

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

REVISION NO. 502 OF 2021

BETWEEN

**ALLY SEMBUI.....1ST APPLICANT
HAMISI MOHAMED2ND APPLICANT
FADHILI NGORONG 3RD APPLICANT
KITWANA SAID 4TH APPLICANT**

VERSUS

**TANZANIA PORTS AUTHORITY..... 1ST RESPONDENT
THE ATTORNEY GENERAL 2ND RESPONDENT**

RULING

S.M. MAGHIMBI, J:

The application beforehand was lodged under the provisions of Section 91(1)(a),(2)(b)&(c),(4)(1)(a)&(b) and Section 94(1)(b)(i) of the Employment and Labour Relations Act, 2004, as amended ("ELRA"), Rule 24(1),24(2)(a),(b),(c),(d),(e),(f),(3)(a),(b),(c),(d),(11)(c) and Rule 28(1)(c),(d)&(e) of the Labour Court Rules, GN. 106 of 2007 ("the Rules"). The applicants are seeking revision of the order of the Commission for Mediation and Arbitration ("the CMA") in Labor Dispute No. 263/2021 dated 03rd December, 2021. In the said decision, the mediator was responding to

the Preliminary Objection raised by the respondents herein (then respondents). The objections were that:

1. Whether the application for condonation (extension of time) after the earlier filed complaint was struck for being time barred is untenable and barred by the law.
2. Whether the application is untenable since similar application was instituted by the complainants withdrawn the complaint without leave to refile fresh application

The objections came after the same CMA, in the previous Labor Dispute No. Labor Dispute No. CMA/DSM/ILA/754/20/013/21 was found to be time barred and the CMA struck out the dispute. In the subsequent dispute No. 263/2021, hence the objections by the respondents which were sustained by the CMA and was eventually dismissed hence this revision on the stated grounds. However, as I was going through the records of the application and particularly the order of the CMA I found that there was some illegality on the order of the CMA which needed to be addressed. When the matter came for mention on the 22nd April, 2022, I ordered the matter to come for hearing on the 27th July, 2022. I further ordered the parties on that date set for hearing, to come and address on

whether it was proper for the arbitrator to overrule the decision of another arbitrator which allowed the applicant to file for condonation of time. I did so because the order had the effect of overruling what the same CMA ordered in the previous dispute CMA/DSM/ILA/754/20/013/21. Hence the parties were to address the court on whether the said order of the CMA to overrule the decision of a fellow mediator was proper.

When the matter came for hearing on 27/04/2022, both parties registered their concern on the propriety of the said order of the CMA and prayed that the court set aside the said order and remit the file back to the CMA to proceed accordingly hence this ruling.

On my part, as I have elaborated earlier, the record is clear that the applicant lodged the previous Labor Dispute No. CMA/DSM/ILA/754/20/013/21 which was struck out, this gave room for them to lodge the subsequent dispute No. 263/2021. However, the Mediator from the same CMA went on to sustain the objections raised by the respondents herein and proceeded to dismiss the dispute before her on the ground that in the previous dispute, the mediator was supposed to dismiss the matter instead of striking it out. The question to be asked is

whether the mediator in the subsequent dispute had powers to revise the order of the fellow mediator in the previous dispute.

In the English case of Chief Constable of North Wales Police v. Evans, [1982] 1 W. L. R. 1155 at 1160 it was held that:

"It is important to remember in every case that the purpose ... is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that authority constituted by law to decide the matters in question."

The powers to revise or quash orders of a court or quasi judicial bodies are expressed by law; it cannot be usurped. The law requires a superior court to revise an order of the lower court and not the same court. The only remedy available in the same court is to make an application for review on grounds set down under the relevant laws. However, the mediator in the dispute No. 263/2021 erred in having set aside an order of a fellow mediator as if he was a superior authority.

It is pertinent to note that even if the order passed in the previous dispute was not proper, it was not for the mediator from the same level of court

and that they correctly administer the law laid down by the statute under which they derive their powers. In fulfilling this duty; from the serious irregularities that I have just observed, the only remedy is to allow this revision by quashing and setting aside the order of the CMA in Dispute No. 263/2021. The file is remitted back to the CMA where the parties shall proceed with the mediation before other processes under the law follow.

Dated at Dar-es-salaam this 10th day of May, 2022.





S.M. MAGHIMBI
JUDGE