IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION APPLICATION NO. 10 0F 2020

(ORIGNATE FROM DISPUTE NO.CMA/ILA/790/19

JAMES PETER.....APPLICANT

AND

DODSAL HYDROCARBONS AND POWER (TANZANIA) PVT LTD...RESPONDENT

Date of last Order: 23/06/2021

Date of Judgment: 05/07/2021

Z.A. Maruma, J.

RULING.

The applicant James Peter was aggrieved by the ruling of Commission for Mediation and Arbitration delivered on 13th December 2019 before Arbitrator Fungo E.J in complaint No. CMA/ILA/790/19. The applicant herein calls this court to revise and set aside the said ruling.

The brief gist of this application resulted from the interpretation of the ruling dated 4th March 2016 before Nyerere, J (as then she was) in revision Application no. 477 of 2015. The background of the ruling resulted from a labour dispute No. CMA/DSM/ILA/790/19 which was instituted by the applicant on termination of his employment on 5th June 2013. On 2nd July 2013 the applicant instituted a dispute to the Commission and Mediation which was determined and the decision was delivered on 13th November 2015. Aggrieved with the decision, the applicant filed Revision Application No. 477 of 2015 before this court. The application was preceded by the preliminary objection which resulted to a ruling delivered on 4th March 2016. The ruling quashed and set aside the CMA's decision dated 13th November 2015 was based on the issue of wrong identification of the parties in dispute. At page 4 of the ruling it was observed that" ***From the parties' submission one issue stand that, in CMA award respondent Peter James was wrongly identified by the Arbitrator instead of referring him as James Peter, she identified him as James Peter. The contested issues by the party are that the applicant also alleged he was wrongly identified in CMA form No.1 instead of being identified as DODSAL HYDROCARNONS AND POWER (TANZANIA) PVT***

LIMITED he was identified as DODSAL HYDROCARBONS AND POWER".

The ruling further referred the complaint to the Commission to commence afresh out of time before a different Arbitrator with competent jurisdiction.

On 15th October 2019 the applicant instituted a Labour Dispute No. CMA/DSM/ILA/790/19 claiming for constructive unfair termination. Preliminary objection on point of time limitation was raised by the respondent. The respondent argued that, the applicant was time barred for 7 years as the aforesaid dispute No. CMA/DSM/ILA/790/19 was supposed to be filed by 14th July 2013 contrary to Rule 10(1) of the Labour Institutions (Mediation and Arbitration) Rules of 2007. The respondent's argument which was also the understand of the Commission was based on interpretation of the ruling of the Labour Court before Nyerere J (as she then was) that, the said ruling quashed and set aside the award and proceedings of the CMA in Labour Dispute No. CMA/DSM/ILA/R.465/13/460 dated 4th March 2016 and granted an extension of time to the complaint to commence afresh dispute before another Arbitrator. The CMA went on and stated, this was done by the applicant after a lapse of three (3) years and eight (8) months. The Commission was of the position that though, the applicant was given an

extension of time to commence his dispute afresh at the Commission. He should come to the Commission within reasonable time and not as he wishes to do so.

The ruling thereof was delivered on 13th December 2019, whereby the respondent's preliminary objection was sustained and dismissed the application. The Commission ruled that, since the ruling of the Labour Court issued on 4th March, 2016 gave an extension of time for the applicant to commence afresh and, the fact that the complaint was referred to the Commission on 15th October, 2019 that was time barred. The ruling went further to direct that, the Commission is moved by rule 29 (1) of The Labour Institutions (Mediation and Arbitration) Rules of 2007 and not letters in the process of referring the complaint.

At the hearing of this application, the applicant was represented by Mr. John Shepo the learned Advocate and Mr. Odhiambo Kobas, the learned counsel for the respondent. The application was also supported by the affidavit sworn by Mr. Anthony Mseke and a counter affidavit sworn by Odhiambo Kobas was dully filed in court against the applicant. Both counsel for the applicant and the respondent in support of their affidavits made submissions on arguments on the issues raised.

