IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

CONSOLIDATED REVISION NO. 787 & 852 OF 2019

BETWEEN

CHINA COMMERCIAL BANK LTD.....APPLICANT/RESPONDENT

VERSUS

ANGANILE MWANKUGA.....RESPONDENT/APPLICANT

JUDGEMENT

Date of last Order: 10/05/2021

Date of Judgement: 27/05/2021

Aboud, J.

This is the Consolidated Judgement of Revision No. 787 & 852 of 2019. Revision No. 787 was filed by **ANGANILE MWANKUGA** (to be referred as the employee in this judgement) and Revision No. 852 was filed by **CHINA COMMERCIAL BANK LIMITED** (to be referred as the employer). Parties were aggrieved by the decision of the Commission for Mediation and Arbitration (herein CMA) in labour dispute No. CMA/DSM/KIN/R.410/2018/2019 which was delivered on 01/10/2019 by Hon. Abdallah, M., Arbitrator hence they filed their applications respectively.

The application emanates from the following background; on 21/03/2018 the employee was terminated from the employment for gross negligence. Aggrieved by the termination he referred the dispute at the CMA claiming for unfair termination. At the CMA the matter proceeded ex-parte after the employer failed to enter appearance. Therefore, the ex-parte award was delivered in favour of the employee where he was awarded a total sum of Tshs. 91,465,092/= as compensation for the alleged unfair termination. The employer became aware of the ex-parte award, he therefore filed an application to set aside the ex-parte award at the CMA on the following grounds:-

(i) That, he was not served with a summons to appear nor to file a defence in respect of the labour dispute which was held ex-parte.

(ii) That, the summons were served to a wrong party, China Commercial Bank instead of China Commercial Bank Limited.

On his finding the Arbitrator was of the view that the summons were duly served but to a wrong party who was not the employer. In other words, on the basis of the second ground above the Arbitrator allowed the application, he quashed the ex-parte award and ordered

the matter to be heard interparties. Both parties were aggrieved by the Arbitrator's decision hence they filed the present applications to challenge the same.

In the employer's application he invited the Court to determine the following issues:-

(i) That, the Honourable Mediator in Mgogoro wa Kazi Na. CMA/DSM/KIN/R.410/2018/2019 did not comply with the legal procedures after having decided to proceed ex-parte.

(ii) That, the applicant was not dully served with neither the summons to appear nor to file defense in Mgogoro wa Kazi Na. CMA/DSM/KIN/R.410/2018/2019.

On the other hand, the employee urged the Court to determine the following issues:-

(iii) Whether it was proper for the trial Mediator/Arbitrator to hold that the respondent was served with summons and the same time hold that the respondent was not heard.

(iv) Whether it was proper for the trial Mediator to hold that the respondent was not party to the Mgogoro wa Kazi no. CMA/DSM/KIN/R.410/18 while its advocates entered appearance sometimes in 2018 and defend the same.

(v) Whether it was proper for the trial Mediator/Arbitrator to base her decision on a verry minimal clerical errors and denied the applicants enjoying his legally obtained fruits.

(vi) Whether it was legally fair and just to hold that the respondent has good and sufficient reasons to set aside exparte award delivered by the Commission on 18th March, 2018.

Both applications were argued by way of written submissions. The employee was represented by Learned Counsels from the law firm trading as Vam Associates while the employer was represented by Mr. Kenneth Joseph Msechu, Learned Counsel.

In the employee's application he deviated from what he deponed in his affidavit and submitted that, there was no final determination of the dispute at the CMA. He referred rule 50 of the Labour Court Rules to support his submission. He therefore prayed for the employer's application to be dismissed.

Responding to the employee's application the employer's Counsel submitted on the employee's grounds stated in the affidavit which the employee himself did not submit on the same.

In employer's application his Counsel strongly submitted that, the employer was not served with summons to appear at the CMA because the same was served to China Commercial Bank which is not his proper name that is China Commercial Bank Limited. He therefore prayed for the impugned ruling to be set quashed and set aside.

Responding to the employer's application the employee reiterated his submission in his application. He therefore prayed for the employer's application to be dismissed.

I have dully considered the submissions of parties. Having gone through court records pertaining to this application and the relevant laws I find the Court is called upon to determine one issue, whether the applications at hand have merit.

As stated above, the applications at hand emanates from the decision which set aside an ex-parte award and ordered the complaint at the CMA to be heard interparties. It is clear that the Labour Court Rules, GN. 106 of 2007 (herein Labour Court Rules) forbids appeals against interlocutory orders or decisions which do not determine the matter to finality as rightly submitted by the employee.

This is in accordance with Rule 50 of the relevant rules which provides that, I quote:-

> *'Rule 50- No appeal review, or revision shall lie on interlocutory or incidental decision or orders, unless such decision had the effects of finally determining the dispute'.*

The CMA decision ordered the matter to be heard interparties. Therefore, in my view the ruling in question did not bring the matter to its finality. In the case of **Managing Director Souza Motors V. Riaz Gulamali and Another TLR [2001] at p.104,** [quoted by Nyerere, J. in the case of **Mohamed Enterprises (T) Ltd. V. Peter Magesa and 5 Others, Revsion 343 of 2015 [unreported**], the Court, Bwana, J. (as he then was) held that:-

> *'...A decision or order of preliminary or interlocutory nature is not appealed unless it has the effects of final determining the suit...'*

As the record of this case shows, the matter was not finally determined by the CMA and the same would have proceed with hearing if the parties did not file the present applications.

Therefore, is my considered view that the present revision applications are on an interlocutory decision which did not finally determine or dispose of the matter and as quoted above such matters are not allowed to re-surface in this court because they contravene the provision of Rule 50 of the Labour Court Rules which is mandatory.

However, on the exceptionality to the general rule in rule 50 above, the court may intervene in interlocutory proceedings, ruling or orders in the following circumstance as stated in the case of **Lucky Spin Ltd. (Premier Casino Ltd.) Vs. Thomas Alcord and Joan Alcord** Revision No. 445 of 2015 [unreported], Mipawa, J. held that:-

> *'...Where justice may not by other means be obtained or where a gross irregularity has occurred or where grave injustice may result, it has been held that the Labour Court may intervene in incomplete proceedings...'*

In my view the impugned ruling of the CMA in any manner has not caused grave injustice to the parties in this application or nor any gross irregularity that has been occasioned by the said decision. Therefore, I have no hesitation to say that rule 50 of the Labour

Court Rules provides for mandatory requirement which have to be fully complied with as it stands.

In the event, I find the revision applications filed by both parties have no merit and are hereby dismissed. Thus, it is ordered that the file be remitted back to the CMA to proceed as per the Arbitrator's ruling.

It is so ordered.

I.D. Aboud

JUDGE

27/05/2021