment and Labour Relations Act, 2004 provides in section 74 that unless the parties to a collective agreement agree otherwise, a dispute concerning the application, interpretation or implementation of a collective agreement shall be referred to the Commission for mediation; and if the mediation fails, any party may refer the dispute to the Labour Court for a decision. The law provides clearly that the Commission for Mediation have jurisdiction to mediate on the application, interpretation or implementation of collective agreement. The Commission may have jurisdiction to arbitrate on the matter only if the parties to the collective agreement agree otherwise. If the mediation fails, any party may refer the dispute to the Labour Court for adjudication. In the present case the mediation before the Commission for Mediation failed but the Commission decided to proceed with the arbitration without agreement of the parties to the dispute which is contrary to the law. Thus, as rightly submitted by the

applicant and conceded by the respondent the Commission proceeded with arbitration of the matter after the mediation failed without jurisdiction. Therefore, I find that the Commission proceeded with the arbitration of the dispute concerning collective agreement without jurisdiction.

From above, the revision application is found to have merits and is hereby allowed. Consequently, the arbitration proceedings in labour dispute no. CMA/DSM/TEM/253/2016 before the Commission is quashed and its Award is set aside. The parties to the dispute may proceed to pursue their rights according to the procedures set out by labour laws. Each party to bear his own cost.

A handwritten signature in black ink, appearing to be 'A. E. Mwipopo', written over a horizontal line.

A. E. Mwipopo

JUDGE

03/07/2020