

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

LABOUR REVISION NO. 207 OF 2022

*(Arising from the award of Commission for Mediation & Arbitration of DSM at Temeke
Dated 25th May 2022 in Labour Dispute No. CMA/DSM/TEM/383/2020/155/2020)*

KIOO LIMITED.....APPLICANT

VERSUS

DAMIAN P. MASATILA.....RESPONDENT

JUDGEMENT

K. T. R. MTEULE, J.

9th November 2022 & 1st December 2022

This Revision application emanates from the ruling of the Commission for Mediation and Arbitration of Dar es Salaam, Temeke (CMA) in Labour Dispute No. **CMA/DSM/TEM/383/2020/155/2020**. In this application, this Court is asked to inspect the CMA award, revise and set it aside.

From what I gather from the CMA record, affidavit and counter affidavit filed by the parties, the respondent was employed by the applicant as Laboratory Technician. Their relationship turned sour due to an alleged misconduct (negligence), where the respondent was said to have caused bottle jamming while performing his duties in his night shift. Due to such allegation, a disciplinary process was initiated by the employer where the applicant was charged with a disciplinary offence of negligence.

Upon disciplinary hearing, the respondent was found guilty, and the Disciplinary Committee recommended warning to be issued against the respondent. On 12th August 2020 the applicant issued a letter extending time of suspension. Such decision aggrieved the respondent, hence filed the matter at CMA claiming compensation for unfair termination. The CMA awarded him 8 months and seven days remuneration to the tune of TZS 2,446,250.00. Being resentful with CMA award the applicant filed the present application.

Along with the Chamber summons, the applicant filed an affidavit sworn by Athuman Said the applicant's principal officer, where he among others alleged that the award was improperly procured, thus the CMA findings come in question. The applicant considers illegal the findings in the award and needs to be quashed and set aside.

In his affidavit, the applicant advanced two grounds of revision as stated in her affidavit as follows: -

- i) That the Commission grossly misdirected by not analyzing and evaluating weightiness of evidence adduced by the applicant.
- ii) That the Commission awarded damages of TZS 2846250/= erroneously as no such evidence was tendered to warrant grant of such quantum of damages, if any, or at all.

The application was challenged through a counter affidavit affirmed by the respondent himself. The deponent in the counter affidavit vehemently and strongly disputed applicant's allegation that the award was not properly procured.

The application was disposed of by a way of written Submissions. The Applicant was represented by Advocates Mr. Kanywani, Mr. Mbakileki, Mr. Mtaki and Mr. Nditi from Beranrd Mbakileki Advocates, whereas the Respondent was represented by Mr. Josephat Sayi Mabula Advocate from J. S. Advocates & Company. I appreciate their rival submissions which will be considered in determining this matter.

Regarding the first issue of affidavit, the counsels for the Applicant are challenging the CMA analysis and evaluation of evidence which failed to accord due weight to the evidence produced by the Applicant. According to the counsels, the CMA failed to take cognizance of the evidence that the Disciplinary Committee found the Respondent guilty of an offence and recommended a warning. According to them, the warning was not done and the applicant was still an employee of the applicant hence the matter was premature in the CMA. According to the counsels for the Applicant, the CMA based on hearsay evidence of the respondent that he was terminated. The counsels submitted that the respondent disappeared from work and went to claim protection from the CMA.

On the other hand, the counsel for the respondent asserted that the applicant ignored to implement the recommendations of the disciplinary committee. According to the Respondent's counsel, the applicant opted to extend suspension instead of issuing a warning to the applicant as per the committee's recommendations. He refuted immaturity of the matter in the CMA on the ground that the disciplinary committee had already completed its tasks and there was nothing remaining hence the issue of immaturity is immaterial.

In rejoinder, the counsels for the applicant reiterated the submission in chief but emphasized that the respondent had never been terminated from his employment.

