

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

LABOUR REVISION NO. 188 OF 2022

*(Arising from the award of Commission for Mediation & Arbitration of DSM at Ilala
Dated 23rd Mei 2017 in Labour Dispute No. CMA/DSM/ILA/439/2013)*

IRON AND STEEL LIMITED.....APPLICANT

VERSUS

MARTINE KUMALIJA & 117 OTHERS.....1st RESPONDENTS

OMARY ABUBAKAR AHMED.....2nd RESPONDENT

(NECESSARY PARTY)

JUDGEMENT

K. T. R. MTEULE, J.

18th October 2022 & 28th November 2022

This application for revision arises from the award of the Commission for Mediation and Arbitration of Dar es Salaam, Ilala (CMA) delivered by **Hon. Urrasa, E.F, Arbitrator**, dated 23rd day of May 2017 in **Labour Dispute No. CMA/DSM/ILA/439/2013**. The Applicant is praying for this Court to call for the record, evaluate the correctness of the computed award of the Commission for Mediation and Arbitration issued by Hon. Urrasa on 23rd May 2017, which came to her knowledge on 9th May 2022. The Applicant is further praying for any other relief deemed fit and just to be granted by this Court.

The respondents are former employees of the applicant. They encountered labour dispute which was referred to the CMA and

registered as Labour Dispute No. CMA/DSM/KIN/573/11/828 where the respondents claimed unfair termination from employment. At the CMA, the arbitrator found that the respondents were unfairly terminated and awarded 12 months remuneration as compensation to each employee.

While in this court for execution of the decree arising from the award of the Labour Dispute No. CMA/DSM/KIN/573/11/828 the Applicant lodged this application for revision asserting an existence of a computation award which is tainted with irregularities.

From the record, I noted 3 decisions of the CMA concerning the instant parties. The **first** one is the award which was delivered by Hon. Batenga, Arbitrator on **27th June 2014** after the hearing of the matter on merit where each applicant was awarded 12 months salaries as compensation for unfair termination. This award is in respect to **Labour Dispute No. CMA/DSM/KIN/573/11/828** which was the main dispute. The **second** decision is dated **29 March 2017** and it is related to **Labour Dispute No. CMA/DSM/KIN/R.573/8284**. It disposed of a preliminary objection which was raised by the Respondent therein (the instant applicant) to challenge the application for computation of award of **27 June 2014** by Batenga, Arbitrator. The **third** decision is dated **23rd May 2017** concerning a matter registered as **Labour Dispute No. CMA/DSM/ILA/439/2013**.

It appears that the Respondents filed in the CMA an application with registration **No. CMA/DSM/ILA/439/2013** seeking for computation of the award issued in **Labour Dispute No CMA/DSM/KIN/573/11/828** which resulted to the said computation to yield TZS 166,380,000.00 as compensation for twelve months salary to the Applicants. The applicant felt that the Registrar was executing the decree basing on this computation. She filed this application for revision challenging the validity of the computation decision.

Along with the Chamber summons, the applicant filed an affidavit sworn by Mr. Idrissa Ally, the applicant's Principal Officer, in which he asserted that the computed award is tainted with illegalities as it was done without proper presentation as there was no consent of the applicant to be represented in computation exercise. The applicant is of the view that the arbitrator failed to comply with different procedures in computing the award for the alleged amount to be paid.

Paragraph 6 of applicant's affidavit contains 5 legal issues as reproduced hereunder: -

- i) Whether CMA complied with procedures in summoning the applicant for the appearance after application for computation being instituted.

- ii) Whether the applicant was represented by an advocate namely Omary Abubakar Ahmed in computing the award.
- iii) Whether CMA satisfied itself, as to whether the application for computing award was filed within time.
- iv) Whether CMA issued computed award in accordance with the law.
- v) Whether the computed award with Reference No. CMA/DSM/ILA/439/2013 issued on 23rd May 2017 is elaborating the award with Reference No. CMA/DSM/KIN/573/11/828 dated 27th June 2014.

The application was challenged by a counter affidavit affirmed by Mr. Juma Nassoro, the respondents' Counsel. The deponent in the counter affidavit vehemently and strongly disputed applicant's allegation on the reason that the computation was done in accordance with the law and services of appearance was properly served to the applicant, who initially appeared but later on opted nonappearance which led the CMA to decide to proceed with the hearing of the computation of the award in her absence.

The application was disposed of by oral Submissions. The Applicant was represented by Mr. George Shayo, Advocate, while respondents was represented by Mr. Juma Nassoro. I appreciate their rival submissions which will be considered in determining this matter.

Having gone through the parties' submissions and their sworn statements, I am inclined to address two issues. The first is **whether the applicant has adduced sufficient grounds for this Court to revise the impugned CMA decision.** If the answer is affirmatively then the second issue is, **to what reliefs are parties entitled?**

In addressing the first issue as to **whether the applicant has adduced sufficient grounds for this Court to revise the CMA computation award,** all five grounds of revision will be considered together.

Starting with the timeliness of the application for computation before CMA, Mr. Shayo contended that the application for correction of award before CMA must be done within 14 days from the date on which the applicant became aware of the arbitration award as per **Section 30 of the Labour Institutions (Mediation and Arbitration) G.N. No. 64 of 2004.**

For that reason, he is of the view that the application for computation was filed out of time before CMA. Supporting his stand, he cited the case of **Ebrahim Haji Charitable Health Centre v. Jenifer Mlondezi and 3 Others**, Misc. Application No. 227 of 2016, High Court of Tanzania, at Dar es salaam, (unreported) and stated that issues of

limitation go to jurisdiction of the court and therefore they should not be undermined.