Mr. Shepo Jonh for the applicant submitted that, on 26th March 2019 they wrote a letter requesting the Commission to set the file for matter to start afresh before another arbitrator and he referred Annexure AM3. He submitted that, the Commission never acted on order of the court despite of the follow up made. On 10th June 2019 he again wrote a complaint letter for the failure of the commission to take action. Again, the Commissioner failed to assign the file, (instead as annexure AM 5) where the arbitrator provided his interpretation. A referred according to him, the applicant complied with the order to file a new referral instead it was placed before mediator instead of Arbitrator as ordered in 4th March, 2016. He also argued that, the Commission wrongly interpreted the order of the High Court as seen in the last para of CMA's decision. The referral made was for the dispute to start afresh before another Arbitrator and not to file a fresh dispute. Also, the ruling which was quashed was on Arbitration proceedings and not Mediation. He also argued that, the Arbitrator came with new rule 29 (1) which is not the procedure and practice. Insisted he submitted that, the High Court ruling is the one which had directed what need to be done and there was no need for the Commission to interprete otherwise. He argued that, it was the Commission which directed to file a new referral. Therefore, the source of

all problem was the Commission itself and to penalize the applicant would be unfair. To support this position, he referred the court to the cases of Court of Appeal of **William Getari Kegere Versus Equity Bank & Another,** Civil Application No. 24/8 of 2019**, Tanzania Revenue Authority Versus Tango Transport Company**, Civil Application No.5 of 2006. Both of these cases set a principle of penalizing of the parties on mistakes of Court or parties' advocate.

Mr. Odhiambo in contesting the application, stated that the application has no merit. He argued that, the mediator's decision was right as the dispute before him was time barred. He pointed out that, it should be clearly noted and determined that, the labour dispute ordered to be remitted to CMA before another Arbitrator was CMA/DSM/ILA/R.465/2015 and the dispute filed afresh by the applicant was CMA/ILA/790/19. According to him, he said that instead for the applicant to continue with the first dispute he filed the later one. It was on this later dispute the preliminary objection was raised and filed. It was his argument that, the order by Nyerere J (as she then was), quashed the award and proceeding of CMA and ordered the complaint to commence afresh out of time before the different arbitrator in respect to the dispute CMA/DSM/ILA/R.465/2015. The applicant instead filed

a fresh dispute before CMA before seeking leave of the CMA to bring that fresh matter. He argued that, the interpretation referred by the applicant is not the formal interpretation by the CMA as it was a mere administration letter written to CMA with no copy to the respondent and the response thereof was never copied to the respondent. Therefore, according to him, the said letters cannot form party of the decision of CMA. He also, submitted that, if the counsel for the applicant found that the HC decision by Nyerere, J (as she then was), was vague of interpretation, he should have applied to this court for a proper interpretation. He submitted that, in that regard even the proceedings pertain to mediation and the certificate for the failure to mediation proceedings were also quashed. He submitted further that, because the gist of removing the application was the name of the applicant and the respondent were not the same. For that reason the fresh dispute which is the subject for this application is not the dispute which was envisaged by the decision of Nyerere J, (as she then was). He said what was in the dispute No. CMA/DSM/ILA/R 465 of 2015 and extension of time was granted to commence before another arbitrator. Therefore, the Mediator was right to rule out that the matter was time barred because before him it was a fresh dispute with no earlier number and in deed it was filed out of 30

days contrary to rule 10(1) of the Labour Institutions (Mediation & Arbitration) Rules GN 64 of 2007. Looking at CMA form No.1 on its part B item no. 2 started the date of termination was 5th June 2013. He submitted that, the letter written by applicant and response thereto could be a good reason to seek for an extension of time for proper interpretation before he could bring the application which is already held to be time barred. The remedy for a time barred matter is well spelt in number of authorities. Mr Odhiambo cited Revision No. 568/2019 of the Labour Court between **Yordan Johim Sanga Versus Governing Body of College of Business Education** Abood J, at pg 7 provided a remedy for the late filed applications. It was his submission that this court to uphold the ruling as the Mediator was right and dismiss the application for want of merit.

