

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

LABOUR REVISION NO. 514 OF 2019

BETWEEN

THE BOARD OF TRUSTEES OF NATIONAL

SOCIAL SECURITY FUND (NSSF)APPLICANT

VERSUS

PAULINE MATUNDA RESPONDENT

RULING

Date of Last Order: 24/06/2020

Date of Ruling: 07/08/2020

Aboud, J.

This is an application for revision. It is made under Rule 28 (1) (a), 28 (1) (c), and 28 (1) (e) and Rules 24 (1), 24 (2) (a), (b), (c), (d), (e), (f) and 24 (3) (a), (b), (c) and (d) of the Labour Court Rules, GN. No. 106 of 2007 (hereinafter, the Labour Court Rules).

The applicant, The Board of Trustees of NSSF calls for this Court to revise the proceedings, orders and quash and set aside the ruling by the Commission for Mediation and Arbitration, henceforth the CMA, in Labour dispute No. CMA/DSM/ILA/R.824/2017 before Hon. Fungo, E.J. Mediator. At the CMA, The Board of Trustees of

NSSF raised two preliminary objections against the complaint made by Pauline Matunda on the basis that:-

- i. The Commission has no jurisdiction to entertain the matter.
- ii. The dispute is prematurely filed in the Commission.

The CMA overruled the preliminary objection. Therefore, the application at hand emanates from the ruling of the preliminary objections raised at the CMA.

During hearing the respondent filed a notice of preliminary objection. So this ruling is in respect of the preliminary objection raised by Pauline Matunda, the respondent through Ms. Athanasia Soka, Learned Counsel who pierced against the present application for revision on the point that:-

- a) The application is incompetent in that it has contravened the provisions of Rule 50 of the Labour Court Rules 2007, GN. No. 106 of 2007.

The hearing of the preliminary objection was by way of written submissions and the respondent filed the same timely while the applicant did not file his submission hence the Court proceeds with this ruling.

Ms. Athanasia Soka, Learned Counsel, submitting for the preliminary objection argued that, the ruling of the CMA is a result of the preliminary objection raised by the applicant herein claiming that the CMA had no jurisdiction to entertain the matter filed before it. She stated that the CMA overruled such objection hence the applicant filed this application.

Ms. Athanasia Soka went on to submit that, Rule 28 of the Labour Court Rules deals with revision of judgments and therefore does not support this application and left the application with no legs to stand.

Ms. Athanasia Soka strongly submitted that, this application for revision is against the conditions set under the provision of Rule 50 of the Labour Court Rules. She stated that the CMA's decision was on the preliminary objection, thus it was an interlocutory order which does not permit revision application. The learned Counsel contended that, the application is prematurely before this Court because the ruling of the CMA did not determine the matter to its finality but on the preliminary objection. She argued that the said ruling which is the subject matter of this revision was an interlocutory matter which did not have an effect of finally determining the relevant matter filed at

the CMA. To support her argument she cited number of cases including the case of **The Board of Trustees of NSSF vs. Yacoub Kidula**, Rev. No. 104 of 2019 where it was held that:-

“...a decision or order of preliminary or interlocutory nature is not appealed unless it has the effect of final determining the suit...”

From the above position, the respondent counsel was of the view that, the application is premature before the Court since the CMA ruling did not determine the matter to its finality. Therefore, the contested ruling stands to be an interlocutory order as is appreciated by Rule 50 of the Labour Court Rules. She stated that, a decision or order on preliminary objection of interlocutory nature is not appealable, unless it has effect of finally determining the suit.

Ms. Athanasia Soka, Learned Counsel concluded by praying to this court that, the application for revision be dismissed and the matter should be remitted back to the CMA for it to continue with arbitration.

Having gone through court record pertaining to this application, the preliminary objection at hand, the relevant laws and respondent submission with eyes of caution, I am of the settled mind that the

issue for determination is whether the application for revision is prematurely made before this court as is against the CMA interlocutory decision.

The Labour Court Rules forbids appeals against interlocutory orders or decisions which do not determine the matter to finality. Rule 50 of the relevant rules provide that, I quote:-

“Rule 50- 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.”

Interlocutory order is defined under the legal dictionary by S.L. Swan and U.N. Narang, 25th Edition, 2015 to mean:-

“Order determining an intermediate issue, made in the course of a pending litigation which does not dispose of the case but abides further Court action resolving the entire controversy. They are steps taken towards the final adjudication for assisting the parties at the prosecution of their case in the pending proceedings.”

Now, the question to be addressed before this Court is whether the impugned ruling is interlocutory? In the case of **Vodacom Tanzania Public Limited Company vs. Planetel Communications Limited**, Civil Appeal NO. 43 of 2018, CAT, the Court adopted the test in the case of **Bozson vs. Artincham Urban District Council** (1903) 1 KB 547 wherein Lord Alverston stated as follows:

"It seems to me that the real test for determining this question ought to be this: Does the judgment or order; as made, finally dispose of the rights of the parties? If it does, then I think it ought to be treated as final order; but if it does not, it is then, in my opinion, an interlocutory order."

