

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

AT DAR ES SALAAM

REVISION NO. 765 OF 2019

NATIONAL BANK OF COMMERCE LIMITED.....APPLICANT

VERSUS

JABIRI A. LIBABE.....RESPONDENT

JUDGMENT

Date of last Order: 16/10/2020

Date of Judgment: 30/10/2020

Z.G.Muruke, J.

According to the Commission for Mediation and Arbitration (CMA) records, respondent was employed by the applicant as sales consultant at Mbagala Branch, located in Temeke District. Upon termination respondent instituted dispute at CMA Ilala. Applicant raised preliminary objection on jurisdiction, that was overruled by CMA and proceeded to determine the dispute and issue an award.


The law under **Rule 22(1) of the Labour Institutions (Mediation and Arbitration) GN No. 64 of 2007** provides 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."** The law is very clear on the issue of the jurisdiction and the mere fact that the preliminary objection was raised at later stage, it does not give the Commission jurisdiction to determine the matter.

The respondent committed the alleged offences in the applicant's branch at Mbagala within the district of Temeke hence the cause of action arose at Temeke. In the case of **Cocacola Kwanza Ltd Vs. Paul Kingu Revision No. 18/2017**, his Lordship Masaju, J, ruled that "*The respondents working station were the disciplinary offence were allegedly committed by the respondents hence that is where the cause of action arose*"

Issue of jurisdiction is fundamental in determine the labour dispute. Arbitrator after realizing that the matter was wrongly filed in the CMA which had no jurisdiction, ought not to continue with the hearing. In the ruling, arbitrator said that the preliminary objection was raised at the late stage of the case, so declined to entertain the preliminary objection and ruled against it. The law is clear that the preliminary objection, can be raised at any stage of the case even at appeal stage. In the case of **Tanzania –China Friendship Textile Ltd Vs. Our Lady of Usambara Sisters. Court of Appeal of Tanzania at Dar es Salaam. Civil Appeal No. 84/2002. TLR 2006** the court held that "*The issue of the jurisdiction of the court, can be raised at any stage, even on appeal.*" The fact that the preliminary objection was raised at the late stage of the hearing of the dispute cannot give the honourable arbitrator jurisdiction to determine the dispute.

In the case of **Tanzania –China Friendship Textiles Ltd Vs. Our Lady of Usambara Sisteer (supra)**. The Court of Appeal of Tanzania held that "*Since the trial court had no pecuniary jurisdiction as stated above, the whole proceedings and the decision there is are null and void.*" In the case at hand, arbitrator proceeded with the matter, while knowingly


that the CMA had no jurisdiction. Thus proceedings and award are all null and void. Court cannot leave nullify to flourish in court records. Accordingly, proceedings and Award of CMA are quashed. Respondent if still interested, should file dispute at respective CMA office having jurisdiction to entertain the dispute.


Z.G. Muruke

JUDGE

30/10/2020

Judgment delivered in the presence of Flavian A. John holding brief of Godfrey Tesha for applicant and in the absence of respondent.


Z.G. Muruke

JUDGE

30/10/2020