In his short rejoinder Mr. Shepo submitted that, the High Court decision was on 4th March 2016 the first letter to the Commission was wrote on 23rd March 2016. However, no response and he filed a complaint letter with regard to that on 10th June 2019. The Commission thereafter the applicant ordered to file fresh referral which was attached with the ruling of the High Court. The new referral and it was the CMA provided with a fresh dispute number and not the applicant.

In evaluating the submissions and arguments of the both counsels. It is apparent that the issue here is on the proper interpretation of the decision of Nyerere J, (as she then was) delivered on 4th March 2016.

There is no dispute that the decision in Revision Application no. 477 of 2015 before Nyerere J, gave an extension of time to the applicant to file a fresh referral before another Arbitrator of the Commission and Mediation. It is not in dispute that the applicant moved the Commission to effect the ruling of 4th March 2016 through the letters AM3 and AM4. It is also apparent that through a letter AM5 applicant was directed to file a fresh referral AM6 which the same was attached with the ruling of 4th March 2016. The question to determine is whether this was a duty of the applicant or the Commission to direct itself properly to affect the ruling of Nyerere, J.

Referred to the case of **William Getari Kegere** and the case of **Tanzania Revenue Authority (Supra)** cited by the applicant, it is true that the litigants should not be allowed to suffer through the mistake of an officer of the court connected with the administration of justice. With the same spirit, this should be applied by the Commission as well. Looking into the contents of the letters AM3, AM4 and AM5 are very clear to alert the Commission to direct itself on what was supposed to be done in respect of

the High Court decision of 4th March 2016. The letter AM5 in responding letter AM4 was a source of a problem of interpretation. It was the Commission misdirected itself and the applicant by giving the interpretation as produced here under

" I have read the said decision of the Labour Court (which you attached) and found out that the Court did only refer complaint to commence afresh before another Arbitrator but also quashed and set aside both the award and proceedings of the Commission. My interpretation of the order of the Labour Court means the Commission remains with nothing in record as everything has been quashed and set aside. Such being the case, the commission cannot assign another Arbitrator unless interested parties have initiated fresh referrals and/or proceedings."

Addressing this issue of interpretation, this court is of the view that, the Commission did misdirected itself as the ruling of Nyerere, J was very clear that, I qoute "*I hereby refer the complaint to the Commission to commence afresh out of time before a different Arbitrator with competent jurisdiction."* Even though the interpretation made by the Commission was correct, but the proper step for the Commission was not to have the new referral. The Commission could either proceed by correcting the names

which were wrongly identified by the parties since it is not in dispute that it was the same persons on the same subject matter or; to have a new referral with a new number as it did, but take into consideration the ruling directed to do that of which, it has already gave an extension of time to the applicant for the same.

Moreover, the applicant was supposed to move the Commission through **Rule 29 (1) of the Labour Institutions** (Mediation and Arbitration) **Rules of GN No. 64 of 2007**. This Court is of the view that, the Commission wrongly applied this rule based on the fact that, the ruling of Nyerere, J of 4th March 2016 had already given the directive on what to be done and the applicant was correctly complied with the order by alerting the Commission to comply with the directive given therein through letter AM3 and AM4.

This court is also of the settled view that, the argument raised by the respondent that the correspondence letters AM3, AM4 and AM 5 were not part of CMA's decision has no merit as the fact that these letters were part of submissions in the determination of preliminary objection and being referred in the ruling subject to this application before this Court.

Further to the above findings, this Court is satisfied that, the Commission was wrong to entertain the preliminary objection raised, since it was in contrary to the ruling of 4th March 2016.

In view of the above, this court find application has merit and the ruling delivered on 13th December, 2019 is set aside, the matter to proceed to the determination on substantive issues before another Arbitrator. It is so ordered.

Z.A. Maruma

JUDGE

05/07/2021