IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 175 OF 2019

BETWEEN

JOHN ELIAS..... APPLICANT

VERSUS

THE REGISTERED TRUSTEES OF

CHAMA CHA MAPINDUZI.....RESPONDENT

JUDGEMENT

Date of Last Order: 03/12/2020

Date of Judgment: 18/12/2020

Aboud, J.

The Applicant, **JOHN ELIAS** filed the present application seeking revision of the decision of the Commission for Mediation and Arbitration (herein referred as CMA) in Labour Dispute No. CMA/DSM/ILA/R.1172/18 delivered on 25/01/2019 by Hon. Kalinga, C. Arbitrator. The application was made under the provision of section 91 (1) (a) (b) 91 (2) (b) (c), 94 (1) (b) (i) of the Employment and Labour Relations Act, [CAP 366 R.E. 2019] (herein referred as the Act) Rule 24 (1), 24 (2) (a) (b) (c) (d) (e) and (f), 24 (3) (a) (b) (c) (d), 24 (11) (c), 28 (1) (c) (d) (e) of the Labour Court Rules, GN. No. 106 of 2007 (to be referred as Labour Court Rules).

The application is supported by the applicant's affidavit. On the other hand the respondent did not respond to the application.

The application resulted from the following background. The applicant was employed on 31/01/1964 by the respondent in the position of Deputy Area Secretary at Kigoma as indicated by the employment letter (exhibit C1). It is on record at the time of the applicant's employment the respondent was known as The Tanganyika African National Union (TANU) currently known as The Registered Trustees of Chama cha Mapinduzi (CCM). The record reveals that the applicant's monthly salary was Tshs. 350/=.

The applicant alleged that he was then transferred to Same District. While he was on his daily performance of his duties at Same District he was convicted and jailed for six months for the offence of rape by Moshi District Court. He stated that his conviction occasioned his termination from employment in 1968. He further stated that, he successful appealed against sentence and conviction in 1969 and that upon acquittal he went back to his employer to claim for his terminal benefits.

It is alleged that on 12/08/1969 the applicant received a letter from the Chief Executive Officer of the respondent promising him that they are working on his claims of terminal benefits. The applicant averred that he waited for a very long time until 1974 when he was again charged for other criminal offences. He added that he was again acquitted on 2008 after the Attorney General office entered Nolle Prosequi. Thereafter the applicant filed a labour dispute at the CMA claiming for unfair termination. The matter was decided on his favour after the respondent was ordered to pay him Tshs. 211,924/= being the payment for salary arrears, severance pay, one month notice and compensation of 600 months. Aggrieved by the CMA's award the applicant filed the present application on the following grounds:-

i. That the Hon. Arbitrator failed to analyze the evidence on record which shows that an amount of Tshs. 350 is very little as compared to present economic development.

ii. That the Hon. Arbitrator erred in law and facts when decided by assumption that amount of Tshs. 350/= is sufficient while his other workmates of his level who retired on 2008 were paid Tshs. 72,000/= and not Tshs. 350/=.

iii. That the Hon. Arbitrator failed to take into account that if the failure to renew the contract was due to politically motivated cases that were opened against the applicant which the last court found them illegal and discharged him with all the charges and conviction through nolle prosequi.

The matter proceeded ex-parte after the respondent failed to enter appearance before the Court. The application was argued by way of written submission where the applicant appeared in person, unrepresented.

Arguing in support of the application the applicant submitted that, the Arbitrator failed to consider the salary increments according to the Government Notice and decided by assumption that the amount of Tshs. 350/= is sufficient to the applicant. He stated that his workmates who retired on 2008 were paid 72,000/= and not 350/= as awarded by the Arbitrator. The applicant added that the amount of Tshs. 350/= is very small amount compared to the current market situation.

It was further submitted that the record of CMA shows that there are irregularities which affect the legality of the impugned

decision. He stated that the Hon. Arbitrator failed to consider and make decision that the applicant was unfairly and illegally terminated from employment and the procedures were not complied with as stipulated under section 37 of the Act. To strengthen his submission he cited the case of **Afriweld Co. Limited vs. Christopher J. Msila**, Rev. No. 05/2019, HC Lab. Div DSM. It is due to the above stated reasons the applicant is urging the Court to order the respondent to pay him basing on the salary rate of Tshs. 72,000/=.

