

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**DAR ES SALAAM**

**REVISION NO. 634 OF 2019**

**BETWEEN**

**TANZANIA INTERNATIONAL CONTAINER**

**TERMINAL SERVICES LIMITED..... APPLICANT**

**VERSUS**

**ERNEST KALAGE ..... RESPONDENT**

**JUDGEMENT**

*Date of Last Order: 17/05/2021*

*Date of Judgment: 01/07/2021*

**Aboud, J.**

The applicant, filed the present application seeking revision of the decision of the Commission for Mediation and Arbitration (herein CMA) delivered on 08/02/2019 by Hon. Amos, A Arbitrator in labour dispute No. CMA/DSM/ILA/R.76/17. The application is made under section 94 (1) (e) of the Employment and Labour Relations Act [CAP 366 RE 2019] (herein referred as the Act) Rule 24 (1), 24 (2) (a) (b) (c) (d) (e) (f), 24 (3) (a) (b) (c) (d), Rule 28 (1) (c) and Rule 55 (1) (2) of the Labour Court Rules GN. No. 106 of 2007 (herein referred as the Labour Court Rules).

The dispute emanates from the following background. The respondent was the applicant's employee, employed as an Operator class A. On 07/03/2001 the respondent was terminated from his employment for failure to succeed on his probation period as indicated in the termination letter. Aggrieved by the termination the respondent referred the dispute at the Reconciliation Board which ruled that the respondent's termination was fair. Again, being resentful by the Board's decision the respondent appealed to the Minister of Labour who ordered the applicant to pay the respondent his terminal benefits. Following such decision, the respondent has been approaching different courts for execution including the Kisumu Resident Magistrate's Court without success. Thereafter the respondent decided to refer the matter at the CMA where he prayed for terminal benefits including repatriation expenses and subsistence allowances. At the CMA the matter proceeded ex-parte after the applicant did not enter appearance. On his findings the Arbitrator ordered the respondent to be paid Tshs. 3,525,960,000/= as repatriation allowances, subsistence allowances and damages. The applicant unsuccessfully prayed to set aside the ex-parte award. Being dissatisfied by the CMA's decision the applicant filed the present

application on 10 grounds as indicated in the applicant's affidavit in support of the application. For the reasons that will be apparent in this decision the relevant grounds will not be reproduced.

The matter was argued orally. Both parties were represented by Learned Counsels. Mr. Issa Mrindoko was for the applicant where as Mr. Aron Lesilamu appeared for the respondent.

Arguing in support of the application Mr. Issa Mrindoko submitted that, they have number of issues and among them there is the issue of jurisdiction of the CMA. He stated that, the issue of jurisdiction needs to be determine first because it is a bedrock on which court's authority and competence to determine any matter before it rest as it was decided in the case of **Mwananchi Communications Limited & others Vs. Joshua K. Kajula and 2 others**, Civ. Appl. No. 126/01 of 2016, CA Dar es Salaam.

It was also submitted that, in this matter it is undisputed the applicant was terminated while working at the applicant's office at Temeke District. It was argued that, the respondent's claims or complaint ought to have been instituted at the CMA Temeke which had jurisdiction to entertain the same. It was further argued that, for

unknown reasons the respondent instituted this matter at CMA Ilala contrary to Rule 22 of the Labour Institutions (Mediation and Arbitration) Rules, GN. 64 of 2007 (herein GN. 64 of 2007). To strengthen his submission the Learned Counsel cited the case of **Sylvanus Msomi Vs. Bayport Financial Services Ltd.**, Rev. No. 220 of 2010, HC DSM (unreported).

Moreover, it was argued that, it is common knowledge that the CMA located at Temeke was established to entertain all labour disputes whose cause of action arose within Temeke Municipality. He submitted that, the respondent did not aver in his counter affidavit that at the time the cause of action of this case arose the CMA at Temeke was not in place. It was added that, the respondent did not mention the Government Notice which gives jurisdiction to CMA Ilala to determine all the labour disputes arising within Dar es Salaam region or that, she had a specific order to refer the complaint at CMA Ilala instead of the CMA offices where the cause of action arose.

The applicant's Counsel strongly submitted that, the respondent decided to choose her own forum and disregarded the relevant provision of the law which clearly states where to lodge the complaint. The Learned Counsel urged the Court to condemn such



practice. He therefore prayed for this court to find that the CMA Ilala erred in law in determining the matter whose cause of action arose within the local limits of CMA Temeke.

Responding to the application Mr. Aron Lesilamu submitted that, it is true that this matter was supposed to be filed at the place where the CMA had jurisdiction. He submitted that, in this matter the complaint with reference No. CMA/DSM/ILA/R.76/17 was heard at Ilala, he argued that, the matter was filed in a wrong forum and the respondent should pursue his right in a proper forum. In the upshot he conceded that the CMA Ilala had no jurisdiction to entertain this matter.

After considering the submissions by the parties, Court records and relevant labour laws I find the Court is called upon to determine whether the CMA Ilala had jurisdiction to entertain this matter.

In this matter I fully agree with the applicant's Counsel submission that the issue of jurisdiction is the bedrock of the court's power to entertain any dispute rests before it. I am also bound to the decision of the Court of Appeal in **Mwananchi**

**Communications Limited & others** (supra), where it was held that:-

*'Jurisdiction is the bedrock on which court's authority and competence to entertain and decide matters rests.'*

As stated in number of cases the issue of jurisdiction can be raised at any stage of the case even at the appellate jurisdiction. In this matter the applicant's Counsel raised the issue of territorial jurisdiction of the CMA. In our labour laws the territorial jurisdiction of the CMA is governed by Rule 22 of GN. 64 of 2007 which provides as follows:-

*'Rule 22(1) 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 above position was restated in the case of **Francis Kuringe v Singita Grumeti Reserve**, Rev. No. 37 of (2013) LCCD

1. Where it was held that:-

*'It is the established position in law 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.'*

In the matter at hand, the record shows that this dispute was instituted at CMA Ilala. The respondent's Counsel in his submission conceded that the cause of action in this matter arose within the territorial jurisdiction of CMA Temeke. Therefore, on the basis of the above cited provision and case law, it is my view that the matter ought to have been instituted at the CMA Temeke where the cause of action arose. In the circumstances of this case, it is also my considered view that, the CMA Ilala had no jurisdiction to entertain this matter because the cause of action arose within the territorial jurisdiction of CMA Temeke.

In the result, as stated above the CMA Ilala had no jurisdiction to entertain this matter. Consequently, the proceedings and award acquired thereto are hereby quashed and set aside. The respondent should institute the dispute at CMA Ilala where the cause of action arose if he still wishes to pursue his right. For the interest of justice, the respondent should not be affected by the law of limitation,

however the application should be filed within 30 days from the date of the order.

It is so ordered.

A handwritten signature in blue ink, appearing to be 'I.D. Aboud', written over a circular stamp.

I.D. Aboud

**JUDGE**

01/07/2021

Labour Court TZ.