

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION**

AT DAR ES SALAAM

REVISION APPLICATION NO. 961 OF 2018

DB SHAPRIYA & CO. LTD.....APPLICANT

VERSUS

ISSA KABISU..... RESPONDENT

JUDGMENT

Date of last Order: 08/06/2020

Date of Judgment: 26/06/2020

Z.G.Muruke, J.

The applicant **DB SHAPRIYA & CO. LTD** filed the present application seeking to revise the proceedings, ruling dated 14th July,2017 and the exparte award dated 05th September,2016 issued by the Commission for Mediation and Arbitration [CMA] on the following grounds:-

- i. Whether the trial arbitrator properly exercised jurisdiction vested to him
- ii. Whether it was proper for the mediator to arbitrate the dispute which was placed before him for mediation purpose only and without consent of the parties.
- iii. Whether it was legally correct for the Honourable Arbitrator to rely on un collaborated testimony of the respondent only in his findings
- iv. Whether the trial mediator was legally correct to deny the applicant's right to be heard.

Application is supported by affidavit of Applicant's Human Resource Officer Mr. Lewis Mcharo. Challenging the application respondent filed his affirmed counter affidavit. The applicant enjoyed the services of Advocates from Fides Attorneys, while the respondent was served by Mr.Kassim Said Massimbo and Simon Malunde at different times representatives from TAMICO. Hearing was by way of written submission, both parties adhered to the schedule hence this judgment.

Here are the brief facts of the case. The respondent was employed by the applicant on 27th March, 2013 as a mechanics on daily basis contract and was paid on daily and weekly basis. He worked with the applicant until 30th December, 2013 when he was terminated. Aggrieved with the termination, the respondent appealed to CMA where the matter was determined ex parte on his favour. Being resentful with the CMA decision the applicant filed this application hence this judgment.

Submitting on the application the applicant's counsel argued that the trial mediator erred in law by entertaining the matter without territorial jurisdiction. That the matter arose in Temeke District, Chang'ombe industrial area where the applicant's office is located as evidenced by exhibit DBS 6 (business license). The mediator's office is CMA Ilala, that was contrary to Rule 8(1) of the Labour Institution (Mediation and Arbitration) Rules GN 64 2007.

It was submitted that, on 23rd March, 2016 the parties agreed to settle the matter amicably hence the matter was adjourned to 1st April 2016. CMA Form Number 21(an agreement by the parties to extend time for mediation) was filed as the time for mediation had already lapsed. On

1st April, 2016 the applicant failed to attend at CMA, the mediator ordered ex parte hearing instead of marking that mediation has failed and refer the matter for arbitration as per Section 88(2) (a),(b) and (c) of the Employment and Labour Relations Act. Cap 366 R.E 2019(Cap 366 R.E 2019). The matter was heard ex parte and the award was issued on 27th June, 2016, this deprived the applicant of his right to be heard.

The applicant's counsel further contended that on 14th March,2017 the applicant filed an application to set aside the exparte award which was objected by the respondent on the ground that it was time barred. On 14th June, 2016 the mediator rejected the application basing on Rule 16 (3) of the Magistrate Court Act, Cap 11 R.E 2019, instead of determining the objection argued by the parties. The parties were not afforded with the right to be heard contrary to the principals of natural justice citing the case of **M/S Darsh Industries Ltd Vs. M/S Mount Meru Millers Ltd**, Civil Appeal No.114 of 2015.

It was further submitted that the mediator erred in law and fact in finding that, the respondent was an employee for a fixed time without any proofs of a written contract. The mediator ought to have ruled out that the respondent was a daily/casual employee as he was paid 25,000/= daily. Regarding reliefs granted by the mediator, the applicant counsel argued that, the mediator wrongly awarded the respondent a tune of 925,000/= as unpaid salaries without any proof that the respondent worked within the mentioned period. The respondent had already been paid his terminal benefit at the tune of 1,400,000/=, referring He referred Section 4 of Cap 366 RE 2019.

Moreover, it was argued that the award of transportation costs and repatriation costs was contrary to the provision of Section 43(1) of Cap 366 R.E 2002. The mediator awarded the respondent Tshs. 3,000,000/= for repatriation costs and transport allowance to Mwanza, without any proof that he was terminated in a place which he was not recruited, citing the case of **The Attorney General & 2 others Vs. Eligi Edward Massawe and 104 others** Civil Appeal No.86/2002, **Vedastus S. Ntulanyenka & 6 others v Mohamed Trans Ltd**, Revision No.4 of 2014 LCCD Part 1.

