

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**REVISION NO. 695 OF 2019**

**BETWEEN**

**ERASMUS B. RWEIKIZA & ANOTHER ..... APPLICANT**

**VERSUS**

**PAUL B. NAHABWE ..... RESPONDENT**

**RULING**

*Date of Last Order: 25/05/2021*

*Date of Judgement: 16/07/2021*

**Aboud, J.**

This ruling is in respect of the preliminary objections raised by respondent's Counsel against the application for revision in opposing the decision of the Commission for Mediation and Arbitration (herein CMA).

The preliminary objections are to the effect that;

- i. The application is defective as Notice of application contains grounds for revision
- ii. The application is bad in law for wrong and or non-citation of the enabling provision of the law.

The preliminary objections were ordered to be argued by way of written submission. The applicants were represented by Mr. Mkibi Dickson Issa, Personal representative while Mr. Dismas Mallya, Learned Counsel was for the respondent.

Arguing in support of the first preliminary objection Mr. Dismas Mallya submitted that, the notice of application is a prescribed form (LCF No.1) provided in the schedule to the Labour Court Rules, [GN 106 OF 2007] (herein the Labour Court Rules). He argued that, the said form does not prescribe a space for grounds on which the revision application is sought but only a space for orders sought. He stated that, the subsequent paragraphs in the form prescribes space for filling in the details of the applicant's and respondent's representatives.

He submitted that, looking at the notice at hand, paragraph 1 pointed out orders sought by the applicant and paragraphs 2, 3 and 4 of the said notice provide grounds for revision. To support his submission, he cited the case of **Tanzania Telecommunication Co. Ltd. V. Kija Redio**, [2015] LCCD 1 Rev. No. 11 of 2015.

It was strongly argued that, it is wrong to include prayers and grounds sought for revision in the notice of application. The Learned Counsel also referred the case of **William Kefa Owino V. Afriline Gt. Ltd**, [2014] LCCD II.

On the second preliminary objection it was submitted that, the applicant wrongly cited section 91 (1) (a) of the Act provides time limit within which a person aggrieved by the CMA's award can file an application for revision. It was argued that, the said subsection does not apply to the application at hand.

It was further argued that, the applicants cited section 91 (2) (a) of the Act which provides for grounds for setting aside an arbitration award. He stated that the subsection is wrongly cited because misconduct on the part of the Arbitrator is not mentioned on the applicants' application as one of the grounds for revision of the CMA's award.

It was submitted that, allegation of misconduct by the Arbitrator is a very serious allegation that ought to have been indicated as among the grounds for revision in the applicants' application. It was argued that, the applicant's ground for revision is that the award was improperly

procured and the proper provision ought to have been cited is section 91 (2) (b) of the Act. It was argued that, wrong citation of specific provision of the law renders the application incompetent. To cement his submission, he referred the case of **Madaha T. Augustino & Lilian Kimaro V. Marie Stopes**, [2014] LCCD and the case of **Kinondoni Municipal Council V. Alphonse Buhatwa**, Civ. Appl. No. 20 of 1997.

He therefore prayed for the application to be struck out for wrong citation of the enabling provision of the law and incompetent notice of application.

Responding to the application the applicants prayed for the preliminary objections to be dismissed to save time of the court so as the matter can proceed on merit.

Having careful considered the rival submission by the parties, courts' records and relevant labour law I find the issue for determination before the Court is whether the preliminary objections are meritorious.

In the first preliminary objection that, the application is defective as Notice of application contains grounds for revision. It was stated that, the notice of application does not comply with Form LCF 4. In this court

the format of the notice of application is governed by rule 24 (2) of the Labour Court Rules. The relevant provision is to the effect that:-

*'Rule 24 (2) - The notice of a application shall substantially comply with Form No. 4 in the schedule to the Rules, signed by the party bringing the application and filed and shall contain the following information-*

- (a) The title of the matter*
- (b) The case number assigned to the matter by the registrar*
- (c) The relief sought*
- (d) An address at which that party will accept notices and service of all documents in the proceedings;*
- (e) A notice shall advise the other party that if he intends to oppose the matter, that party shall deliver a counter affidavit within fifteen days after the application has been served, failure of which the matter may proceed ex-parte; and*
- (f) A list and attachment of the documents that are material and relevant to the application.'*

The above provision provides for the mandatory contents of the notice of application which should also be in conformity with form LCF 4.

As rightly submitted by the respondent's Counsel the grounds for revision are not supposed to be included in the notice of application. Looking at the notice of application at hand, at paragraph 2, 3 and 4 it is crystal clear that the applicant wrongly included the grounds for revision. Therefore, the notice of application at hand is not in conformity with the provision of the law cited above.

In the circumstances, I find the first preliminary objection raised by the respondent's Counsel has merit and is hereby upheld. That being the position I find no need to labour much on the remained second preliminary objection.

In the result the present application is incompetent and is hereby struck out from the Court's registry. The applicants are at liberty to come to court by following procedures of the law.

It is so ordered.

A handwritten signature in blue ink, consisting of several loops and flourishes, positioned above the printed name and title.

I.D. ABOUD  
**JUDGE**  
16/07/2021.