

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

REVISION NO. 926 OF 2018

BETWEEN

**IMPALA WAREHOUSE &
LOGISTICS (T) LTD.....APPLICANT**

AND

SAMUEL KAYOMBO AND 3 OTHERS.....RESPONDENTS

JUDGMENT

Date of last Order: 16/06/2020

Date of Judgment: 11/09/2020

A. E. MWIPOPO, J

The applicant in this application namely Impala Warehousing & Logistics (T) Ltd have lodged the application for revision against the Orders issued by Hon. Mrangu, Deputy Registrar, dated 3rd November, 2018, in Misc. Labour Application No. 315 of 2018. The applicant is seeking revision for the following orders:-

1. That, this Hon. Court be pleased call for the record in Misc. Labour Application No. 315 of 2018, made and delivered by Hon. E.G. Mrangu,

DR, on the 22nd day of November, 2018, and ascertain on its propriety and legality.

2. That, after revising the order, this Honourable Court be pleased to quash the proceedings and orders issued thereto and went on to lift the order of depositing the security to this Court issued against the applicant.
3. That, this Honourable Court be pleased to issue a stay of execution without Condition.

The background of the application in brief is that the Respondents namely Samuel Kayombo, Robert Mayolela, Francis Yambi and Kuzwa Haji were employed by the applicant as a Warehouse Administrators on 1st June, 2014.

The respondents were terminated due to misconduct and they referred the dispute to the Commission for Mediation and Arbitration (CMA) which delivered the Award in their favour. The applicant was aggrieved with the decision and he filed revision No. 337 of 2018, praying for the court to set aside the CMA award and the proceedings. The applicant also filed the Application for Stay of Execution No. 315 of 2018 of which the Court granted subject to deposit of security equivalent to the decree amount. The applicant was aggrieved by the condition of depositing the Security of the amount awarded and he filed the present revision.

The application is supported by the affidavit of Awadh Tamim, the Principal Officer of the Applicant. The respondent filed their notice of opposition together with the Counter Affidavit of the 1st Respondent namely Samuel Kayombo. The ground of Revision as contained in paragraph 7 of the Affidavit in support of the application is as follows hereunder:-

- i. The Honourable Registrar delivered the Ruling without considering the applicant grounds in the affidavit.

The applicant in this application was represented by Mr. Praygod Jimmy Uiso, Advocate, whereas the respondent represented themselves. The Court ordered hearing of the application to proceed by way of written submission following corona virus pandemic. The applicant filed his submission in chief as ordered by the Court, but the 2nd Respondent on behalf of the other respondents informed the Court that they are not interested to file their reply submission and they prayed for the Court to fix the date for Judgment.

The applicant stated that his ground of Revision is that the Honourable Registrar delivered the Ruling without considering the Applicant grounds in the Affidavit. However, instead of submitting on the said ground, he proceeded by making a prayer to add another ground of revision which is

that the Honourable Registrar had no Jurisdiction to entertain the Misc. Labour Application No. 315 of 2018. The applicant proceeded to submit on the second ground which he added during submission.

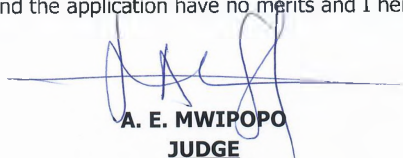
I find it relevant to determine the act of the applicant to raise a new ground for revision during the submission, the ground which was not pleaded in the Notice of Application and its supporting affidavit. The parties to the suit are bound by their pleadings. This was the position of the Court of Appeal in the case of **Astepro Investment CO. LTD vs Jawinga Company Limited**, Civil Appeal No. 8 of 2015, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported), where the Court held that, I quote:-

".....the proceedings in a civil suit and the decision thereof, has to come from what has been pleaded, and so goes the parlance 'parties are bound to their own pleadings.'"

The applicant in the present case was not supposed to submit on the new grounds unless the same was contained in the pleadings. As submitted by the applicant, there was only one ground for revision that the Honourable Registrar delivered the Ruling without considering the Applicant grounds in the Affidavit. The only time this Court may make decision on un-pleaded facts is when the matter had been left to the court for decision and there was evidence on issue and Court was addressed on the issue. This was the

position held in the case of **Odds 18 Jobs Vs Mubira [1970] EA 476**. For that reason, I'm going not to determine the second issue raised by the applicant.

Back to the only ground of revision as mention by the applicant in the applicant's submission and the affidavit in support of the application, there is nothing in the submission or in the affidavit which support the allegation. I read the Ruling of the Hon. Registrar in the Miscellaneous Application No. 315 of 2018, and it shows that the affidavit was considered as the Hon. Registrar stated that the applicant is praying for stay of execution of the CMA Award pending determination of Revision No. 337 of 2018 and that if execution will proceed the applicant will suffer irreparable loss. This prove that the Registrar considered the respective affidavit. Therefore, it is my finding that the Registrar considered the Applicant Affidavit in his Ruling in respect of application for stay of execution (Misc. Application No. 315 of 2018). Thus, I find the application have no merits and I hereby dismiss it.



A. E. MWIPOPO
JUDGE
11/09/2020