IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

AT DAR ES SALAAM

MISC. APPLICATION NO. 545 OF 2020

BETWEEN

CASTER EMMANUEL MREMA ..... APPLICANT

VERSUS

TANZANIA PORTS AUTHORITY ..... RESPONDENT

RULING

S.M. MAGHIMBI, J:

In his memorandum of review, the applicant named above has moved this court under the provisions of Rules 27(2)(a)(b)&(c) and (7) of the Labour Court Rules, G.N. No. 106 of 2007 ("the Rules"). He is seeking review of a judgment of this court in Labor Revision No. 689/2019 dated 30/10/2020. In the memorandum of review, the applicant has moved the court on the following grounds:-

1. That there is a manifest error in the judgment in Labor Revision No. 689/2019 by the court's finding that the time for lodging the Revision against the ruling in CMA dispute No. CMA/DSM/TEM/756/18/18/19 ought to have been calculated from the date when the Ruling was

delivered and not from the date when the Ruling was served to the Applicant, which decision is contrary to the Court of Appeal of Tanzania recently found by the Advocate for the applicant which provides that the period of limitation of six weeks begins to run against the applicant after the decision is served to the applicant.

2. That there is a manifest error on the Court's findings that the Labor Revision No. 689/2019 was filed out of time.

On those grounds the applicant is praying for the following orders:

1. To set aside the dismissal order issued in the Judgment dated 30/10/2020.
2. To determine Labor Revision No. 689/2019 on merits.
3. To issue any other order as the Honorable Court may deem fit and just.

By a notice of representation lodged under Section 56(c) of the Labour Institution Act, 2004 and Rule 43(1)(c) of the Rules, the applicant is represented by Ms. Stella Simkoko, learned advocate. The respondent's submissions were drawn and filed by Mr. Shija Charles, State Attorney and Marcelino Mwamunyange, Principal Legal Officer of the respondent.

Having considered the submissions of both parties, I have noted that on the onset of their submissions, at the "INTRODUCTION" part, the respondents have raised a crucial issue which can be termed as a point of law that goes to my jurisdiction in entertaining the present application as a Review Application under Rule 27 of the Rules. It was the respondent's submission that the instant application is misconceived and it is not an application for review worth a name. They argued that as a matter of fact, the instant application is an appeal in disguise because it is mainly premised as a ground for review, on a purported error which is based on an arguable point of law. Unfortunate for the applicant, Ms. Simkoko did not make any rejoinder submissions which means she had nothing to dispute on the point raised by the respondent.

Indeed the issue raised by the respondent calls for my immediate evaluation on whether I am clothed with jurisdiction to entertain the review application before me. I will start by bringing to light the principle set by the courts as to when a court may review its judgment. For a court to entertain a review, the error that review is sought for must be manifestly apparent on the face of record. A review may also emanate from a discovery of some new and important evidence in which the applicant must

convince the court that the evidence could not be brought to court by reasons beyond the applicant's control or without unnecessary delay.

In the case of **Chandrakant Joshubhai Patel Vs. Republic (2004) TLR 218** in which the reasoning in **Mulla 14th Edition pp. 2335-36** was adopted when the Court stated:

> *"...An error apparent on the face of the record must be such as can be seen by one who writes and reads, that is, an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions..."*

On the above holding of the court, it is emphasized that in order to move the court to review its decision on an error, the applicant has to establish that the error is apparent on the face of records which must not be subjected to a lengthy drawn process of reasoning.

I have noted that in her submission to support the application, Ms. Simkoko based her ground to move the court on the fact that after the delivery of the impugned judgment, she found a decision of the Court of Appeal, which while dealing with a similar matter like the one she is seeking review for, the Court of Appeal decided contrary to what this court

held in the impugned judgment, identifying the decision of the Court of appeal to be one in the case of **Serengeti Breweries Limited Vs. Josephine Boniface, Civil Appeal No. 150/2015**.

In reply, the respondent questioned whether or not the discovery of the decision of the Court of Appeal forms a good ground of review. They argued that such a discovery cannot be termed as new and important evidence hence it does not constitute a valid ground of review.

It was important that I check when the decision of the Court of Appeal that Ms. Simkoko is relying on, was delivered. To my surprise, she is referring to a judgment that was delivered on the 08th day of April, 2016. At this point I started asking myself, how can someone bring a case that was decided 5 years ago, expecting the court to call that new evidence forming a ground for review? Secondly, I could not be convinced that finding a new case law decided five years ago can constitute "evidence" discovered to justify a review. The followed a series of unanswered questions, didn't Ms. Simkoko do her research well when making her submissions before Aboud J? Was the decision of the Court of Appeal not in circulation yet? All these questions established negligence on the part of the applicant and not the new discovery as Ms. Simkoko would wish the

court to believe. Therefore the interpretation here is that the applicant's counsel didn't do her research well and now she is seeking for this court's intervention to cover her shortfalls.

Again, one may look at the language that was used in the applicant's memorandum of review, it says at the onset that **the Applicant is aggrieved** by the judgment of this Honorable Court. the applicant didn't say he has discovered an error apparent on the face of records, he is rather aggrieved by the decision of the court and that is why even in his ground of review he laments that **there is a manifest error in the judgment** (not on face of records) whereby the court calculated the period of limitation from the date of the decision and not from the date when the ruling was served to the applicant. To this end he cited the *"recently discovered"* decision of this court of appeal was not evidence but a ground to error the reasoning of this court. Even the language used in his memorandum indicates that the applicant is moving the court to revise its findings and make a new finding favoring his position. This is not a mere error apparent on the face of record.

The concept of error apparent on the face of record was also emphasized in the cited case of **Chandrakant Joshubhai Patel** (Supra) where the court held:

> *"It is, we think, apparent that there is conflict of opinion as to what amounts to an error manifest on the face of record and it is important to bear of this, lest disguised appeals pass off for applications for review. We say so for the well-known reason that no judgment can attain perfection but the most that courts aspire to is substantial justice. There will be errors here and there, inadequacies of this or that kind, and generally no judgment can be beyond criticism. Yet while an appeal may be attempted on the pretext of any error, not every error will justify a review."*

The above holding court could not have better distinguished an application for review from an appeal. Looking at our situation on the ground, the appellant is aggrieved by the reasoning of this court, hence the application is based on a pretext of an alleged error on the reasoning of the court and cannot be hidden under the umbrella of review. The applicant would have wished that the reasoning in Serengeti Breweries case (Supra) be taken on board, with respect, unfortunately, that

opportunity has passed the applicant in so far as the jurisdiction of this court is concerned. That is not an error apparent on the face of record nor is the case law cited evidence newly discovered.

This court has made its reasoning and if the applicant feels the reasoning is not proper, then she should knock the doors of the court with competent jurisdiction to make that finding, unfortunately, it is not this court by way of review. That said, I dismiss this application.

Dated at Dar-es-salaam this 22th day of October, 2021.

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S.M. MAGHIMBI.
JUDGE.