

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**REVISION APPLICATION NO. 850 OF 2018**

**UJENZI SECONDARY SCHOOL.....APPLICANT**

**AND**

**SURAIYA BOFU & ANOTHER ..... RESPONDENTS.**

*Date of the last Order: 25/06/2021*

*Date of Judgment: 05/07/2021*

**Z.A. Maruma, J.**

**JUDGMENT**

The applicant, Ujenzi Secondary School was dissatisfied with the Award issued by the Commission for Mediation and Arbitration at Dar es Salaam zone in consolidated disputes No. CMA/PWM/MKG/401/2013 and CMA/DSM/TEM/188/2013. The same was delivered on 13<sup>th</sup> January, 2017. Dissatisfied with the said award, the applicant has moved the Court to call for records and proceeding for revision and to set aside the award on the ground that the decision is factually wrong, irrational and illogical.

The application is supported by the affidavit sworn by Helmes Marcell Mutatina. Whereas, the respondent through the joint counter affidavit of Suraiya Bofu, the 1<sup>st</sup> respondent and Adam Seif, the 2<sup>nd</sup> respondent strongly contested the application. On the hearing of this application on 25<sup>th</sup> June, 2021 the applicant was represented by Mr. Mussa Kiobya the learned Advocate, while the respondents were represented themselves.

Arguing the application, Mr. Mussa Kiobya, the learned advocate presented two issues before this Court these were:-

1. Jurisdiction of CMA to decide the two disputes.
2. The CMA was erred in law for awarding the right without sufficient evidence.

Starting with the first issue of CMA to decide the two disputes without having Jurisdiction, the applicant's Advocate submitted that in 2013 there was no Commission established at Mkuranga and disputes were determined by the Commission situated at Kibaha. Based on that, the dispute of CMA/PWM/MKG/401/2013 was correctly instituted at Mkuranga. He argued that the second dispute with No. CMA/DSM/TEM/188/2013 was wrongly instituted at Temeke since the dispute arose at Mkuranga.

Therefore, the counsel was of the view that, both of the disputes were to be determined at Kibaha. If the second one was transferred to Mkuranga, the same should have to reflect the numbers of Mkuranga. He also argued that the two disputes however, were determined by the Commission at DSM zone. At pg 1 of the award, the Arbitrator explained as to why the consolidation was done. He submitted that the cause of action was the same. The applicant's counsel submitted that this was wrong as there are two jurisdictions of Temeke and the other at Mkuranga. Also, there was no explanation on the record why the disputes were not determined at Kibaha instead it was determined at DSM zone. According to him, even if there was transfer there must be an explanation and all parties were supposed to be heard before the Commission to rule on that. However, he insisted that, there was no such evidence on the record. He cited a case of Court of Appeal of **Mushuti Food Supply LTD Vs. CRDB Bank LTD & Others** in Civil Appeal No. 79/2013 which laid down the principle of transfer.

Mr. Kiobya further argued that there was procedure irregularities observed and no explanation was given for the alleged transfer, thus this is contrary to section 22(1) of GN No.64 of 2007. Moreover, he submitted that, it has been a practice that where there is one mediator and no

Arbitrator, the procedure is that another arbitrator will be appointed and assigned from another jurisdiction and go to the respective commission to determine the matter and not to transfer the file. According to him, if the file was transferred there should be a new number. The legal position was stated in the case of **Mushuti Food Supply LTD Versus CRDB & The Two Others**, Civil Appeal No.79 of 2013 at pg 7 referred a case of **M/S Benandy Company Ltd Versus Balozi Abubakar Ibrahim & Anr**, Consolidated No.1 & 2 of 2017 (unreported) that "...Once a case is transferred to another Registry, it changes its identity....". Applied the same principle to this application, applicant counsel submitted that the CMA's decision maintained the two numbers of original disputes from their jurisdictions which led to confusion of the disputes. Therefore, the CMA had no Jurisdiction to determine the disputes. Also, he cited Revision Application No.551 of 2019 of HC Labour Division between **ST. Methew Secondary School Versus Stephen Maghai**, according to him this case provide the remedy over the subject matter at hand.

