

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

(ARISING FROM REVISION APPLICATION NO. 486 OF 2022)

LABOUR REVIEW NO. 04 OF 2022

BETWEEN

PETER MNYANYI.....APPLICANT

VERSUS

PATRICK MISSION HIGH SCHOOL.....1st RESPONDENT

BOARD OF DIRECTORS OF

MWAKITAPONDA INVESTMENTCOMPANYLIMITED..... 2nd RESPONDENT

RULING

K. T. R. MTEULE, J.

26 September 2022 & 03 November 2022

The historical background giving rise of this review application is traced from Revision application No. 486 of 2020 filed by applicant against CMA award in a **Labour Dispute No. CMA/DSM/KIN/176/265/2018**.

The Revision application encountered two points of preliminary objection, one raised by the respondent and the second one raised by the Court *suo moto*. This court having heard submissions of the parties on the said points of law raised in the revision application, issued a ruling that the dispute was filed out of time and that the provisions of law cited to bring it were not sufficient to move the Court. Based on that background, the applicant has filed this application for review under

Rule 27 (7) of the Labour Court Rules, GN. No. 106 of 2007. In

his application, the applicant has advanced the following grounds for review: -

- a) This Court erred in law and facts for having not considered that the Revision Application No. 486 of 2020 does not fall under the ambit of Section 88 (8), 91 (1) (a) and (b) of the Employment and Labour Relation Act, Cap 366 R.E 2019 in challenging Labour Dispute No. CMA/DSM/KIN/176/265/2018.
- b) The Court erred in law and facts by not considering that Sections 91 (1) (a), (b) and Section 94 (1) (b) (i) of the Employment and Labour Relation Act, Cap 366 R.E 2019 were not relevant provision to move the court to revise the CMA award.
- c) The Court erred in law and facts in her ruling by not considering the reality in paragraph 5.2 of the applicant's affidavit that the application before this Court was not an application for revision against the CMA award.
- d) The Court erred in law and facts in not having considered that the time limitation for the revision No 486 of 2020 which was not against an order of CMA which was not an award was 60 days.

On hearing, the Applicant appeared in person whereas the Respondent was represented by Mr. Mashaka Edgar Mfala, Advocate. The hearing of the application was by way of written submissions. I appreciate the rival submissions which will be considered in drafting this Judgement.

Having gone through the parties' submissions and their sworn statements together with the record of the CMA, I am inclined to address one issue. The issue is **whether the applicant has adduced sufficient grounds for this Court to review its ruling in Revision Application No. 486 of 2020.**

In addressing this issue, I will consider the four grounds of review focusing on two points forming basis of the decision in **Revision Application No. 486 of 2020**. The **first** point concerns the propriety of the **Revision Application No. 486 of 2020** in the court and **secondly** is whether the matter was time barred.

The applicant challenged the ruling issued by this Court by asserting that since the application for revision was against the ruling issued by the CMA and not award, then he is of the view that the ruling was not properly issued by using Section 91(1)(a), (b) and Section 94(1)(b)(i) of the Employment and Labour Relation Act, Cap 366 R.E 2019 in sustaining the preliminary objection that this Court was not properly moved and the matter was time barred.

In his submission, the Applicant's counsel Mr. Mashaka Edgar Mfala started by raising a legal issue that the application is not capable of being reviewed because it does not contain the judgment, or decree of order which is sought to be review either by being attached or mentioned in the application. He cited **Rule 27 (2) (c) of the Labour Court Rules, GN 106 of 2007** under which only judgments, decrees or orders are reviewable.

Submitting on the substance of review, Mr. Mashaka averred that the grounds of revision do not disclose any error on the face of the record which is a paramount requirement for any matters to be qualified for review. The applicant made reference to the definition of "An error on the face of record in **Mulla the Indian Code of Civil Procedure 1998, 14th Edition at page 2332 – 6**. In further explanation on what amounts to error on the face of record, he referred to the cases of **Nguza Vicking and Another versus Republic, Criminal Appeal No 5 of 2010** and **African Barrick Gold Plc v. Commissioner General Tanzania Revenue Authority**, Civil Application No. 350 of 2019, The Court of Appeal of Tanzania, at Shinyanga, (Unreported). According to Mr. Mfala the ground of review needs long debate and process of reasoning and they are not errors on the face of record.