I have noted the applicant's submission and Court's record. Before venturing into the merit of the application I find the issue of the laws applicable to this matter to be very crucial and calls for the intervention of this Court. In his determination of the matter at hand the Hon. Arbitrator applied the provisions of the Act. It is on record that the applicant was terminated from employment way back on 14/10/1968 as evidenced by his letter claiming for payment of terminal benefits (Exhibit C2). Under such circumstance it is my view the Arbitrator misdirected himself to apply the provision of the Act to award the applicant as the Act came into force in 2004, after the dispute at hand arose. As stated in many decisions, the law cannot be

applied retrospective as it was done in the present application unless is expressly provided for.

Furthermore, it is directly stipulated in the Act that disputes arose before the commencement of the Act had to be dealt with by the repealed laws. This is in accordance with paragraph 7(1) Third Schedule of the Act which is to the effect that:-

> *'Subject to sub-paragraph (3), any dispute stipulated in the repealed laws that arose before the commencement of this Act shall be dealt with as if those laws had not been repealed'.*

On the basis of the above provision it is my view that because the present dispute arose before the commencement of the Act then had to be dealt with the repealed law which was in existence at such time. It is apparent that, the new labour laws repealed the previous regulating labour dispute resolution laws. Among the repealed laws was the Security of Employment Act (CAP. 574) as indicated in the Second Schedule of the Act. It is apparent that the CMA was established in 2004 as provided under section 12 of the Labour Institution Act, Act No. 7 of 2004. That means the dispute at hand

which arose on 14/10/1968 was before the CMA came was established.

Provision governing the transition from administration of the repealed law to the new laws is provided in the third schedule of the Act wherein the relevant parts are paragraph 7 and 13. The Written Laws (Miscellaneous Amendments Act) no. 2 of 2010 which became operational on 28/05/2010 amended the third schedule of the Act by deleting paragraph 13 and substituted for it a new paragraph which provided inter alia:-

> *'The Commission shall have powers to mediate and arbitrate all disputes originating from the repealed laws* ***brought before the Commission by the Labour Commissioner*** *and all such disputes shall be deemed to have been duly instituted under section 86 of the Act, and that "All disputes pending hearing before the Industrial Court of Tanzania shall be determined by the Labour Court."*
> *[Emphasis supplied]'.*

Now the question to be addressed is whether the dispute at hand falls within the categories stipulated above and whether the

CMA had jurisdiction to entertain the matter. The record reveals that this dispute was neither brought at the CMA by the Labour Commissioner nor was it pending before the Industrial Court of Tanzania. The record reveals further that, the dispute was brought at the CMA by the applicant personally.

Therefore, basing on the provision of the law cited above it is crystal clear that the CMA had no jurisdiction to entertain the dispute at hand as it was neither brought by the Labour Commissioner nor was it pending before the Industrial Court of Tanzania. Under such circumstance the dispute was illegally determined by the CMA due to lack of jurisdiction, then the award thereto is invalid.

The CMA would have jurisdiction if the dispute would have been filed by the Labour Commissioner but that is not the position in the matter at hand. However, the position of the law has changed now and the requirement of referring the dispute by the Labour Commissioner has been deleted. The current position confers power to the party personally to refer the dispute to the CMA. This is the position of the law provided under paragraph 13 (5) of the Employment and Labour Relations Act (CAP 366 RE 2019) which is to

the effect that:-

> *'13 (5) - The Commission shall have powers to mediate and arbitrate all disputes originating from the repealed laws brought before the Commission and all such disputes shall be deemed to have been duly instituted under section 86 of the Act'.*

Unfortunately the provision cited above would not apply to the application at hand as the matter was filed at the CMA in 2011 before the amendment of the Act and, it has no retrospective effect. Thus, this Court cannot invoke such new provision in determination of this application. In the circumstance, the Court too lacks jurisdiction to entertain revision application which originates from invalid award.

In the result I find the present application has no merit. This CMA had no jurisdiction to arbitrate this matter, hence its award was invalid and consequently renders this Court to be incompetent for want of jurisdiction to determine this revision application. Therefore, the application is dismissed and the CMA award is quashed and set aside accordingly. It is so ordered.

I.D. Aboud
JUDGE
18/12/2020