

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(LABOUR DIVISION)
AT MBEYA
LABOUR REVISION NO. 60 OF 2016
(Originate from Complaint No. CMA/MBY/86/2015)**

**JUMA AKIDA SEUCHAGO.....APPLICANT
VERSUS
SBC TANZANIA LIMITED.....RESPONDENT**

JUDGMENT

Date of last order: 01/07/2020

Date of Judgment: 25/09/2020

NDUNGURU, J.

Before me is an application for revision whereby the applicant, one Juma Akida Seuchago calls upon this Court to revise and set aside the ruling of the Commission for Mediation and Arbitration (hereinafter referred to as CMA) dated 29th day of February, 2016 in Labour Dispute No. CMA/MBY/86/2015.

The application is brought under Section 91 (1) (a) (b) and 91 (2) (b) (c) of the Employment and Labour Relation Act, No. 6 of 2004 and Rule 24 (1) (2) (a) (b) (c) (d) (e) and (f) and (3) (a) (b) (c) and (d) and Rule 28 (1) (a) (c) (d) and (e) of the Labour Court Rules, G.N. No. 106 of 2007.

The application is supported by the affirmed affidavit of the applicant. The respondent challenged the applicant's application through counter affidavit sworn by the one, Erick Gaudence, the respondent's principal officer.

The brief facts of this matter are that: The applicant (who was the complainant at the CMA) was an employee of the respondent until on 2007 he was suspended from work because he was facing a criminal case before the Court of law. During the suspension the applicant was paid full remuneration but in August, 2012 the employer (the respondent herein) decided to deduct the applicant's salary.

Thereafter the applicant notified his employer regarding the said deduction but the employer replied nothing. Being dissatisfied with the decision of his employer, the applicant referred the matter to the CMA vide Labour Dispute No. CMA/MBY/150/2012 challenging the deduction which was made by his employer in his salary since August, 2012. Having heard the evidence of the both parties, the Arbitrator found out that, the deduction made to the applicant's salary was not fair and ordered the employer to pay the balance from August, 2012 up to January, 2013 to the applicant.

Again the applicant executed the award which was given by the on 15th day of January, 2013 at the Labour Court and the Judgment Debtor (respondent herein) paid the whole award to the applicant. Further, the applicant filed another claim before Labour Court claiming for salary

allowances, which was not in an award given by the CMA on 15th day of January, 2013.

As result the Deputy Registrar directed the applicant to file the claims to the CMA and the same be heard by the same Arbitrator who heard Labour Dispute No. CMA/MBY/150/2012. Thereafter, the applicant filed Labour Dispute No. CMA/MBY/86/2015 at the CMA. At the hearing of the said labour dispute at the stage of mediation the employer raised the preliminary objection to the effect that, the CMA had no jurisdiction to entertain the said labour dispute.

In conclusion, the Honourable Mgimba Laban Mediator found out that, the dispute was filed before the wrong person and dismiss the complaint. Being aggrieved with the decision of the CMA, the applicant lodged the present application before this Court on the following grounds:

- (a) That, the Mediator erred in law and fact by dismissing the complaint for the reason that he was not the one who arbitrated Dispute No. CMA/MBY/150/2012.
- (b) That, the Mediator's ruling is irregular in that he did not grasp the centre of the dispute between the applicant and the respondent and this led him to an erroneous conclusion of dismissing the applicant's case occasioning serious injustice to him.

When the application placed before me for hearing, Ms. Jenifa Silomba, learned advocate appeared for the applicant whereas Mr. Kennedy Makafu appeared for the respondent as representative. By leave of this Court, the application was disposed of by way of written submission and I appreciate both parties for adhering the scheduling order of the Court.

Submitting in support the application, Ms. Silomba opted to adopt the contents of the applicant's affidavit and finally, she prayed for the Court to allow this application.

In rebuttal, Mr. Makafu contended that, the law allows mediators to dismiss complaints where the part fail to appear to prosecute his case and when jurisdictional question is at issue. He added that, the mediator dismissed the applicant's complaint because a jurisdictional question was raised by the respondent (employer) by way of preliminary objection at the commencement of the mediation proceedings.