According to Mr. Mfala, whether the decision sought to be revised was an award or not an award, it does not change decision of the High Court.

As to whether the application was time barred, Mr. Mfala averred that what has been done by the applicant is going to the merits of the case something which has been addressed by this **Court in Revision No. 486 of 2020**. In such circumstances he is of the view that the applicant is trying to force this Court to sit for the appeal of its own decision.

Having considered the submissions of the parties, I point out that an application for review is guided by the provision of **Section 27 (1) of the Labour Court Rules** which provides:-

27.— (1) Any review shall be instituted by filing a written notice of review to the Registrar within fifteen days from the date the decision to be reviewed was delivered.

(2) Any person considering himself aggrieved by a judgment, decree or order from which-

(a) an appeal is allowed, but from which no appeal has been preferred;

or

(b) no appeal is allowed, and who, from the discovery of any new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the

time when the judgment or decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the judgment, decree or order made against him,

(c) may apply for a review of the judgment, decree or order to the Court.

It is an established principle under the cited **Rule 27 (2) (b) and (c) of the Labour Court Rules, G.N No. 106 of 2007** that for a matter to be reviewed, the following factors need to be considered. The factors are:-

- (i) no appeal has been preferred; or
- (ii) discovery of any new and important matter or evidence which,
 - a. was not within the applicant's knowledge or could not be produced by him at the time when the judgment or decree was passed or order made, or
 - b. on account of some mistake or error apparent on the face of the record, or
 - c. for any other sufficient reason, desires to obtain a review of the judgment, decree or order made against him,

(c) when there is a judgment, decree or order to the Court.

I have gone through the grounds for review and the applicant's submission and noted that the applicant attempted to point out some errors in fact and law. In his submission, it was not clear on how the errors are apparent on the face of the record. The assertion that the order which was revised in **Revision Application No. 486 of 2020** was not an award and therefore not subjected to the **Sections 88 (8) and Section 91 (1) (a) and (b) and 94 (1) (a), (b)** of the **Employment and Labour Relations Act, Cap 366 of 2019 R.E** are matters of interpretation which needs long arguments and debate. They cannot be termed as an error which one can run and read as described in **East African Development Bank versus Blueline Enterprises Tanzania Ltd, Civil Application No. 47 of 2010 (unreported)** also cited by the applicant.

The applicant did not indicate why the arguments advanced in the memorandum of review could not have been raised during the determination of the revision application sought to be reviewed. There must be a new discovery. Whether the grounds of review are newly discovered matters leave so much to be desired in the applicant's submission.

This being the case, there is no way under which this court will consider the grounds of the review without reconsidering the reasoning of the

judge and parties' long debate and arguments, which would amount to the Court sitting on its own appeal.

I concur with respondent's Counsel with regard to the principle in **African Barrick Gold Plc v. Commissioner General Tanzania Revenue Authority**, Civil Application No. 350 of 2019, The Court of Appeal of Tanzania, at Shinyanga, (Unreported) where it was held; -

"...it is clear that the term an error on the face of the record signifies an error which is evident from the record of the case and it does not require detailed examination, scrutiny and clarification either of facts or legal exposition. Thus, if an error is not self-evident and its detection requires long debate and process of reasoning, it cannot be treated as an error on the face of record..."

From the foregoing, I am of the view that the grounds of review do not fit under the requirements of **Rule 27 (2) (b) and (c) of the Labour Court Rules, G.N No. 106 of 2007.**


From the above authority and provisions, the grounds in the memorandum of review as they appear suggest to move the court to sit

on its own appeal. This is not proper channel of challenging the disputed ruling issued by this Court.

Having found that there are no apparent errors on the face of the record to justify review as discussed above, I hereby dismiss this application for lack of merit. I give no order as to the cost.

It is so ordered.

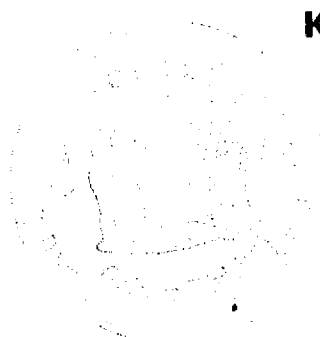
Dated at Dar es Salaam this 03rd day of November 2022.



KATARINA REVOCATI MTEULE

JUDGE

03/11/2022



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