

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LABOUR REVISION NO. 14 OF 2020

(C/O CMA/RK/SMB/25/2020)

(O. Ngaruka, Arbitrator)

TENDER INTERNATIONAL CO. LTD APPLICANT

VERSUS

RUTH SIMUMBA AND 4 OTHERS RESPONDENTS

RULING

Date: 07/03 & 04/04/2022

NKWABI, J.:

The applicant is seeking the award of the Commission for Mediation and Arbitration be quashed in its entirety among other reliefs. The respondents are fighting back this application for revision for they believe that they are entitled to the award. The applicant is represented by Mr. John J. Lingopola, learned advocate, while the respondents appear to fend for themselves.

On 12/12/2021, Mr. Samwel Kipesha, learned counsel who held brief for Mr. Lingopola, learned counsel for the applicant, raised a concern in respect of the names of the parties cited since the matter was in the

Commission for Mediation and Arbitration. That was incorrect. He prayed the concern be argued by way of written submission.

In addition to that concern, I ordered the parties to address this court as to the appropriateness or otherwise of citing the name of parties as Ruth Simumba & 4 Others instead of listing the name of those 4 others. I directed the concerns be addressed by way of written submissions, parties duly complied.

Mr. Lingopola was the one to break the ice. He argued the matter originated from two applications. The names of other complainants were not revealed in the application forms and that it was the fault of the Commission for Mediation and Arbitration seen in the award. He said, that violated among other provisions of the law, Rule 5 of GN No. 64 of 2007 which stipulates:

(2) Where proceedings are jointly instituted or opposed by more than one employee, documents may be signed by one employee who is mandated by other employees to do so.

(3) Subject to sub rule 2 a list in writing of the employees who have mandated a particular employee to sign on their behalf

must be attached to the document. The list must be signed by the employees whose names appear on it.

Mr. Lingopola stressed, the 1st application was signed by Fredrick Mtui and the 2nd one was signed by Ruth Simumba. No evidence as to authorization for that situation and no list attached showing authorization. That renders the application incompetent.

Mr. Lingopola too added that even the counter affidavit against the revision application contravenes the provisions of Rule 44(1) ad (2) of Labour Court Rules, GN. No. 106 of 2007 which stipulates for seeking leave of the court to represent the interests of other persons. The violation rendered the application incompetent citing **Donatian Damian Sentozi and Others v. National Food Reserve Agency**, Misc. Labour Application No. 685 of 2019:

"From the provision above, a person can only act as a representative and initiate the proceedings on behalf of others after she/he has obtained leave of the Court. ... In my view the omission by the applicants to sign the relevant documents is a serious error which renders the whole application incompetent ... All the Applicants were supposed to swear and affirm the affidavit as they did in the notice of application."

Citing **Coca Cola Kwanza Ltd v Paul Kingazi**, Labour Revision No. 5 of 2019, HC at Mbeya and **Kanguza Mchemba v Republic** Criminal Appeal No. 157B of 2013, he argued that the present application is unmaintainable for not adhering the mandatory rules of initiating the application as prescribed by the laws. Mr. Lingopola prayed that I quash the award and order that the matter starts afresh at the Commission for Mediation and Arbitration. No prejudice will be occasioned by the order.

In reply submission, drawn by all the respondents, they argued that in front of the commission all respondents chose Fredric Mtui to be their representative. They substantiated it with F1 (though illegal to attach evidence in submission). Since it was so received by the Commission, they argue that their application was not incompetent. As to the counter-affidavit in this court, the respondents urged that it was perfectly executed by the 1st and 2nd respondents.

Mr. Lingopola, in rejoinder submission, apart from noting that the respondents failed to address the issues they were directed to submit on, reiterated his submission in chief. He further noted that it was wrong for the respondents to attach evidential documents in submissions. He also

added that there is nowhere in the record evidencing authorization of one Fredric Mtui to act on the other respondents' behalf.

I have carefully considered the submissions of both parties on the concern, I think that the counsel for the applicant has misconstrued the concern of the court and tries to deflect from what is at stake or misdirect it and heap the blame on the respondents as if at this stage I am dealing with the revision on merits or considering the award. To be clear, I am dealing with the concern I raised in respect of the application for revision that is before me. The counsel for the applicant seems have misunderstood and not addressed on the matter, and of course he acknowledged the anomaly as clearly seen in his submission in chief and rejoinder submission thereof.

The applicant ought to have mentioned the names of all the respondents in the application. I say so because, I note from the award, each and every respondent was clearly mentioned and what he would get from the award (his or her share). The present application is just numb on the names of other respondents and the applicant blames that it was a representative suit while it was not. The current application is defective. Though welcomed to address the matter, on what this court should do,

the applicant prays that I nullify the award and order for a retrial. With the greatest respect to Mr. Lingopola, I am unimpressed. He seems to invite this court to swallow his home made sugar-coated bitter pill, I refuse to swallow it as it does not cure the sickness. The bitter pill I am referring to is the applicant counsel's prayer I quash the award at this stage. Of course, it is sugar coated by the claim that no prejudice will be occasioned by me quashing the award.

I have to note that, to be able to be availed with the reliefs or orders the applicant is seeking, her application ought to be in accordance with the law. The defect goes to the root of the matter as the other respondents are nowhere to be seen in the application. How could the respondents be bound by the outcome of the labour revision in the circumstances?

Consequently, the application for revision is struck out. Each party to bear their own costs as this is a labour matter. It is so ordered.

DATED at SUMBAWANGA this 4th day of April, 2022



J. F. NKWABI

JUDGE