**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**LABOUR DIVISION**

**(AT DAR ES SALAAM)**

**REVISION NO. 159 OF 2020**

**BETWEEN**

**URANEX (T) LTD ..... APPLICANT**

**VERSUS**

**GODWIN M. NYELO ..... RESPONDENT**

## JUDGEMENT

**S.M. MAGHIMBI, J:**

The applicant filed the present application moving the court to revise and set aside the award of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. **CMA/DSM/ILALA/R.130/17/54** dated 26th March, 2020 by Hon. A. Massay, Arbitrator. In the said award, the CMA awarded the respondent a claim of bonus USD 40,000/- allegedly withheld by the applicant. Aggrieved by the award of the CMA, the applicant has lodged this Revision the provisions of Section 91(1)(a), 91(2)(b) and (c) of the Employment and Labour Relations Act No. 6 of 2004, R.E. 2019), Section 94(1)(b)(i) of the Employment and Labour Relations Act No. 6 of 2004; Rule 24(1), 24(2)(a),(b),(c),(d),(e) & (f), Rule 24(3)(a),(b), (c) and (d) and Rule 28(1)(c),(d) and (e) of the Labour Court Rules GN. No.

106 of 2007. In his affidavit in support of the application, the applicant has raised the following legal issues:

i. Whether the CMA can determine an issue that does not form part of the claims as indicated in the CMA F1.

ii. Whether a claim that is not part of the CMA F1 but is included in a Certificate of Non-settlement forms part of the dispute by the parties.

iii. Whether bonus is part of terminal benefits.

iv. Whether there was evidence on record to justify the award of USD 40,000/= as bonus.

v. Whether there were sufficient reasons to condone the delay in filing labour dispute at the CMA.

The application was argued by way of written submission. Before this court the applicant was represented by Ms. Samah Salah, learned Advocate and Mr. Mashaka Ngole, learned Advocate appeared for the respondent.

Before going into the knits and grits of this application, it is pertinent to acquaint with the facts giving rise to this application. The respondent is the applicant's former employee who was employed on

permanent terms as Corporate Affairs Manager from 10th May, 2011. On 05th August, 2014, the respondent resigned from employment in order to pursue a political career. It would appear that despite his resignation, the respondent was still engaged by the applicant as a consultant on ad-hoc basis for two to three days per week to advise the applicant where needed. The consultancy services came to an end on April, 2016.

The record shows that on 31st January, 2017 the respondent filed a complaint at the CMA claiming for terminal benefits which included payment of severance pay for three years amounting to Tshs. 15,628,846/=, payment of leave allowance amounting to Tshs. 14,512,500/=, one month salary in lieu of notice Tshs. 19,350,000/= and certificate of service.

In his opening statement at the CMA the respondent also included the claim of bonus of Tshs. 40,000/= and after considering the parties evidences, the Arbitrator awarded the respondent bonus of Tshs. 40,000/= and a certificate of service, dismissing all other claims. Aggrieved by the CMA's award the applicant filed the present application raising the aforementioned legal issues.

I find the last ground of revision should be determined first because it is on jurisdiction of the CMA with regard to time limitation.

The applicant is challenging whether there were sufficient reasons to condone the delay in filing labour dispute at the CMA. It is undisputed that the voluntarily resigned on the 30/08/2014 ad was engaged in consultancy services. In April 2016 he was informed of the termination of the contract at the expiry of the contract period and it is from that time he started claiming for his benefits including severance pay, leave, certificate of service and one month's salary. The dispute was lodged at the CMA on 31/01/2017. In his ruling on condonation, the learned arbitrator held:

> *One of the issues is the time the dispute fall late. The applicant resignation later was tendered on 05/08/2014, stating that it will take effect at the end of the month. The correct calculations are that the dispute started when resignation took effect, at the end of August. But the applicant was late starting the end of September, 2014 so degree of lateness is 26 months. The time which the applicant has been late is 26 months. The reason behind being late is that he was engaged with the same employer on another capacity. The respondent dispute the time but I see the applicant is correct. The time with which the*

*applicant was within time frame to lodge the complaint cannot be said to include in his lateness.*

First to fourth legal issues raised revolve around the legality and propriety of awarding the bonus of USD 40,000/- to the respondent.

In her submissions, Ms. Salah pointed out the initial procedure in referring a dispute to the CMA. She submitted that disputes are referred to the CMA by filing CMA F1 pursuant to section 86 (1) of the Employment and Labour Relations Act [CAP 366 RE 2019] (ELRA). That the claim of bonus was not included in the CMA F1 arguing that the Arbitrator has discretion to award the remedies only provided in the CMA F1. To support her submission, she referred the court to the case of **Edwin Ntundu v. Plan International Tanzania, [2014] 1 LCCD 32** where the said position was held.

She also submitted that Rule 16 (1) of the Labour Institutions (Mediation and Arbitration) Rules, [GN No. 64 of 2007] (GN 64/2007) empowers the Mediator to identify the nature of the dispute guided by what is stated in CMA F1. That the provision does not allow the mediator to include any other dispute not forming part of the CMA F1 arguing that the CMA F.1 is also similar to plaint used in normal civil cases. She argued further that a Certificate of non-settlement of dispute issued at

the conclusion of the mediation does not amend the CMA F1, therefore any claim not included in CMA F1 need not be entertained.

