

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)
AT DAR ES SALAAM**

REVISION NO. 807 OF 2018

BETWEEN

AFRICAFCO COFFEE HOUSE LTD. APPLICANT

VERSUS

ENOS JAMES OWEK AND JANE NJUGUNA RESPONDENT

JUDGEMENT

S.M. MAGHIMBI, J:

On the 29th day of March, 2016, the Commission for Mediation and Arbitration (CMA) delivered its award in favor of the respondents herein who were then applicants (“employees”). They successfully sued the applicant herein (“the employer”) on allegations of unfair termination. The dispute proceeded ex-parte of the employer. He subsequently applied for setting aside the ex-parte award in vain, hence this application for revision against the said refusal. Before me, the employer was represented by Mr. Mashaka Ngole, learned Counsel while the employees were represented by Mr. Isaac Zake, learned Counsel. The application was disposed by written submissions.

I have considered the parties submissions for and against the grant of this application, with appreciation, they will not be reproduced but instead, I will consider them in due course of composing this judgment. On my Part, I have seen that Mr. Ngole banked much of his reasons for the delay to his withdrawal from conducting the matter at the CMA. This is also reflected on page 3 of the CMA decision where the arbitrator wrote that:

"Tume ikatoa wito mara kadhaa na hatimaye Wakili Mashaka akaiandikia barua Tume mnamo tarehe 09/06/2015 kuomba kujitoka kutokana na kukosa ushirikiano wa mlalamikiwa"

At this point, I have noted with concern the fact that the CMA admitted that the advocate who was all along appearing on behalf of the applicant withdrew from representing the applicant. There was therefore a need for the CMA to satisfy itself that the subsequent summons sent to the applicant in person, had reached the applicant.

Further to that, I have also noted another issue in the decision of the CMA where it held on the same page 3:

"Vilevile Mleta maombi hajapinga maelezo ya mjibu maombi kuwa anatoka ofisi moja na wakili Mashaka, jambo ambalo linaonekana kuwa mleta maombi ana nia ovu ya kuchelewesha haki stahiki ya walalmikaji"

This is a serious issue that needed to be addressed by the CMA at the instance of the employer herein. If the applicant alleged not to have been aware of the proceeding of the matter, and his advocate (who withdrew from conduct without informing him) came from the same office with the respondent's, there should have been raised a doubt as to how two advocates from the same office represented opposing parties. But the CMA completely ignored this fact. The CMA also used more time to determine grounds to set aside ex-parte award instead of extension of time.

As for me, having gone through the decision of the CMA and having been convinced by the submissions of the applicant on his reason for the delay as outlined above, I allow this application. The decision of the CMA titled "Uamuzi Mdogo" in the Dispute is hereby set aside. Time is extended for the applicant to lodge an application to set aside the ex-parte award of the CMA. The intended application shall be lodged at the tribunal within 21 days of the date of this ruling, which is by 15/10/2021.

Dated at Dar-es-salaam this 27th day of September, 2021




S.M. MAGHIMBI
JUDGE