Again, it was argued that the mediator awarded 3,000,000/= being four months' salary for remaining period. That there was no any proof tendered by the respondent to establish that he was employed on April,2013 for a period of two years. Applicant counsel prayed for the revision and set aside of the CMA ruling and the award.

Responding to the applicant's contentions, the respondent representatives submitted that the issue of jurisdiction is baseless and have no merit. The respondent was working with the applicant in his workshop which is located in the applicant's Head Office along Julius Nyerere Road near Central line, and Machinga Complex which is within Ilala District that is why the applicant did not contest the same at initial stage. The applicant ought to have raised his objection at earliest stage, referring the case of Court of Appeal in **Eliah Kasalile and 20 Others Vs. The Institute of Social Work**, Civil Appeal No. 145 of 2016.

One the 2nd ground it was contended that the applicant ought to mislead this Honorable Court to the effect that, the applicant initially filed the review to challenge the award on 20th September, 2016 and on 28th February, 2017 when matter was scheduled for hearing, the applicant prayed to withdraw the application for lack of interest to proceed without asking for leave to refile the same. Therefore, for the applicant to challenge the ex parte award out of time was illegal and abuse of the CMA power and interest of justice as the same was res judicator. For the applicant to shift the burden to CMA was unjustifiable, referring Order XXIII Rule (1), (2) of the Civil Procedure Code, Cap 33 RE 2019. So it was proper for CMA to dismiss the application before it for the interest of justice, dignity and the power vested to it.

It was further submitted that the cited cases are distinguished from the facts of this case as they have failed to provide the true position of the law on the issue in dispute. Respondent representative prayed for dismissal of the application for lack of merit.

Having gone through the rival submission and the records, I believe this is called upon to determine the following issues:

- i. Whether CMA had territorial jurisdiction to entertain the matter between the parties.
- ii. Whether the mediation and arbitration were properly conducted?
- iii. What are the reliefs entitled to the parties.

Regarding the 1st issue for determination, Jurisdiction refers to the authority granted by the law to the courts to rule on legal matters, and render judgments according to the subject matter of the case. It refers to

limit of a legal authority. Jurisdiction should be one of the first things to establish in any litigation. It warrants title to determine the matter before it. The territorial jurisdiction refers to a geographical area which a court has power.

In the present case, the matter was determined ex parte by the mediator at the CMA Ilala. From exhibit DBS 6 which is the Business license, it clearly shows that the applicant's place of business is within Tememe District, Chang'ombe B Street and the same was issued by Tememe Municipal Council. Section 4 of the Business Licensing Act, provides for the extent of authority of business license. It states:

4(1) " A business license shall authorize the holder to carry on, **at the place specified therein**, the business in relation to which it is granted and shall also be deemed to authorize such holder to carry on at such place any auxiliary business."

Basing on the above provision and **Exhibit DBS 6**, it is crystal clear that the applicant's business is within Tememe Municipal as submitted by the applicant, hence the respondent wrongly initiated the dispute before CMA Ilala. That was contrary to Rule 8(1) of the Labour Institutions (Mediation and Arbitration) Rules GN 64 of 2007(GN 64) which provides;

"A party shall file documents with the commission at its head office or I the area in which the dispute arose"

That provision is read together with Rule 22(1) of GN 64 which states that:

"A dispute shall be mediated or arbitrated by the Commission at its office having responsibility for the area in which the dispute arose, unless the Commission directs otherwise."

That position was insisted in the case of **Francis Kuringe Vs Singita Grumeti Reserve**, Rev. No. 37 of (2013) LCCD 1. Where it was held that;

"It is the established position in law that a dispute shall be mediated or arbitrated by the Commission at its office having responsibility for the area in which the cause of action arose, unless the Commission directs otherwise."

Since it is the finding of this court that CMA had no territorial jurisdiction to determine the dispute, hence the matter has been unlawfully determined by the CMA Ilala. The applicant's office is located at Temeke District, the respondent should have filed the application at CMA Temeke.

Basing on the above finding, I see no need to determine the remaining issues. I hereby quash and set aside all the CMA proceedings, ruling and the award for lack of jurisdiction. Considered respondent rights to be heard on his dispute, Issue of jurisdiction, was to be determined by CMA first. For interest of justice, applicant is granted 60 days from today to file dispute in an appropriate CMA registry. Revision application is allowed, to the extent shown.


Z. G. Muruke
JUDGE
26/06/2020

Judgment delivered in the presence of Simon Mahunde representative from TAMICO and in the absence of applicant.

A handwritten signature in black ink, appearing to read 'Z. G. Muruke', written in a cursive style.

Z. G. Muruke

JUDGE

26/06/2020