

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)
AT DAR ES SALAAM**

REVISION NO. 296 OF 2022

(Originating from Labour Dispute No. CMA/DSM/TEM/716/2018)

BOARD OF DIRECTORS, CENTRE

FOR FOREIGN RELATIONS

APPLICANT

AND

SHARIFF ASHAM TARIMO.

RESPONDENT

JUDGMENT.

S.M. MAGHIMBI, J

The current application is lodged under the provisions of Rule 24(1),(2) (a) and (b), and (2)(a),(b),(c),(d),(e),(f), Rule 28(1)(a),(c),(d),(e), Rule 28(2) of the Labour Court Rules, G.N. No. 106 of 2007 and Section 91(1),(b), 94(1)(b)(i) of the Employment and Labour Relations Act, (Cap. 366 R.E. 2019). The applicant is moving this court for the following orders:

- (a) That this Honourable Court may be pleased to call for and examine the proceedings and the subsequent ruling of the Commission for Mediation and Arbitration of Dar es Salaam at

Temeke which dismissed an application for extension of time for the Applicant to file an application to set aside ex-parte Award dated 26th February, 2021 delivered by Hon. Mkidadi, A (Mediator) in Labour Dispute No. CMA/DSM/716/2018.

- (b) The Court may be pleased to revise and set aside the Ruling of the Commission in Labour Dispute No. CMA/DSM/716/2018.
- (c) That Court be pleased to grant any other relief it may deem fit and just to grant.

The application was lodged by a Notice of Application and Chamber summons supported by an Affidavit of Mr. Jacob Gabriel Nduye; a Principle Officer of the Applicant; deponed on the 06th day of September, 2022. On his part, the respondent opposed the application by filing a Counter Affidavit deponed by himself on the 20th day of October, 2022, praying for the dismissal of the application.

Brief background of the matter is that the Respondent was employed by the Applicant on the 1st September, 2012 as an Assistant Lecturer. Sometimes in October, 2018 his contract of employment was terminated by the Applicant for an alleged misconduct. Aggrieved by the termination, the Respondent resorted to the Commission for Mediation and Arbitration for

Temeke ("CMA") and lodged a Labour Dispute No. CMA/DSM/TEM/716 2018 ("the Dispute"). The matter at the CMA preceded ex-parte of the applicant herein and an ex-parte Award was delivered on 12th July, 2019 in favour of the Respondent. When the applicant got knowledge of the ex-parte award, it was too late to challenge it. She then attempted to set aside the ex-parte award by filing at the CMA, an application seeking for extension of time so that she could lodge an application for setting aside ex parte Award.

The CMA was not convinced by reasons for the delay adduced and subsequently dismissed the application. Aggrieved by the decision thereof, the Applicant has lodged this revision seeking for orders of this court to Revise the said ruling on the following alleged grounds of illegalities:

- (a) The Commission for Mediation and Arbitration determined Labour Dispute No. CMA/DSM/TEM/716/2018 without having jurisdiction;
- (b) The Applicant was not aware of the Labour Dispute before the Commission for the Mediation and Arbitration as the Applicant was not served with summons of the case;

- (c) The Mediator ordered the Ex-part hearing while there was no proper service of the summons and the Applicant was not notified of the date of the exparte Award for her to take necessary steps;
- (d) The Applicant has Immunity against legal proceeding under the Diplomatic and Consular Immunities and Privileges, Cap 356 R.E. 2002.

The application was disposed by way of written submissions. The applicant's submissions were drawn and filed by Mr. Stanley Mahenge, learned State Attorney, while the respondent's submissions were drawn and filed by the respondent in person.

Having considered the submissions of both parties, I find that the applicant's main ground for faulting the CMA is that she is in the list of international organizations to which Tanzania accepted immunities and privileges as has been set out in Third Schedule to The Diplomatic and Consular Immunities and Privileges Act Cap. 356 R.E 2002. The immunities are listed under item 29 of the Third Schedule to the Act. In his submissions, Mr. Mahenge submitted that item 1 of Part I of the Fourth Schedule to The Diplomatic and Consular Immunities and Privileges Act (supra) provides that the organizations shall have Immunity from suit and

legal process. That based on item 1 of Part I of the Fourth Schedule, the immunities from suit and legal process are among the immunities and privileges conferred to organization like her.

