

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

**REVISION NO. 364 OF 2020**

**BETWEEN**

**AIR TANZANIA CO. LTD. .... APPLICANT**

**VERSUS**

**CAPT. MSAMI MMARI .....1<sup>ST</sup> RESPONDENT**

**SUED A. MJUNGU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**S.M. MAGHIMBI, J:**

In this application, the applicant is challenging legality of a Deed of Settlement that was entered between the parties herein at the Commission for Mediation and Arbitration for Ilala at Dar-es-salaam ("the CMA") on the 16<sup>th</sup> day of August, 2013. The applicant's reason for challenging the legality of the settlement deed is that same was executed without the applicant's authorized officers' consent, knowledge or approval. It is pertinent to note that the settlement was reached back in 2013 and it was not until the year 2019 when the applicant approached this court vide Misc. Labor Application No. 464/2019 seeking for extension of time to file an application for revision. The application was granted on the 14<sup>th</sup> day August, 2020 hence this revision.

The current application was lodged under the provisions of Rules 24(1), 24(2)(a), (c), (d), 24(3)(a)(b)(c)(d), 28(1), (b), (c), (d), (e) of the Labour Court Rules GN No. 106 of 2007("the Rules"), Section 91(1)(a), 91(2)(a)(b)(c) and Section 94(1)(b)(i) of the Employment and Labour Relations Act, Cap. 366 R.E 2019 ("the ELRA"). In the Chamber Application and the Notice of Application, the applicant is moving the court for the following:

1. That this Honorable Court be pleased to call for the records of proceedings, deed of settlement and Award of the CMA dated 16/06/2014 in Labor Dispute No. CMA/DSM/ILALA/245/10/263 and revise, nullify and set aside.
2. Any other order this Court may deem fit and just to grant.

The application was supported by an Affidavit of Mr. John Nzunda, Company Secretary of the applicant. On the 22<sup>nd</sup> November, 2021 after several adjournments at the instance of the applicant on ground that the parties were in the process of yet another settlement, I ordered the applicant to address the court on the propriety of the application owing to the fact that the award intended to be challenged was made pursuant to Rule 17(1) of the Labor Institutions (Mediation and Arbitration) Rules, G.N

No. 67/2007 as it emanates from a settlement agreement entered between the parties on the 16/08/2013. The parties addressed the court by written submissions, an order which was adhered to hence this ruling. The applicant's submissions were drawn and filed by Mr. John Nzunda, from the Applicant's legal unit while the respondents' submissions were drawn and filed by Mr. Kelvin Kidifu, learned advocate.

Gladly, in his submissions in response to the court's concern, Mr. Nzunda captured it in the context that whether a party may file an application for revision of an arbitral award that arose out of a settlement agreement. He then started his submissions with the jurisdiction of this court citing Section 91(1) of the ELRA which entitles a party who claims for any defects in arbitral proceedings of the CMA to apply for Revision in this court. He then argued that as per the grounds of revision advanced by the applicant, this court has jurisdiction. Mr. Nzunda then went on submitting their grounds of revision, something which I find to be premature at this point because we are still finding whether this court has jurisdiction.

On his part, Mr. Kidifu submitted that the impugned award was entered under Rule 17(1) of the G.N No. 67/2007 while the revisions provided for under Section 91 of the ELRA cater for an award which was

reached an arbitrator after hearing parties under Section 88 of the same ELRA. He argued the jurisdiction of this court in revision is for the arbitral award emanating from arbitrator's decision and not parties' settlement agreement.

Mr. Kidifu submitted further that in this Revision, there was no decision made by the arbitrator of the CMA but rather a deed of settlement. He therefore argued in that case, any attempt to challenge the validity of the deed of settlement should be brought to the attention of the arbitrator by an application to set aside the deed of settlement on ground that the applicant is attempting to rise in this court. his prayer was that the application be struck out.

In rejoinder, Mr. Nzunda submitted that the CMA award was final and conclusive and the only remedy available to the applicant was to file a revision in this court as all the respondents' prayers in the CMA Form No. 1 were exhausted in the arbitral award.

Having appreciated the parties' submissions, my concern in this revision is whether an award emanating from a settlement agreement may be revised. This position was emphasized by the Court of Appeal, sitting at Dar-es-salaam in the case of **Karatta Ernest D.O & 6 Others Vs. The**

**Attorney General, (Civil Appeal No. 73/2014) [2016] TZCA 197 (25 January 2016)** where it was held that:

*"The observation that was made by the learned judge when the appellants went back to the High Court to question the Deed of Settlement sufficiently explained the role of the court in as far as the Deed of Settlement is concerned. It was an agreement between the parties alone. How they arrived to the terms of settlement is a matter known to them alone. **It was not a case in which evidence was given. What the Court was requested to do was to record what the parties had agreed upon.** It is therefore wrong for the appellants to come to the Court to fault the learned judge for refusing 17 to issue a certificate."*(Emphasis is mine).

