

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

REVISION NO. 198 OF 2022

YAPI MARKEZI INSAATVE

SANAYI ANONIM SIRKET..... APPLICANT

VERSUS

JAPHARI MOHAMED1st RESPONDENT

MOHAMED MKALLI.....2nd RESPONDENT

(From the decision of the Commission for Mediation and Arbitration of DSM- Pwani at Kibaha)

(Lyimo: Arbitrator)

in

REF: CMA/PWN/KBH/18/2021

Dated 14th September, 2021

and

REF: CMA/PWN/KBH/MISC APP/02/2022

Dated 15th June, 2022

RULING

10th October & 4th November, 2022

Rwizile, J

This application is for revision. The applicant asked this Court to call for records, revise, quash and set aside an exparte award of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/PWN/KHB/18/2021 dated 14th September, 2021 and the Ruling of the CMA No. CMA/PWN/KBH/MISC APP/02/2022 dated 15th June, 2022.

It has been alleged that the respondents were employed by the applicant as drivers. It seems, they were terminated unfairly by reason of misconduct. Not satisfied with termination, the respondents filed a labour dispute at CMA Pwani claiming for terminal benefits. The application was heard *ex parte*. The CMA ordered the applicant to pay TZS 6,000,000.00 to both respondents to be shared equally at the tune of TZS 3,000,000.00 each.

Dissatisfied, the applicant, filed the application to set aside the *ex parte* award. Upon a hearing, the CMA dismissed it for want of sufficient reasons for absence. The applicant has now filed this application asking this court to set aside both decisions of the CMA.

The application is supported by the affidavit sworn by Izam Mansour, applicant's Human Resource Officer which was opposed by the joint counter affidavit of the respondents. Grounds for revision have been stated as hereunder: -

1. *Whether it was legal to dismiss the application for setting aside an *ex parte* award.*
2. *The *ex parte* award was illegal as it was against the law , CMA had no jurisdiction to entertain labour dispute No. CMA/PWN/KBH/18/2021.*

Mr. Kalasha presented himself before this court as the Principal Officer of the applicant and entered appearance as such. The respondents were represented by Mr. Kessy Ngau learned Advocate.

Before the hearing of this application started, parties were asked to address the court on *whether this application is properly instituted before this court.*

Mr. Kalasha submitted that the application is properly filed before this court. He stated that the application is for revision of the award dated 14th September, 2021. This is an ex parte award. Then, the ruling issued on 15th June, 2022, which refused to set aside an ex parte award dated 14th September 2021. It was his argument that the proceedings in an ex parte award and the ruling that followed have the same origins and so should go together. To support his point, he cited the case of **Makumbusho Cultural Centre v Mahande M. Kilasa & 2 Others**, Revision No. 270 of 2013, High Court at Dar es Salaam which stated that no appeal shall lie on an interlocutory order.

Mr. Kalasha went ahead and cited rule 28(1) (a) – (e) of the Labour Court Rules and cases of **Ravi Industries Investment Co. Ltd v Shamte Mgogota and 25 Others**, Revision No. 257 of 2014, High Court at Dar es Salaam, Tanzania **Gaming Industry v Specioza Elikana**, Revision

No. 137 of 2013, High Court at Dar es Salaam, **Cash Sales Stores Limited v Damas Njowi & Another**, Revision No. 365 of 2019, High Court at Dar es Salaam and **Kunduchi Beach Hotel & Resort v Rosemary Nyerere**, Revision Application No. 762 of 2018, High Court at Dar es Salaam.

In reply Mr. Kessy, submitted that the application to revise an exparte award and ruling were given at a different time. He stated that on cases cited, their applications were properly before the court.

He said, an award to be challenged was filled on 28th June, 2022 (about nine months since it was made).

For that matter, he added that the case of **Kunduchi Beach Hotel & Resort v Rosemary Nyerere (supra)** is irrelevant as it dealt with an exparte award. It was his argument that, this application deals with an exparte award and the ruling that refused to set it aside. In his view, these are two applications made differently which cannot be revised at the same time. He stated that an exparte award was done over 9 months ago and so he prayed the application be struck out. To cement his point, he cited case of **Ison Tanzania Limited v Godwin Assenga and Nestroy Mtaki**, Revision No. 181 of 2019, High Court at Dar es Salaam. He then prayed for the application to be struck out.

In a rejoinder Mr. Kalasha submitted that there is only one application, the exparte award and proceedings to set aside an exparte award, which are to be entertained together with the ruling that refused to set it aside.

He submitted further that an exparte award is not out of time as the ruling has to be delt with first, following the exparte award. To support his point, he referred to the cases cited before of **Ravi Industries Investment Co. Ltd v Shamte Mgogota and 25 Others (supra)** and **Beach Hotel & Resort v Rosemary Nyerere (supra)**. He then submitted that the case of **Ison Tanzania Limited v Godwin Assenga and Nestroy Mtaki (supra)** delt with an omnibus application which is not the case here.

Having heard both parties, I think I have to say, there is no dispute that this court has been asked to revise two decisions of the CMA issued in different dates.

According to pleadings, I have to deal with an exparte award in Labour Dispute No. CMA/PWN/KHB/18/2021 dated 14th September, 2021 and the Ruling in No. CMA/PWN/KBH/MISC APP/02/2022 dated 15th June, 2022.

There is no dispute either that one decision is an award which its merits are challenged and at the same time, the second one is for setting aside a ruling that refused to set aside that exparte award. This means, the

court is asked to set aside an order of the CMA and let the applicant be heard on merit before the CMA but at the same time set aside the exparte award because the CMA had no jurisdiction to entertain it.

The applicant stated that it was proper for her to file this application praying both decisions be revised together. Therefore, it is clear to me that there are two combined applications. In the case of **Rutagatina C.L. v The Advocate Committee and Another**, Civil Appeal No. 98 of 2010, Court of Appeal of Tanzania at Dar es Salaam (unreported) as cited in the case of **Ison Tanzania Limited v Godwin Assenga & Another**, Revision No. 181 of 2019, High Court at Dar Es Salaam at page 7. It was held that:

"When two different prayers with different provisions of the law are sought in one application, then the said application becomes omnibus and cannot stand in the eyes of the law."

I think, it was not proper for the applicant to place before this court this application in the manner she did. I have reasons for saying so as demonstrated hereunder. In my view, when a matter is heard exparte, the applicant possess two options for remedies. **First**, he may apply for having an exparte order or judgement be set aside. This was done by the applicant in application No. CMA/PWN/KBH/MISC APP/02/2022.

It was heard and determined on dated 15th June, 2022. In view of the arbitrator, this application had no merit and so he refused to set aside an exparte award CMA/PWN/KHB/18/2021 dated 14th September, 2021.

Second, the applicant may apply before this court to revise the ruling that refused to set aside the award. **Third**, the same may have opted to apply for revision before this court, challenging merits of the exparte award. The applicant therefore, in my considered view, has no room to challenge both of them in one go. The reason for preventing this is simple. That an exparte award dated 14th September, 2021, cannot be challenged in the application filed this year without first obtaining leave to file it out of time. That done, the reasons for having it so should be express. The applicant advanced both applications, when in fact one should be taken in its totality and may affect another depending on the prayers made.

That being the case, I find this application improperly before this court. I therefore strike the same out. I make no order as to costs.




A.K. Rwizile

JUDGE

04.11.2022