In defining the term suit or legal process, Mr. Mahenge submitted that it has not been defined under the Act. However he referred to the definition by case law in the case of **Yusuph Haruni Adamu versus Country Representative UNHCR Tanzania & Another, Civil Appeal No. 10 of 2016**, Court of Appeal of Tanzania sitting at Tabora(unreported), whereby the Court quoted with approval the definition of the term legal process expounded by the same Court in the case of **Humphrey Construction LTD versus Pan African Postal Union, Civil Revision No. 1 of 2007** that;

"Legal process" has not been defined in the Act but in our view, it includes all proceedings in legal action before the Court"

He submitted further that in the same case, while explaining the issue of Immunity from legal action, the Court quoted with approval the words of Professor Mmag, Dr. A. Rainish and Dr. George Kolek of Vienna University in their Seminar Paper titled "Immunities of International organizations and Alternatives Remedies against the United Nation" that;

"International organizations are exempted from jurisdiction of domestic judicial and administrative authorities and therefore not subject to suits, claims, or enforcement of proceeding in such fora..."

He submitted further that the Court further held at page 14 of the ruling of the Court;

"In essence, International Organizations which include the Defendants in this case are entitled to immunities and privilege which include immunity from suit and legal process as a whole"

On the Respondent's allegation that the Applicant has no immunity privilege whereby the respondent has attached in his counter affidavit, the agreement between the Government of the United Republic of Tanzania and Peoples of the Republic Mozambique for establishment of the Tanzania/ Mozambique Centre for Foreign Relation and alleges that as per the said agreement the center is body corporate; Mr. Mahenge submitted that the assertion by the Respondent to the effect that the Applicant has no immunity/privilege is misconceived. He was in agreement with the respondent that the Agreement and constitution for establishment of the Centre recognizes the Centre to be body corporate, however, he argued

that the same does not take away the immunity and privileges which are provided for by the law. His prayer was that the application is allowed.

On his part the respondent challenged the immunity defining the applicant as a body corporate capable of suing and being sued. He argued that in order for the applicant to enjoy such immunities under the Act, the Minister must publish in the gazette an order declaring that the same has immunity against legal process. He argued that the Minister has not made any such publication declaring immunity of the applicant and that the applicant is misdirecting the court that they have immunity. His prayer was that the application is dismissed for applicant's inaction and negligence to respond to the summons issued by the CMA.

Having considered the submissions of the parties, this application should not detain me much. The applicant's reason for moving the CMA to extend time to set aside an ex-parte decree was an issue of illegality whereby the applicant alleges to enjoy the immunities and privilege from suit and legal process under the Diplomatic and Consular Immunities and Privileges Act, Cap. 356 RE 2002. In her ruling dismissing the application for extension of time, the CMA held that the Applicant failed to show to the Commission lucidly and clearly the immunities and privileges enjoyed by the Applicant

under the Diplomatic and Consular Immunities and Privileges Act Cap. 356 RE 2002 and the Applicant did not mention the provision of the law to that effect. To me given the fact that what was pleaded by the applicant was the diplomatic immunity, the reason that the applicant "failed to show to the Commission lucidly and clearly the immunities and privileges enjoyed by the Applicant under the Diplomatic and Consular Immunities and Privileges Act Cap. 356 RE 2002" was not proper. The CMA should have considered that some issues are worth the attention of courts (in this case the CMA) as from the nature of how they are pleaded.

It should be clear that I am not, at this point, in conclusion that the applicant does have that immunity or not, because that will be determining the matter prematurely. My point is that the issue was worth the extension of time of the CMA to hear the application to set aside the ex-parte decree. Determining that issue at the stage of extension of time and arguing that the applicant failed to show lucidly and clearly was an error on the CMA.

Owing to the above, I hereby allow this application. The ruling of the CMA which dismissed an application for extension of time for the Applicant to file an application to set aside ex-parte Award in Labour Dispute No. CMA/DSM/716/2018 is hereby revised and set aside. Time is extended for

the applicant to lodge an application to set aside an ex-parte decree at the CMA. The intended application to set aside the ex-parte decree shall be lodged at the CMA within 30 days from the date of this ruling.

Dated at Dar es Salaam this 23rd day of December, 2022.




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S.M. MAGHIMBI
JUDGE