He went on to submit that, the applicant erred in law in filing a new claims before the same arbitrator. He added that, the applicant ought to have filed an application to the Labour Court as per Section 94 (3) (a) (ii) of the Employment and Labour Relation Act, 2004.

Again, Mr. Mkafu referred this Court to the case of **Joseph John vs. Tanzania Electrical Supply Co. Ltd.**, Execution No. 01 of 2013 to support

his argument. He added that, there was no option of filing new complaint at all vide Section 86 (1) of the Employment and Labour Relation Act, 2004.

Further, Mr. Makafu argued that, the second option which ought to have been taken by the applicant is to file a written application to the CMA attached with the labour Court ruling as pervide Rule 29 (1) (c) and (11) of the Labour Institutions (Mediation and Arbitration) Rules, 2007 G.N. No. 64 of 2007.

Moreover, Mr. Makafu submitted that, the said complaint which this Court is asked to resurrect by the applicant suffer other serious jurisdictional questions. He added that, the applicant was filed his complaint at the CMA out of the time limit from the date of the directives which was given by the Deputy Registrar.

Lastly he demonstrated that, the applicant ought to have filed the condonation application as required by Rule 11 (1) and (2) of the Labour Institutions (Mediation and Arbitration) Rules, 2007 G.N. No. 64 of 2007. In conclusion, he prayed for the Court to dismiss this application.

Having careful scanned the written submissions filed by the learned counsels for the parties and the record of the CMA; the issue calling for the determination is whether the said mediator had jurisdiction to entertain the Labour Dispute No. CMA/MBY/86/2015 or not.

Through the CMA form No. 1, the applicant in Labour Dispute No. CMA/MBY/86/2015 claimed for unpaid fuel allowance and salary allowance arrears while in Labour Dispute No. CMA/MBY/150/2012 the applicant claimed for deduction which was made by the respondent (employer) in his salary since 2012.

In my considered view, the claims of unpaid fuel allowance from September, 2013 up to July, 2015 and salary allowance arrears from February, 2013 up to July, 2015 does not form part of the award delivered on 15th day January, 2013 by the CMA in Labour Dispute No. CMA/MBY/150/2012. In other words the claims of unpaid fuel allowance and salary allowance arrears are the new claims.

Therefore, the Deputy Registrar of the High Court was wrong to direct that, the said new claims to be heard by the Arbitrator who heard labour Dispute No. CMA/MBY/150/2012 while the same does not form part of the award which was already executed by the Labour Court.

Again, I disagree with the argument advanced by Mr. Makafu that, the applicant may opted either to file written application to the CMA vide Rule 29 (1) (c) and (11) of the Labour Institutions (Mediation and Arbitration) Rules, 2007 G.N. No. 64 of 2007 or to file an application to the to the Labour Court through Section 94 (3) (a) (ii) of the Employment and Labour Relation Act, 2004.

I hold so because Rule 29 (1) (c) and (11) (supra) is used mostly by desirous applicants ordered by the Deputy Registrars when seeking clarification in different award before them but the application at hand being the new claims does not form part of the award given by the CMA hence the Arbitrator who heard Dispute No. CMA/MBY/150/2012 cannot give clarification on the new claims which was not part of the award.

Furthermore, Section 94 (3) (a) (ii) of the Employment and Labour Relation Act, 2004 is not applicable to the facts of the present application because the mentioned provision of the law is only speaking on the situation where a party refers a dispute to the labour Court and in the course of hearing of the said dispute, the labour Court discovered that, the dispute required to be referred to the arbitration.

From the analysis above, I find out that, the applicant was right to file Labour Dispute No. CMA/MBY/86/2015 as new claim and I therefore ordered that, the mediator who was mediating Labour Dispute No. CMA/MBY/86/2015 proceeds to mediate the parties, or any other mediator present subject to the time limitation. No order as to costs due to the nature of the labour matter.

It is so ordered.




D. B. NDUNGURU
JUDGE

25/09/2020

Date: 25/09/2020

Coram: D. B. Ndunguru, J

Applicant: Absent

For the Applicant: Absent

Respondent: Absent

For the Respondent: Absent

B/C: M. Mihayo

Court: Judgment delivered in the absence of both parties though they were duly informed on the judgment date.



D. B. Ndunguru
D. B. NDUNGURU

JUDGE

25/09/2020

Right of Appeal explained.