

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

**REVISION NO. 351 OF 2019**

**BETWEEN**

**HEMED A. KIBULE ..... APPLICANT**

**VERSUS**

**SIMBA PLASTIC CO. LIMITED ..... RESPONDENT**

**JUDGMENT**

*Date of Last Order: 18 /03/2020*

*Date of Judgment: 24/04/2020*

**S.A.N. Wambura, J.**

The applicant **HEMED A. KIBULE** calls upon this Court to revise and set aside the ruling of the Commission for Mediation and Arbitration [herein after to be referred to as CMA] dated 16<sup>th</sup> April, 2018 in dispute No. CMA/DSM/ILA/R.126/16/550 on the following grounds:-

- i. The Mediator erred in law and fact to enter the ruling of the preliminary objection raised by one Sillafrica Tanzania Ltd which was not a party to the case and based on that to end over the case.*

- ii. *That the trial mediator did erred in law and fact by not disclosing that the Silafrica Tanzania Ltd had no any locus stand on this case.*
- iii. *That the trial mediator did erred both law in fact to sustain the preliminary objection on the preliminary stage of the case as based on evidence.*
- iv. *That the trial did erred in law and fact where ended the case prematurely as avoided a good end of justice to the parties.*
- v. *The mediator of the commission for mediation and arbitration did biased to the respondent to hold that the respondent company was sold to the Sillafrica Tanzania Ltd and the applicant was terminated on the year 2005 without any justification.*
- vi. *That the matter stayed at the CMA for mediation beyond the reasonable prescribed time without any justifiable course.*

The application was supported by an affirmed affidavit of the applicant. Challenging the application, the respondent **SIMBA PLASTIC CO. LIMITED** filed a counter affidavit sworn by Victor Ntunde their Principal Officer.

The brief background of the dispute is that, in 1996 the applicant was employed by the respondent as a machine operator. He worked for the respondent up to 2015 when he was suspended due to lack of raw materials. It was agreed that he would resume work after the supply of the same. However, was not called to resume his position up to 2016 when it is alleged that he was terminated by the respondent.

The applicant referred the matter to CMA where by prior to the commencement of the hearing of the matter, a preliminary objection was raised by the respondent. Consequently the application was dismissed. Aggrieved with the ruling, the applicant has filed the present application.

During the hearing of this application, the respondent did not enter appearance, thus the matter was heard ex parte.

Mr. Hamza Rajabu who was the applicants representative submitted that the application is in respect of the ruling of CMA which dismissed the applicant's application due to a preliminary objection thereto raised. That the objection was filed at CMA by Sill Africa Co. Ltd who was not a party to the case.

That parties to this case were the applicant and the respondent and the arbitrator failed to consider that Sill Africa was not a party in the

matter. No one filed a notice of representation to represent the respondent but the Arbitrator did not consider the same. That the preliminary objection was based on facts by stating that the respondent's company had been sold and they were the ones who bought it. Since preliminary objections do not have merit if they totally rely on facts, he prayed to this Court to revise and set aside the ruling.

It is worth noting that even if the matter is heard *ex parte*, the applicant is duty bound to prove his case as it was held in the cases of **Roseleen Kombe (as Administrator of the Estate of the Late Lt. Gen. Imran Hussein Kombe) Vs. Attorney General** (2003) TLR 347 and Lab. Rev. No. 46 of 2018 between **Jordan University College and Francis G. Mabuga**.

According to the applicant's submission, this court is called upon to determine whether or not Sill Africa Co. Ltd has locus standi in this dispute. The applicant has alleged it does not have the locus standi, thus faulting the ruling of CMA.

The plain meaning of locus standi is the right or capacity to bring an action or to appear in a Court. Locus standi should be one of the first things to establish in any litigation. It concerns the sufficiency and

directness of a litigant's interest in proceedings, which warrants his or her title to prosecute the claim asserted.

There are various court decisions regarding locus stand. In the case of **The Attorney General v The Malawi Congress Party and another**, Civil Appeal No. 22 of 1996, the Malawian Supreme Court of Appeal as cited in the case of **God Bless Jonathan Lema v Musa Hamis & 2 others**, Civil appeal No. 47/2012, CAT at Arusha, provided the test for locus standi. It held that:-

*"Locus Standi is a jurisdictional issue. It is a rule of equity that a person cannot maintain a suit or action unless he has an interest in the subject of it, that is to say unless he stands in a sufficient close relation to it so as to give a right which requires prosecution or infringement of which he brings the action."*

In the case of **LUJUNA SHUBI BALLONZI, SENIOR v REGISTERED TRUSTEES OF CHAMA CHA MAPINDUZI** [1995] TZHC 11; (09 May 1995); 1996 TLR 203 (TZHC). It was stated that:-

*"In this country, locus standi is governed by the common law. According to that law, in order to maintain*

*proceedings successfully, a plaintiff or an applicant must show not only that the court has power to determine the issue but also **that he is entitled to bring the matter before the court.***"

*[Emphasis is mine].*

In the matter at hand, the applicant sued Simba Plastic Ltd who was his employer for unfair termination. It is on record that during mediation the respondent did not enter appearance, hence the matter proceeded to arbitration.

On 1<sup>st</sup> March, 2018, the day set for hearing, the coram indicates that the respondent was present and raised a preliminary objection on two grounds that:-

- " i. This matter is hopelessly time barred.*
- ii. The complaint is defective **as alleged respondent was sold on 28/10/2008 to another Company and thus could not have terminated the complainant on 8<sup>th</sup> February** and therefore offends the provisions of the Companies Act."*  
*[Emphasis is mine].*

The notice of preliminary objection shows that, the same was raised by Sill Africa Co. Ltd. I have cautiously gone through CMA's proceedings. I could not understand as to how Sill Africa Co. Ltd became a party in the dispute.

Since there is no evidence that the respondent Simba Plastic Co.Ltd has been dissolved or merged then the liabilities still lied upon them. I believe that Sill Africa Co. Ltd had wrongly chipped in this dispute while they had no locus standi. If they were interested in the matter, then they ought to have observed the proper procedure to be joined in the matter.

The arbitrator thus dismissed the application basing on a preliminary objection which was raised by a person who was not a party to the case. I believe that the arbitrator misdirected himself on relying on the evidence given by a stranger in a suit and dismissing the application for want of merit.

In view of the above findings, I hereby grant the application, quash and set aside CMA's proceedings and the ruling hereto. I order the matter to be remitted back to CMA and to be arbitrated by another arbitrator.

S.A.N. Wambura  
**JUDGE**  
24/04/2020