Contested the argument, the 2<sup>nd</sup> respondent submitted that there was no office at Mkuranga and the dispute was properly transferred to Kibaha and the number given was to distinguish the area dispute arose. The

process to transfer were followed by CMA and the advocate for the applicant did not put clear which procedures should be followed by CMA. The 1<sup>st</sup> respondent supported the arguments submitted by 2<sup>nd</sup> respondent.

This Court preferred to start with the question of jurisdiction which is fundamental to any court or adjudicating body in determining the matter. In the case of **Fanuel Mantiri Ng'unda Versus Herman Mantiri Ngunda & two others** (1995) TLR 155 CAT stressed on the importance of Jurisdiction where it was held that "The question of jurisdiction for any court is basic, it goes to the very root of authority of the court to adjudicate upon cases of different nature..."

From the above stance, and upon going through the record of CMA, it is apparent that the two disputes arose from the cause of action which was employment termination of 1<sup>st</sup> and 2<sup>nd</sup> respondents by the former employer, the applicant, but their claims were filed separately with different numbers of CMA/PWN/MKG/401/2013 and CMA/DSM/TEM/188/2013. The court records further reveals that, later on they were consolidated with the same numbers and determined by the Commission for Mediation and Arbitration at Dar es Salaam zone.

The law is very clear as referred above since Rule 22(1) of the Rules GN No. 64 of 2007 gives power to the Commission to decide which office having responsibility of the area of which the dispute arose. According to this rule, the Arbitrator should consider the areas having responsibility with the cause of action arose.

Looking on the two consolidated disputes, it is apparent clear that they were of two different jurisdictions. This means, the dispute No. CMA/PWN/MKG/401/2013 originated from Mkuranga district and the second one with No. CMA/DSM/TEM/188/2013 originated from Temeke district. The cause of action arose at Mkuranga where the office of respondent situated. Furthermore, the record in form no.1, copy of Contracts AB-4 and AB-5 for both responders shows the cause of action arose at Mkuranga. Therefore, in my settled view the Commission for Mediation and Arbitration at Mkuranga district was the one having jurisdiction to determine the two disputes whether jointly or separately. Also, taking into account the reasons given are sufficient to require a different Arbitrator to determine the matter, the practice used by the Commission is to assign another arbitrator to sit at the Commission where

the dispute arose and not to transfer as it has been done in this application.

This court is also aware of the matter of procedures which the court or tribunal should observe in the due course of adjudicating litigations. This including a transfer where the Commission as an adjudication body has to observe. The argument raised by the counsel for the applicant established that, there was no procedure followed for the transfer. The respondents' argument in responding to this was to the extent that, though the disputes were filed separately, they were consolidated by the Commission and they were involved.

Going by the record, the CMA's proceedings shows the Arbitrator with reasons given consolidated the two disputes. However, the Commission maintained the two numbers as indicated on the 1<sup>st</sup> pg of the Award. This is contrary to the principle laid in the case of **M/S Benandy Company Ltd** (Supra). Even though the disputes were to be transferred to Dar es Salaam zone for the reasons stated above, but still there should be the procedures to be followed as hereunder.

The Commission taking into consideration that, the two disputes coming from two different jurisdictions should consolidate and give an identity number of the area which have been transferred that would be of the Dar es salaam zone. Failure of the Commission to do this renders the Commission to have no jurisdiction to entertain the two disputes.

Taking into consideration that, the issue of jurisdiction is the fundamental principle and non-compliance with the same is fatal. I find the first issue of jurisdiction has merit and it is sufficient to dispose of this application without going further to the second issue. Based on the finding above, this application is hereby granted. The award is consequently set aside and proceedings of the Commission in consolidated Labour dispute **No. CMA/PWN/MKG/401/2013** and **CMA/DSM/TEM/188/2013** are quashed for want of jurisdiction. The parties if so wish to revive their respective remedies they can start afresh their claims out of time.



Z.A. Maruma

**JUDGE**

05/07/2021