

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM

REVISION APPLICATION NO. 164 OF 2021

BLUE PEARL HOTEL & APARTMENTS LTD..... APPLICANT
AND
HAMIS S. DAFFA AND 79 OTHERS.....RESPONDENTS

RULING

Date of Last Order: 9/08/2021

Date of Judgment: 17/08/2021

B. E. K. MGANGA, J.

On 30th April 2021, the applicant knocked the doors of this court praying the court to revise the decision of the Commission for Mediation and Arbitration in Labour Dispute No.CMA/MISC/46/2020 issued on 19th March 2021. Together with notice of representation, notice of application and chamber summons, he filed an affidavit sworn by Shalom Samwel Msakyi advocate in support of the Application. The respondent has resisted the application by filing notice of opposition, notice of representation, a notice of preliminary objection containing three grounds and a counter affidavit. The three grounds of preliminary objections, the subject of this ruling, raised by the respondent are:-

- 1. That, the Application is incompetent for offending the mandatory provision of the law;*
- 2. That, the Applicant is time barred; and*

3. That the Applicant Application(sic) is incompetent for no-citation of proper provision of the law.

When the application was called for hearing, Jamal Ngowo advocate appeared and argued on behalf of the respondent while Shalom Msakyi appeared and argued on behalf of the applicant.

Mr. Ngowo abandoned ground number two relating to limitation of time remaining with only two grounds that he argued. Arguing on ground No. 1 that the application is incompetent for offending mandatory provision of the law, he submitted that applicant has failed to cite a specific Rule relating to revision instead, has cited Rule 55(1) and (2) of the Labour Court Rules, GN. No. 106 of 2007 that is supposed to be cited when there is no specific Rule provided. He submitted that there is a specific Rule relating to revision of which the applicant has failed to cite. On ground three, i.e., non-citation, Mr. Ngowo submitted that the application is incompetent for the applicant's failure to cite section 91(4)(a) and (b) of the Employment and Labour Relations Act, [Cap.366 R.E. 2019]. He therefore prayed for dismissal of the application.

On his part, Mr. Msakyi advocate for the applicant maintained that the application is properly before this court. He submitted that Rule 55(1) and (2) of the Labour Court Rules, GN No. 106 of 2007 was cited as there is no specific provision relating to revision. He was quick to add that at any

rate, it is not fatal to the application at hand. He conceded that, in the application at hand, section 91(4)(a) and (b) of the Employment and Labour relations Act, supra was not cited. He invited the court to invoke the overriding objective principle and overrule the preliminary objections.

It is my settled view that both counsel have misconstrued the application of section 91(4)(a) and (b) of the Employment and Labour relations Act, supra, in relation to the application before me. In my view, that section is not enabling provision to be cited by the party rather it guides the court what to do in the event it sets aside an award. This being an application for revision, the enabling provision is section 94(1)(b)(i) of the the Employment and Labour Relations Act, supra, that is cited both in the chamber summon and notice of application. This is the section that confers this court with jurisdiction to revise award issued by the Commission for Mediation and Arbitration. As the said section 94(1)(b)(i) was cited, this court is seized with jurisdiction to hear and determine revision application filed by the applicant. To that end, citing or non-citation of Rule 55(1) and (2) of the Labour Court Rules, GN No. 106 of 2007 becomes of no harm. I am also guided by the decision of the court of Appeal in the case of the ***National Housing Corporation vs. Etienes Hotel, Civil Application No. 10 of 2005*** (unreported) wherein it was held that rules of procedure are handmaids of justice intended to facilitate

and not to impede decisions on substantive issues. Being so guided, I hereby overrule all preliminary objections raised by the respondent as they lack merit.

It is so ordered.




B.E.K. MGANGA
JUDGE
17/08/2021