

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM**

REVISION APPLICATION NO 270 OF 2019

KAMPALA INTRNATIONAL UNIVERSITY.....APPLICANT

VERSUS

JAMES F.SIMUMBA & 2 OTHERS..... RESPONDENTS

JUDGMENT

Date of last Order: 30/03/2020

Date of Judgment: 03/04/2020

Z.G.Muruke, J.

The applicant, **KAMPALA INTERNATIONAL UNIVERSITY**, filed present application, seeking for revision of the proceedings and ruling issued by Commission for Mediation and Arbitration, (herein to be referred as CMA) on 11th March, 2019, in Labour dispute no. CMA/DSM/ILA/R.836/2018, originated from exparte award dated 24th September, 2018 in favour of the respondents. Application is supported by affidavit of the applicant's Principal Officer Richard Jumanne Kayemba. In opposition, respondents filed a joint counter affidavit sworn and affirmed by themselves.

The case was disposed by way of written submission, I thank both parties for adhering to the schedule hence this judgment. The applicant was represented by Advocate Florence A. Tesha, while the respondents were represented by their co respondent, James Frank Simumba.

The respondents were employed by the applicant as security officers. They worked for until 25th July, 2018 when they alleged to have been terminated. They referred the dispute before CMA, where the matter was heard exparte and decided in their favour. On 25th September, 2018 the applicant was served with the exparte award, then filed an application before CMA for the same to be set aside. Application was dismissed for lack of merits. Aggrieved with the ruling the applicant filed present revision application.

Supporting the application, the applicant's counsel prayed to adopt the affidavit in support of the application. He started by Challenging the respondent's counter affidavit for being incurably, defective on the following **one**; did not state when the oath was taken contrary to Section 8 of the Notaries Public and Commissioner for oaths Act . Cap 12 R.E 2002, **two**; counter affidavit failed to disclose whether the deponent is personally known or identified by another person to the Commissioner for oaths, and **three**; the affidavit lacks endorsement by the drawer contrary to Section 44 of the Advocates Act, Cap 341 R.E 2002. Applicant counsel prayed for counter affidavit to be struck out.

On regard to the grounds for revision, Mr. Tesha Counsel for applicant submitted that, the applicant has neither been served with the summons nor refused to receive the same. The said summons purported to be served doesn't state the name of a person who has refused to receive the summons as the applicant is an academic institution and not an individual. Respondents had intention of misleading the applicant on the place where the dispute was referred by serving a Notice of representation

titled High Court of Tanzania – Labour Division together with the CMA F1 from CMA.

From the above facts, the sufficient cause has been shown for failure to appear on the date scheduled for mediation as the applicant was not served with the summons. By refusing the applicant's application to set aside the expert award, while there was sufficient reasons, of not being served, the arbitrator denied the applicant's right to be heard, contrary to article 13(6) (a) of the Constitution of the United Republic of Tanzania of 1977.

In opposition, the respondent representative contended that, after the dispute have been filed before CMA the applicants didn't enter appearance when the matter was scheduled for mediation, the mediator issued a certificate on non-settlement. During arbitration, the applicant was issued with a summons which was served by a Ward Executive Officer, the same was rejected hence, the matter was heard *ex parte* and *ex parte* ruling was issued. Thus, the applicant has not adduced sufficient reason as to why did not enter appearance during hearing before CMA, referring the case of **Amina Rashid v Mohinder Singh and Another** 1986 TLR 196 (CA) . Before hearing the dispute *ex parte* CMA must satisfied itself that the summons was duly served to the applicant, referring the case of **Esther David Mmari v Emanuel Makaidi** (1967) HCD 178.

In rejoinder, the applicant's counsel reiterated what has been stated in submission in chief. He added that the cited case of Amina Rashid v Mohinder Singh and another (1986) TLR 196 CA, is distinguished from the present case. In above case, the court made an investigation and came

with the findings that the appellant deliberately absented herself from hearing of the application while in the present case the applicant was misrepresented by the respondent.

Having heard both parties submissions, it is worth noting that I have come across the applicant's preliminary objection in cause of submission. It is a trite law that, the preliminary objection ought to have been raised at the earliest stage for respondent to prepare themselves and argue the same, bearing in mind that they are unrepresented. Thus, this court ignores the said preliminary objection raised by the applicant.

Having considered the parties submissions, this court is called upon to determine whether the applicant sufficient cause to justify CMA to set aside exparte award.

Before addressing the stated issue, I find it worth to re-instate what amounts to good cause, for the purpose of this case. In the case of **Attorney General v Tanzania Ports Authority & another**, Civil Application No. 87 of 2016 Page 11 .

"Good cause includes whether the application has been brought promptly, absence of any invalid explanation for the delay and negligence on the part of the applicant.

Also in the case of **Mbeki Teachers Saccoss Vs. Zahra Justas Mango, Labour Revision No. 164/2010** HC Mbeya Sub registry (unreported) it was held that:

“... Sufficient reasons are pre conditions for court to set aside its exparte order”

According to the records, On 3rd August, 2018 the applicant was served by the respondents with a notice of representation titled, High Court of Tanzania Labour division with the CMA F1, while the matter was at CMA. On 9th August,, 2018 CMA issued a summons annexure “D” which was said to have been served by the Executive Officer of Guluka Kwalala Street and rejected by the applicant. The said note of rejection read as follows.

“mlalamikiwa alikataa kupokea barua hii ya wito”

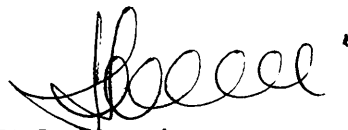
CMA upon receipt of the said summons, the arbitrator recorded the words stated above and ordered exparte hearing on 13th September, 2018.

On basis of the above finding from record, I am of the view that the applicant was not duly served with the summons. The said summons lacks important information regarding who refused to receive and sign the same, reason being the applicant is a recognized Institution with a valid management having physical and permanent postal address. The arbitrator scheduled for an exparte hearing without satisfying herself that the said summons was dully served to the applicant.

Equally, the applicant alleged that the said exparte award, contains irregularity as it based on false information adduced by the applicant that they were permanently employed while they had a fixed term contract of three years as per annexure “E”. Thus, need of hearing both parties to ascertain alleged illegality if any.

In the circumstances, sufficient cause to justify the grant of the Revision application. Denial of the same, will prejudice the applicant as the execution of the award will be effected without being afforded with a right to be heard.

It is clear that, what the applicant seeking is the right to be heard, which is vital for fair and just decision. Therefore, for the interest of justice, I hereby quash the order to proceed expert, and ruling to set aside exparte order. Award is also set aside. CMA records to be returned, for the commission to proceed at the staged reached before order to proceed exparte. Applicant be given time to file defense within 30 days from 14th April, 2020.



Z.G. Muruke

JUDGE

03/04/2020

Judgment delivered in the presence of Tesha Florence and James F.Simumba for the respondents.



Z.G. Muruke

JUDGE

03/04/2020