Having gone through the parties' submissions and their sworn statements together with the record of the CMA, I am inclined to address two issues. The first issue is **whether the applicant has adduced sufficient grounds for this Court to revise the CMA award** issued in Labour Dispute No. CMA/DSM/TEM/383/2020/155/2020 and secondly, **to what reliefs are parties entitled?**

In addressing the issue as to **whether the applicant has adduced sufficient grounds for this Court to revise the CMA award**, the two grounds of revision contained in the affidavit will be reflected. In the CMA, the arbitrator found that the applicant was terminated, and his

termination was unfair as there was no valid reason and that the procedure for such termination was tainted with irregularities. The applicant is challenging this finding basing on the argument that there was no termination, and that the matter was in the CMA prematurely. He alleged the arbitrator of having failed to analyze evidence on record.

In supporting her assertion, that there was no termination at all, the applicant's counsel averred that if there was a termination the applicant could claim from the respondent the employee identity and other working tools. Supporting his stand, the applicant cited two cases including the case of **Said Selemani and 13 Others versus A One Product and Bottlers Ltd, Revision No. 890 of 2018 (Unreported) High Court of Tanzania Labour Division** which cited **Meena Ludovick & Others v. Tridea Cosmetics (T) Ltd**, Revision No. 125 of 2013, High Court of Tanzania, reported as case No. 177 LLCD 2013 where it was held that the court lacked jurisdiction over a matter prematurely filed in the CMA.

The Respondent's counsel has opinion that extension of the suspension of the respondent amounted to acting contrary to the recommendation of the disciplinary committee and it amounts to termination.

While contemplating, a question arose as to whether the ***failure to issue warning letter after Committee's recommendation***

amounted to termination. In answering the above question, I find worth to reproduce **Rule 10 (1) of G.N No. 64 of 2007** provides that:-

"any dispute about fairness of employee's termination of employment must be referred to the Commission within thirty days from the date of termination or the date that the employer made a final decision to terminate or uphold the decision to terminate."

As articulated in the above provision, it's clear that for any labour dispute to acquire status of being a dispute about fairness of termination, there must be a specific date in which the service was terminated or the date that the employer made a final decision to terminate or uphold the decision to terminate. Having gone through the record the evidence reveals nothing as to when the applicant made final decision of terminating the respondent's employment. Even the disputed letter which extended time for suspension after Disciplinary hearing which was admitted as Exhibit D-3 at paragraph 1 states clearly that the respondent's time of suspension was extended for five days subject to the enjoyment of his monthly salary.

It is an established principle that for premature argument to stand, one must file the application without first exhausting the internal remedies. That was the position in the case of **Joshua Nassary vs. Speaker of the National Assembly of the United Republic of Tanzania and Another**, Miscellaneous Civil Cause No. 22 of 2019, High Court of Tanzania at Dodoma, (unreported). In this matter no evidence which show whether either the respondent or the applicant exhausted their internal remedies.

I would point out from the record that the suspension was supposed to end on 31st August 2020 and the matter was referred to CMA on 1st September 2020, that means it was just the next day where the respondent was to be informed by the respondent about the next step. I reasonable expectation was for the respondent to go back to office to know way forward. Under such circumstances one could not even establish the intention of the respondent to terminate the employment of the applicant.

In the CMA, the arbitrator did not belief the applicant's evidence that he gave the respondent the letter to extend suspension but no reason given why such evidence was not believed while it was not disputed. I differ with the arbitrator in his holding.

From the above legal reasoning I have sufficient reason to hold that the Labour Dispute in the CMA was filed prematurely. This finding is sufficient to answer the first issue that the applicant has provided sufficient evidence to warrant revision of the CMA award.

Regarding reliefs, since the applicant has adduced good reason for this Court to exercise its revision power, and since it is found that the matter in the CMA was prematurely filed, then I find nothing should have been awarded to the respondent as the matter was prematurely filed.

On that basis this Court finds that the application filed by the applicant has merit and it is allowed. The CMA award is hereby revised, quashed, and set aside for having arose from premature application. Each party to take care of its own cost. It is so ordered.

Dated at Dar es Salaam this 1st day of December 2022.



KATARINA REVOCATI MTEULE

JUDGE

1/12/2022