As correctly argued by Mr. Kidifu, the award in question is a result of a deed of settlement under Rule 17(1) of the G.N. No. 67/2007 and not one on merits as provided for under Section 88 of the ELRA and Rule 18 of the G.N. No. 67/2007 which defines and elaborates the process of arbitration.

The issue to be resolved in the current ruling is on the remedies available to a party who wishes to challenge the validity of the settlement agreement on ground of fraud or legality in its procurement. Unfortunately, the labor laws (including the Rules therein) does not expressly provide for such remedies. Owing to that, I have resorted to Rule 55(1) of the Labor Court Rules, G.N. No. 106/2007 which provides:

*"Where a situation arises in proceedings or contemplated proceedings which these rules do not provide the Court may adopt any procedure that it deems appropriate in the circumstances."*

In this case, the procedure I will adopt is making reference to the issue under the Civil Procedure Code, Cap. 33 R.E 2019 ("The CPC"). The provisions of Section 70(3) of the CPC are that:

*"No appeal shall lie from a decree passed by the court with the consent of the parties."*

It is the spirit of the law that litigations must come to an end, this may include putting a stop to applications seeking to reopen matters already decided by a court , whether by consent or after a contested hearing, if the court is satisfied that no useful purpose will be served by reopening the matter. The impugned award comes from a settlement

agreement, it is therefore an equivalent to a consent decree in ordinary civil courts hence I may be using the words interchangeably, so will the words revision and appeal.

Now the question is whether an appeal(in this case revision) lies from a settlement agreement and the subsequent award thereto, and if not what are the remedies available to the person who wishes to challenge the said settlement award on grounds of illegality like what the applicant is attempting to establish in this revision?

Starting with the first question, whether an appeal lies from a settlement agreement. Generally speaking, as provided for under the cited Section 70(3) of the CPC, there is no appeal that lies from a settlement agreement. Parties who have amicably settled a matter in civil proceedings cannot appeal from the award/decreed arising from the settlement agreement. Therefore since the principles apply in applications for revision, then no party can apply for a revision arising from an award emanating from a settlement agreement. Section 91(2) cited by the applicant while lodging this award provides:

*(2) The Labour Court may set aside an arbitration award made under this Act on grounds that-*

*(a) there was a misconduct on the part of the arbitrator;*

*(b) the award was improperly procured;*

*(c) the award is unlawful, illogical or irrational.*

Looking at the submissions of Mr. Nzunda, the revision is based on three grounds, illegality of the deed of settlement, lack of jurisdiction of CMA and ambiguity of the award. It is pertinent to note that the applicant is challenging the legality of the settlement award, hence in order to determine the subsequent grounds, the legality or illegality of the settlement of the agreement has to be determined. Therefore all the three grounds are based on the first ground, that the settlement deed is illegal. As said, there can be no revision against a settlement agreement in a higher court.

This takes me to the next question, the remedies available to a party under the circumstances. Particularly in the case at hand, the applicant is challenging the legality of the settlement agreement. The remedy available therein is to make an application to set aside the award on the allegation of fraud on the source, the agreement. However, the application has to be lodged at the court (in this case the commission) where the settlement award was recorded and an award extracted. All the grounds stated herein must be put forth at the CMA in order to determine the legality of its procurement. The applicant should have therefore lodged at the CMA an



application to set aside the award, have the CMA make a determination therein and proceed to make a finding and decision. Thereafter is when the applicant's right to lodge revision would have arisen.

On those findings, I find the revision to be prematurely filed in this court. But before I proceed to make a final verdict on the decision, I have guided myself on the spirit of the Labor Laws, expeditious disposal of matters, taking into consideration the time that had lapsed since the award was entered and the time the matter has been pending in court, I will not leave the parties in hanging so that they can start going through the lengthy procedures of applying for condonation of time. Instead I strike out this application and remit back the parties to the CMA where they can make an application to set aside the award on grounds of illegality of the settlement agreement. Having determine the legality of the agreement, then the aggrieve party's right to file revision in this court shall accrue. It is so ordered. Application Struck Out.

Dated at Dar es Salaam this 14<sup>th</sup> day of March, 2022.



  
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**S.M MAGHIMBI**  
**JUDGE**