Basing on the above holding, the interlocutory order tends not to determine the matter to its finality. In the instant case as discussed above the applicant raised two preliminary objections to the effect that; the Commission has no jurisdiction to entertain the matter and the dispute is prematurely filed in the Commission.

The Arbitrator in his decision overruled both preliminary objections on the ground that, as is provided under section 14 of the

Labour institution Act the CMA is the body empowered to mediate or arbitrate any Labour dispute filed before it as long as there is employer-employee relationship. On the second preliminary objection the Arbitrator held that, the relevant objection has no merit because the complainant was terminated on 11/07/2017 and filed the dispute timely at the CMA and finally ordered the matter to proceed on merit.

From the Arbitrator's order it is my view that, this application did arise from an interlocutory order which cannot be challenged by revision. The relevant provision of Rule 50 of the Labour Court Rules restricts revision on interlocutory or incidental decisions unless such decision has an effect of finally determining the dispute.

The relevant ruling ordered the matter to proceed between parties at the CMA. Therefore, in my view the ruling in question did not bring the matter to finality and was just an interlocutory order.

In the case of **Managing Director Souza Motors vs. Riaz Gulamali and Another** TLR [2001] at p.104, [quoted by Nyerere, J. in the case of **Mohamed Enterprises (T) Ltd. vs. Peter Magesa and 5 Others**, Revision 343 of 2015 [unreported]], the Court, Bwana, J. (as he then was) held that:-

“...A decision or order of preliminary or interlocutory nature is not appealed unless it has the effects of final determining the suit...”

It was also decided in the case of **Lucky Spin Ltd. (Premier Casino Ltd) vs. Thomas Alcord and Joan Alcord** Revision No. 445 of 2015 (unreported), also the case of **Cami Apparel Ltd. vs. Wong Thing POH** Revision No. 110 of 2011, (Unreported) Rweyememu, J, stressed that, ruling on the preliminary objection which has not determined the matter to finality cannot be revised by this Court.

Admittedly the Commission could have proceeded with the hearing of the matter had it not been the present revision filed by the applicant. In that vein the matter was not finally determined. In the case of **Cami Apparel Ltd. vs. Wong Thing POH Revision No. 110 of 2011** HC Labour Division at Dar es Salaam (unreported) quoted by Muruke, J. in the case of the **Board of Trustee of National Social Security Fund [NSSF] vs. Chedrick Komba** Revision No. 571 of 2018, High Court Labour Division at Dar es Salaam (unreported), held that:-

“If the arbitrator had overruled the preliminary objection, the applicant would not be allowed

to apply for revision at the stage. Revision on the issue would have to wait until finalization of the dispute on merit, to be raised on subsequent revision application hence the application lacks merits, dismiss it and order the case remitted to the CMA for it to continue with arbitration process”.

On the basis of the above discussion I am of the considered view that, the present revision is on an interlocutory decision which does not finally determine or dispose of the matter. And as correctly submitted by Learned Counsel for the respondent; such matters are not allowed to re-surface in this court because they contravene the provision of Rule 50 of the Labour Court Rules which is mandatory as discussed above.

However, the above discussed general rule, the rule 50 has some exceptions as it is in principle. Thus, the court may intervene in Interlocutory proceedings, ruling or orders in the following circumstance:-

“...Where justice may not by other means be obtained or where a gross irregularity has occurred or where grave injustice may result, it

**has been held that the Labour Court may
intervene in incomplete proceedings...”**

[See the case of Lucky Spin Ltd. (Premier Casino Ltd.)

Vs. Thomas Alcord and Joan Alcord Revision No. 445

of 2015 [unreported], Mipawa, J.

In my view a ruling of the CMA in any manner has not caused grave injustice to the applicant in this application or any gross irregularity that has been occasioned by the said order.

I have also considered the respondent’s counsel submission that, Rule 28 of the Labour Court Rules deals with revision of judgments and therefore, does not support this application. The respondent’s counsel correctly submitted that the impugned decision is an interlocutory order, thus it cannot be treated as the final decision of the CMA or the judgment of any responsible person or body implementing the provision of the Acts to warrant it be entertained in revision proceedings in this court. With respect the Labour laws are very clear and specifically pronounced under Rule 50 of the Labour Court Rules that no revision should lay on an interlocutory order. In my considered opinion there is no basis of ignoring Rule 50 of the Labour Court Rules which provides for mandatory requirement and has to be fully complied with as it

stands. Thus, the Court has to obey to the letters of the relevant rule 50 of the Labour Court Rules no matter how unreasonable or unjust it may.

In the event the preliminary objection is upheld and the application is struck out from the court registry. It is ordered that the dispute has to be remitted back to the CMA to proceed as per the Arbitrator's ruling.

It is so ordered.

A handwritten signature in black ink, appearing to be 'I.D. Aboud', with a long horizontal flourish extending to the left.

I.D. Aboud

JUDGE

07/08/2020