

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

REVISION NO. 395 OF 2019

BETWEEN

**TANZANIA INSURANCE
REGULATORY AUTHORITY (TIRA) APPLICANT**

VERSUS

YUSUFU ALI LAIZA RESPONDENT

JUDGMENT

Date of Last Order: 21/05/2020

Date of Judgment: 10/07/2020

S.A.N. Wambura, J.

Aggrieved by the ruling of the Commission for Mediation and Arbitration [herein after to be referred to as CMA] which was delivered on 15/08/2017, the applicant **TANZANIA INSURANCE REGULATORY AUTHORITY** has filed this application under the provisions of Section 94(1)(b)(i) of the Employment and Labour Relations Act No. 6 of 2004 [herein referred to as ELRA] and Rules 24(1), (2)(a)(b)(c)(d)(e)(f); (3)(a)(b)(c)(d) and 28(1)(c)(d)(e) of the Labour Court Rules, 2007 praying for the Orders that:-

- (i). That, this Honourable Court be pleased to call for record, revise and set aside the arbitrator ruling dated issued by Hon. Mwidunda E. (Arbitrator) in Labour Dispute No. CMA/DSM/MIS/65/15 dated 15th day of August, 2017.*
- (ii). That the Honourable Court be pleased to find and order that there is an apparent error on the face of the record when the arbitrator delivered a ruling against the applicant in a matter which he was not a party thereto.*
- (iii). That Honourable Court be pleased to revise and declared that the Arbitrator erred in law to use the decision declared by the Court an illegal decision as a base of his ruling.*
- (iv). Cost of this application be borne by the respondent*
- (v). That this Honourable Court be pleased to determine the matter in the manner it consider appropriate and give any other relief it considers just to grant.*

The application was supported by the affidavit of Baghayo Abdallah Saqware the applicant's Commissioner. The respondent **YUSUFU ALI LAIZA** filed a counter affidavit challenging the same.

The brief background of the dispute is that the respondent was employed by the applicant on 9th June, 1998 up to 15th April, 2003 as a

Senior Assistant Accountant when he was dismissed on the reason of misconduct. Dissatisfied with the decision, the respondent referred the matter to the Conciliation Board. Before the Board the matter was dismissed for non-appearance. This has resulted in the filing of the present application as the applicant not satisfied with the CMA's ruling which allowed the matter to be restored after being filed by the respondent.

The applicant was represented by Mr. Paulo Makanja Directorate of Legal Services Assistant from Tanzania Insurance Regulatory Authority. Whereas the respondent appeared in person.

The application before this court was disposed of by way of written submission. I thank both parties for adhering to the schedule and their submissions.

In supporting the application, the applicants argued on two grounds which are;

- (i). The Arbitrator erred in law by using illegal decision as the basis of his ruling. It was submitted that since the respondent was aggrieved with the decision of the applicant, he was afforded his right to appeal to the Conciliation Board. The appeal was filed as No. CMA/DSM/ILALA/1390/127/03. After having filed the same, the

respondent decided to abandon his claim by not entering appearance. The matter was thus struck out for want of prosecution on 11th August, 2005.

That the only remedy available for the respondent for a matter which has been dismissed for want of prosecution as provided under the Law of Limitation Act, is to apply to the Conciliation Board to set aside the dismissal order or to make reference to the Minister for Labour against the dismissal order. That this was limited to 60 days after the order had been issued. But the respondent refused to exhaust those remedies, therefore the dismissal order was still unchallenged.

It was further submitted that after CMA erroneously entertained Dispute No. CMA/DSM/MIS/65/15, the applicant raised a preliminary objection instead of delivering the ruling of the above dispute, the arbitrator, delivered a ruling in respect of a matter with reference No. KIN/BLU/233/01 in which the applicant has never been a party thereto.

- (ii). That the ruling of the CMA is entirely based on an illegal decision since the High Court quashed all decisions of the CMA. Surprisingly

the Arbitrator proceeded to derive a ruling basing on the nullified decisions.

They thus prayed for the application to be granted.

In reply, the respondent submitted that:-

- (i) The arbitrator was right in ruling against the applicant in a matter which the applicant was a party thereto. He stated that it is true that the respondent appealed to the Conciliation Board but never abandoned his appeal from 2002 to 2009 as supported by annexure C1 to C6.

That the Labour Commissioner is not a member of Conciliation Board as provided under Section 12(1) Cap. 38 RE Security of Employment Act, therefore has no mandate to dismiss any dispute.

- (ii) That the applicant filed several preliminary objections to misdirect the Court. That the High Court did not direct parties to file the matter at CMA, but that if parties are still interested they should pursue the matter through a proper channel.

That there is no evidence that the Board dismissed the case as there is no Form No. 5 signed by the Chairman together with attached minutes of the said Conciliation Board.

Lastly, he submitted that the applicant wrote a letter to the Chairman of the Conciliation Board requesting him to strike out the dispute. This was replied with a letter dated 11th August, 2005 indicating the dispute has been struck out.

He thus prayed for the application to be dismissed.

After having carefully considered the parties' submissions and record, the finding of this Court in this matter is that what was decided at CMA is an interlocutory order. As rightly stated by the applicant, the provisions of Rule 50 of the Labour Court Rules, 2007 do not allow reviews on the same. It provides that:-

"Rule 50 No appeal, review or revision shall lie on interlocutory or incidental decisions or orders, unless such decision has the effect of finally determining the dispute."

[Emphasis is mine].

From above legal position there is no doubt that the ruling of CMA did not finalize the matter, but provided the right of the parties to be heard inter-parties. In the case of **SAMSON NGW'ALIDA VS. THE COMMISSIONER GENERAL TANZANIA REVENUE AUTHORITY**, CIVIL APPEAL NO. 86 OF 2008, it

was held that it was equitable for both parties to be given an opportunity to be heard as the principles of natural justice require.

It is in the interest of justice that since all parties are now available then hearing of the matter should proceed inter-parties at CMA before another Arbitrator. All issues raised herein be thereto resolved.

I dismiss this application as the matter was pre maturely before this Court, and remit the record back to CMA for continuity of hearing interparties.

S.A.N. Wambura
JUDGE
10/07/2020

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VERSUS

YUSUFU ALI LAIZA RESPONDENT

Date: 10/07/2020

Coram: Hon. W.S. Ng'humbu, Deputy Registrar

Applicant: }
For Applicant: } Absent

Respondent: Present in person

For Respondent:

CC: Lwiza

COURT: The Judgment delivered this 10th July, 2020 in the presence of Mr. Yusufu Ali Laiza, the respondent and in the absence of the applicant is certified to be the true copy of the original.


W.S. Ng'humbu
DEPUTY REGISTRAR
10/07/2020