Ms. Salah submitted further that bonus is not part of terminal benefits listed under section 44 (1) and (2) of the ELRA therefore and that it was not part of the respondent's claim in the CMA F1. Further that even if it were to be found that the claim of bonus forms part of the terminal benefits, there is no any evidence on record to substantiate the same, arguing that the payment of bonus was at the absolute discretion of the applicant and the same should not exceed 24,000/= USD per year as reflected in the employment agreement. She alluded that contrary to what is provided in the employment agreement, the respondent alleges that the written agreement in relation to bonus was changed by discussion however, no document was tendered to prove the same. She firmly argued that since the claim of bonus was not based on issue of fairness of the termination it was the duty of the respondent to prove the same. To booster her submission, the Learned Advocate referred the case of **Abdalah kitundu and Another v. CM Co. Ltd, Lab. Rev. No. 227 of 2013** and the case of **Abdul - Karim Haji v. Raymond Nchimbi Alois and another, [2006] TLR 419**. She concluded that the respondent failed to justify the claim of bonus.

In reply, Mr. Ngole submitted that in determining the dispute, the Arbitrator is duty bound to consider the claims and reliefs indicated in the CMA F1, opening statement and a certificate of non – settlement as well as evidence of the parties and the available law. Mr. Ngole argued that pleadings which are binding to the parties in a dispute at the CMA are different with pleadings in ordinary suit. He stated that the cases cited by Ms. Salah on that aspect are distinguishable.

He submitted further that terminal benefits in employment matters is categorized to two aspects, the first are the terminal benefits provided under section 44 of the ELRA and the other category is based on contractual terminal benefits. He argued that the claim of terminal benefit was pleaded as terminal benefit arising out of contract of employment.

In rejoinder Ms. Salah reiterated her submission in chief adding that the claim of bonus was particularized in the opening statement and not in the CMA F1.

Having considered the submissions of the parties, the issue is whether it was proper for the learned Arbitrator to award compensation of bonus not pleaded in the CMA Form No.1. The respondent justified the award on the ground that the same was included in the opening

statement as well as in the certificate of non-settlement. Indeed as pointed out by Ms. Salah, in the CMA Form No. 1 which is the basis of the respondent's claim, did not contain the claim of Bonus. The Arbitrator argued that in terms of Rule 16 (3) of GN 64/2007 the nature of the dispute will be determined by what is stated in CMA F1 and certificate of settlement. The relevant provision provides as follows: -

> *'Rule 16 (3) Where the dispute remains unresolved, irrespective of what was stated in the dispute referral form, the mediator's certificate shall determine the nature of the dispute.'*

In my strong view, the provisions above do not empower the Mediator to amend or add what is pleaded in the referral form No. 1. The Mediator is only empowered to determine the nature of the dispute and not to change the pleadings to include prayers which were not pleaded in the CMA Form No. 1. In the application at hand, the nature of the dispute was specifically stated as payment of terminal benefits. The respondent went further to state the claimed terminal benefits and the claim of bonus was not one of his claims. I therefore join hands with Ms. Salah that the claim of bonus was not pleaded by the respondent in the CMA F1.

The provision of Section 86 (1) of ELRA requires disputes referred to the CMA to be in the prescribed form No 1, this is what moves the

court to determine disputes tabled before and it is what is pleaded in this form that will move the CMA. Therefore the Arbitrator is limited to adjudicate what is sought in the relevant form. In this application the claim of bonus was an afterthought which was not included in the CMA F1. In the circumstance I fully subscribe to the holding of the court in the case of **Dr. Abraham Israel Shuma Muro v. National Institute for Medical Research & another**, Civ. Appl. No. 68 of 2020 cited by Ms. Salah where it was held that: -

> *'It is settled position that the court cannot grant a party or parties an order or relief which has not been prayed for.'*

I have noted the Mr. Njole's argument that bonus is the terminal benefit originating from contractual agreement. Indeed that may be the case. However, even if I am to incline to his line of argument, there will be an issue of time limitation to lodge that particular claim. In his application for condonation, the applicant prayed for condonation of time in order to refer a labour dispute. The dispute was prescribed in the CMA Form No. 1, it is only those claims that were prescribed in the CMA F.1 that were granted condonation. Therefore if the claim of bonus rose out of contract and the contract ceased in April 2016 while the dispute was referred in January 2017, then the claim of bonus was out of time as it were filed after 9 months after the cause of action arose

and the condonation did not include it. Therefore any line of argument that Mr. Njole is pleased to take, the issue remains the same and the CMA had no jurisdiction to entertain the claim for bonus.

Having made the above findings, I find the application beforehand to be meritious and it is hereby allowed. The proceedings of the CMA in arbitration and the subsequent award are hereby nullified.

Dated at Dar es Salaam this 03rd December, 2021.


.....
**S.M. MAGHIMBI**
**JUDGE**