On the other hand Mr. Nassoro, the respondent's Counsel maintained that the matter before this Court is about computation of the award and not correction of clerical errors. He added that the application for computation has no time limit so long as it is done during the execution of the said decision. Bolstering his position, he cited the case of **Hassan Twaib Ngonyani v. Tanzania Pipeline Limited**, Civil Appeal No. 201 of 2018, Court of Appeal of Tanzania, at Dar es salaam, (unreported) which held that computation of award can even be done by the executing court.

To ascertain whether the matter was timely lodged, I make reference to **Rule 30 of G.N No. 64 of 2007**. Under this rule, computation of an application for correction of errors needs to be done within 14 days from the date when the applicant became aware of the errors. In order to do such computation of time, the date when the party seeking for such a correction became aware of the error must be known because such date is the basis of that correction. I have gone through the parties arguments on computation, I could not find sufficient facts to ascertain timeliness of the application. This is because neither of the parties established when the applicant became aware of the error in

computation. This being the case, the court is not sufficiently facilitated to do the computation. It was upon the applicant who raised the point of limitation of time to give details of the application.

Mr. Shayo alleged that the Deputy Registrar ordered the respondent's to seek the computation from the CMA. I read the record of the pending application for execution, I could not find such an order by the deputy registrar. The applicant could not even supply the court with the alleged order of Deputy Registrar for this Court to establish a basis of computation of time.

Since the applicant has failed to give the details of when the respondents became aware of the error for **Rule 30 of G.N No. 64 of 2007** to be invoked, the court is not in a good position to decide on whether the application in the CMA was time barred or not. As such I find the point of time limitation unfounded.

The next point appropriate for consideration after that of time limitation is based on ground five (5) of the revision application as to **whether the computed award with Reference No. CMA/DSM/ILA/439/2013 issued on 23rd May 2017 is elaborating the award with Reference No. CMA/DSM/KIN/573/11/828 dated 27th June 2014.**

The applicants' main concern in this application is based on what features in the identity of the decisions which resulted to the computation. For ease of reference, I will reiterate what I stated in the background of this application. I said earlier that, I noted 3 decisions of the CMA concerning the instant parties. The **first** one is the award which was delivered by Hon. Batenga, Arbitrator on **27th June 2014** after the hearing of the matter on merit where each applicant was awarded 12 months salaries as compensation for unfair termination. This award is in respect to **Labour Dispute No. CMA/DSM/KIN/573/11/828** which was the main dispute. The **second** decision is dated **29 March 2017** and it is related to **Labour Dispute No. CMA/DSM/KIN/R.573/8284**. It disposed of a preliminary objection which was raised by the Respondent therein (the instant applicant) to challenge the application for computation of award of **27 June 2014** by Batenga, Arbitrator. The **third** decision is dated 23rd May 2017 concerning a matter registered as **Labour Dispute No. CMA/DSM/ILA/439/2013**.

Each of the above mentioned decisions contain its own registration number and does not mention the reference number of the computed award that is **Labour Dispute No. CMA/DSM/KIN/573/11/828**. Therefore, it possesses a wrong identity of the matter. Having two

decisions bearing different numbers and with no reference to the main award which is the subject of computation, in my view amounts to a fatal irregularity. On such irregularities I am of the view that the last computed award lacks relevance on its originality. Allowing such irregularity to survive would open a room for any other party to challenge the award as if it had never been computed which automatically would affect execution process. It is on these reasons I find the fifth ground of revision to constitute merit.

Regarding reliefs, I have contemplated deeply on the necessity of having the computation done by the CMA, taking into account the long time the matter has spent in Court. I stood guided by the case of **Hassan Twaib Ngonyani Tazama Pipeline Limited, Civil Appeal No. 201 of 2018, Court of Appeal of Tanzania, Dar es Salaam**. I quote the following words of the Justices of Appeal:-

"Obviously therefore, what should be paid to the appellant as terminal benefits was implied by law and voluntary agreement. To give effect to the decree, the executing court was bound to construe the decree in line with the employment laws and voluntary agreement and in so doing it could not be said to have gone beyond the terms of the decree."

Second, under **Section 38(1)** of the CPC, Mr. Kahendaguza is correct, the executing court enjoys exclusive jurisdiction to deal with any questions relating to execution, discharge and satisfaction of the decree. Where the resolution of any of the questions requires ascertainment of controversial factual issues, the executing court is entitled, under **Section 38(2)** of the CPC even to convert execution proceedings into a suit. In our view, therefore, in so long as the claim is captured by the decree, whether expressly or constructively, it is within the power of the executing court to compute the same. Thus, in **Karata Ernest and Others V. The Attorney General**, Civil Revision No. 10 of 2010 (unreported), this Court while considering the provision of **Section 38(1)** of the CPC, observed as follows:-

"Although ordinarily the trial court has a duty to determine the quantum which the judgment debtor is bound to pay under the decree, where it has left out that question open for consideration subsequently, the executing court has jurisdiction

*to determine the quantum under this section on
the issue."*

The above authority made it clear that the executing court is bound to compute the decree to be executed in line with the employment laws. In this matter, the decree originates from the CMA award. I do not see the necessity of making application for computation in the CMA. This computation can be legally done by this court which is the executing court.

Having found serious irregularities in the computation decision, I hereby revise and set aside the decision of the CMA dated 23rd May 2017 which issued computation ruling. Since this matter has been pending for long time, and for the purposes of serving time, I order the computation to be done by this court within the pending application for execution. This application is therefore partly allowed to that extent. I give no order as to costs.

Dated at Dar es Salaam this 28th day of November 2022.




KATARINA REVOCATI MTEULE

JUDGE

28/11/2022