

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

**REVISION APPLICATION NO. 873 OF 2018**

**BETWEEN**

**PONCIAN PAULO NKINGA.....APPLICANT**

**AND**

**TANZANIA REDCROSS/MAJOHE RADA.....RESPONDENT**

**JUDGMENT**

Date of the last order: 03/03/2021

Date of the Judgment: 30/04/2021

**A.E. MWIPOPO, J.**

This is application for revision against the Commission for Mediation and Arbitration (CMA) decision in Labour Dispute No. CMA/DSM/ILA/R.1379/17. The Applicant herein namely Poncian Paulo Nkinga is applying for the order of the Court in the following terms:-

1. That the Court be pleased to call and revise the ruling of the CMA dated 12<sup>th</sup> October, 2018 issued by Hon. Fungo E.J., Arbitrator.
2. That the Court be pleased to issue and order quashing of the said ruling as the Mediator acted in exercise of jurisdiction illegally and with material irregularity.
3. Any other relief that this Court may deem fit and just to grant.

The Application is supported by the Applicant's Affidavit. The Affidavit contains two grounds of revision in paragraph 6. The respective grounds are as follows:-

- a. That the Commission for Mediation and Arbitration has acted in exercise of its jurisdiction illegally and with material irregularities for failure to consider that the applicant has an agreement with respondent.
- b. That Arbitrator has improperly procured the said ruling.

The history of the matter in brief is that the Applicant filed dispute no. CMA/DSM/KIN/R.160/16 before the CMA on 22<sup>nd</sup> December, 2015 and withdrew it on 2<sup>nd</sup> November, 2016. The Applicant filed another dispute before the Commission with no. CMA/DSM/R.120/17 claiming for salary arrears but the application for condonation was dismissed for want of merits. Then, the Applicant once again filed another dispute before the Commission with no. CMA/DSM/ILA/R.1379/17 claiming for salary arrears but the same was struck out on 12<sup>th</sup> October, 2018 for the reason that the Commission has no jurisdiction to determine the matter which has already been determined the Court of competent jurisdiction. Aggrieved, the Applicant filed the present application for revision.

The Applicant in this case is represented by Personal Representative from CHODAWU namely Mr. Madaraka Ngwije, whereas the Respondent is represented by Mr. Gasper Tluway, Advocate. Hearing of the application proceeded orally.

The Applicant's Representative submitted that the Applicant was employed by the Respondent in 8<sup>th</sup> May, 2012 as a teacher. The Applicant has several claims for salary arrears but she was answered by the Respondent through a letter dated 9<sup>th</sup> November, 2015 that they acknowledge the claims for shillings 2,300,000/= which is salary arrears from May to October, 2015. And that the claims shall be paid shillings 200,000/= each month until all the debt is paid. The same letter went on to interdict his employment. The said money was not paid to the Applicant. The Applicant decided to file a dispute before the CMA on 22<sup>nd</sup> December, 2015 but it was dismissed on 25<sup>th</sup> August, 2017 for being filed out of time. In 21<sup>st</sup> December, 2017 he filed another dispute before the CMA with No. CMA/DSM/ILA/R.1379/17 claiming for payment of shillings 2,300,000/= provided in the Respondent's letter but the Respondent raised preliminary objection that matter was filed out of time and the Commission dismissed it. The Representative avers that Applicant's rights are denied because of legal technicalities as she failed to follow procedures

for filing dispute before the Commission. He prays for the application to be allowed so that Applicant would be heard by the Commission on merits.

The Counsel for the Respondent replied that the Applicant have filed three different disputes before the CMA. The first dispute with no. CMA/DSM/KIN/R.160/2016 was withdrawn by the Applicant. He filed dispute no. CMA/DSM/R.120/2017 for condonation and the same was dismissed. The nature of the application was that he was claiming for payment of salary arrears. Then, the Applicant filed the third dispute with no. CMA/DSM/ILA/R.1379/17 claiming for salary arrears. The Respondent raised preliminary objection that the matter has already been struck out and the CMA upheld the objection and dismissed the matter for being *Res Judicata*. The Commission rightly dismissed the matter since the dispute has already been dismissed.

In rejoinder, the Applicant Representative submitted that there might be procedural mistakes on the part of the Applicant but he prays for the letter from the employer acknowledging Applicant's debt be considered and see how the Applicant gets his right.

From the submission it is clear that this revision application is against the decision of the Commission dated 12<sup>th</sup> October, 2018 in dispute no.

CMA/DSM/ILA/R.1379/17. The Commission in the respective decision dismissed the dispute for *res judicata* following the preliminary objection raised by the Respondent that the dispute has already been determined previously by the Commission against the same parties on the same claims. The evidence available in record shows that the Applicant filed dispute no. CMA/DSM/KIN/R.160/16 before the CMA on 22<sup>nd</sup> December, 2015 and withdrew it on 2<sup>nd</sup> November, 2016. Then, he filed application for condonation before the Commission with no. CMA/DSM/R.120/17 praying to be condoned in his claims for salary arrears but the application was dismissed for want of merits. The Applicant once again filed another application for condonation with no. CMA/DSM/ILA/R.1379/17 for the Commission to condone him to file dispute before the Commission claiming for salary arrears but the same was struck out on 12<sup>th</sup> October, 2018 for the reason that the Commission has no jurisdiction to determine the matter which has already been determined by the Court of competent jurisdiction.

I agree with the Commission decision that the dispute filed by the Applicant was *res judicata* since the Commission with competent jurisdiction has already determined the matter between the same parties, on the same subject matter where the matter was struck out for wants of merits in dispute no. CMA/DSM/R.120/17. Thus, it was not proper for the Applicant to institute

the same application to be condoned to file disputes for claims for salary arrears as the Commission had no jurisdiction to entertain the matter (see. **Shengena Ltd vs. National Insurance Corporation and Another, Civil Appeal No. 9 of 2008, Court of Appeal of Tanzania, at Dar Es Salaam; and Athnasia T. Massinde T/A Abeti Primary School vs. National Bank of Commerce, Commercial Case No. 34 of 2016, High Court Commercial Division, at Dar Es Salaam).**

The Applicant's Representative submitted in rejoinder that there might be procedural mistakes on the part of the Applicant but he prayed for the Court to considered and see how the Applicant gets his right. But, the hands of this Court are tied since the Applicant's prays for the Court to order the Commission to determine the matter it has no jurisdiction to entertain. The Applicant was supposed to challenge the decision of the Commission dated 25<sup>th</sup> August, 2017 which struck out his application to be condoned. Since the respective ruling of the CMA is still there, it means the hands of the Commission are tied in respect of Applicants disputed regarding his claims for salary arrears. There should be a finality to litigation. Thus, I find that the Commission rightly dismissed the application for want of jurisdiction.

Therefore, the application for revision is devoid of merits and I hereby dismiss it. The Commission decision is upheld. Each party to bear its own cost of the suit.

A handwritten signature in black ink, appearing to read 'A. E. MWIPOPO', written over a horizontal line.

**A. E. MWIPOPO**  
**JUDGE**  
**30/04/2021**