

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
(HIGH COURT LABOUR DIVISION)**

AT SHINYANGA

LABOUR REVISION APPLICATION NO. 1 OF 2022

*(Arising from the ruling of the Commission for Mediation and Arbitration of Shinyanga in
Labour Complaint No. CMA/KHM/29/30/31/32/33/34/35/36/37/38/39/2020 dated 5th
January 2022)*

EL-HILLAL MINERALS LIMITED APPLICANT

VERSUS

- 1. EVARIST SELEMANI..... RESPONDENT**
- 2. GODFREY DADU SHAURI.....RESPONDENT**
- 3. JOSEPH PAULO MAYUNGA..... RESPONDENT**
- 4. DAUDI YOMBO PANGANI..... RESPONDENT**
- 5. JOHN SENGAMWEJI.....RESPONDENT**
- 6. MUTTA KAHUBYA.....RESPONDENT**
- 7. BADRU AMRI..... RESPONDENT**
- 8. ISAK MAYALA MBOJI.....RESPONDENT**
- 9. EMMANUEL TUNGU NDAMA..... RESPONDENT**
- 10. ELIZABETH MLINGWA MASELE..... RESPONDENT**
- 11. FLORA ZEBEDAYO KITULA.....RESPONDENT**

JUDGMENT

3rd August & 28th October 2022

MKWIZU, J.:

The respondents were before the Commission for Mediation and Arbitration appearing as applicants. Described as former applicant's employee creating employer-employees' relationship with the Applicant. In 2020, the respondent approached the CMA for the determination of their claim that they were underpaid contrary to the 2013 Wage Order. The CMA found for the Respondents. It was concluded that the Applicant holds a Special Mining Licence performing mining activities and not

research and therefore she was required under the law to pay the respondent 400,000/= minimum wage and not otherwise. The Respondent's claim was for that matter allowed.

Aggrieved, the applicant has filed this application asking the court to *inter alia* revise and set aside the CMA's award dated 5th January 2022. The Application is made by a chamber summons under Rule 24(1) (2) (3) 24(3)(a)(b)(c) and Rule 28(1)(c)and (d) of the Labour Court Rules 2007 GN No. 106 of 2007 and sections 91(1)(a)and (b),(2)(a & b) and (3) and (4) ; Section 94(1)(b)(i) of the Employment and Labour Relations Act No. 6 of 2004, and Order XLIII, Rule 2 and section 95 of the Civil Procedure Code Cap 33 RE 2019. It is supported by an affidavit of Frank Samwel, the applicant's advocate in which paragraph 8 itemizes three issues for determination as follows:

- a) *Whether the Commission for Mediation and Arbitration had jurisdiction to entertain the dispute on the minimum wage*
- b) *Whether the respondents were entitled to the payment awarded to them respectively*
- c) *Whether the applicant should be awarded costs.*

The Respondent's counter affidavit was in opposition. The application was argued through written submissions. Th applicants' submissions were prefaced by the provisions of section 39 (1) and 41 of the Labour Institution Act, Cap 300 RE 2019 stating that recovery of the amount of wage underpaid to the employee is the ambit of the District or Resident Magistrate Court and therefore the Commissioner for Mediation and Arbitration had no jurisdiction to entertain such a matter.

On whether the respondent was entitled to the awarded amount, Mr Frank's submissions were that the Labour Institution Wage Order, 2013 provides for each mining licence category and the wage payable. He added that the Applicant is holding A Special Mining Licence dealing with mining only where the minimum wages payable under such a category is 200,000/= contrary to the findings of the CMA that the respondents are entitled to 400,000 minimum wages under Order 4(3) of the Labour Institutions Wage Order, 2013-part (1) an of the schedules. He stressed that the order relied upon by the Arbitrator is not applicable on the matter as the applicant was not doing a prospecting activity(research) but mining only falling under Part b (1) of the schedule with a minimum wage of 200,000/= only which the respondents were paid. He thus urged the court to allow the application.

In response to the application, Mr. Shaban Mvungi, the Respondent's counsel first prayed to adapt the content of his counter-affidavit to form part of his submissions. He contended that being a labour-related dispute between the parties, the CMA had jurisdiction to entertain. He said section 41 (3) of the Labour Institution Act cited by the Applicants counsel is not restrictive on the filing of the labour dispute related to wage underpayment before the ordinary courts. His contention was that the word 'May' used in that section meant it is not mandatory.

Replying to the second issue, Mr. Mvungi submitted that the Special Mining Licence held by the Applicant does not fall under the Primary Mining licence category with a minimum wage of 200,000/= but falls under the category with a specific minimum wage of 400,000/= as decided by the arbitrator. He finally prayed for the dismissal of the application.

The rejoinder submissions by Mr. Frank Samwel are a reiteration of his submissions in chief, I will therefore not reproduce the same here to avoid repetition.

This matter should not detain the court more. Jurisdiction is a creature of the statute. It is a crucial aspect of every dispute in a court in which neither the court nor a tribunal, a judicial officer nor a party can safely decide upon it. It is in a simple language, not a matter of choice. Meaning that the court or tribunal cannot assume the jurisdiction not conferred to it by the law. Deliberating on this aspect, the Court in **Shyam Thanki and Others v. New Palace Hotel** [1971] 1 EA 199 at 202 the Court observed:

"All the courts in Tanzania are created by statute and their jurisdiction is purely statutory. It is an elementary principle of law that parties cannot by consent give a court jurisdiction which it does not possess."

And in **Yohana Balole vs Anna Benjamin Malongo**, Civil Appeal No.18 of 2020 (unreported) the Court held;

*"It is common ground that jurisdiction of courts is a creature of statute and is conferred and prescribed by the law and not otherwise. The term "Jurisdiction" is defined in Halsbury's Laws of England, Vol. 10, paragraph 314 to mean: "...the authority which a court has to decide matters that are litigated before it or to take cognizance of matters prescribed in a formal way for its decision. **The limits of this authority are imposed by the statute;** charter or commission under which the court is constituted and may be extended or*

*restrained by similar means. **A limitation may be either as to the kind and nature of the claim** or as to the area which jurisdiction extended, or it may partake of both these characteristics. "(the bold is mine)*

The claim by the respondents in this matter was for a portion of their wages resulted in the payment below the prescribed wage standards. Section 41(3) of the Labour institution Act cited by the Applicants advocate vests exclusively jurisdiction over such matters to the **District and Resident Magistrate Court**. The section reads:

*"41 (3) **Any worker who has been paid wages below the prescribed minimum wage may apply to the District Court or Resident Magistrates' Court for the recovery of the amount by which the worker was underpaid**".
(Emphasis supplied)*

This is the law. Mr. Mvungi has invited this court to find that the section is not mandatory but could not go further to disclose to the court another court (s) or tribunals that the law permits the filing of such a claim. I doubt this assumption. Given the position of the law above, the respondent had no choice but to channel their claims to the District or Resident Magistrate Court. The Commission for Mediation and Arbitration as rightly submitted by Mr. Frank had no jurisdiction to entertain the matter.

Consequently, the application is allowed. The CMA proceedings and the contested award are all quashed and set aside. This conclusion marks the end of the matter and Respondents are advised if still interested to

channel their claim through a proper forum in accordance with the law.
No order as to costs.

DATED at **SHINYANGA** this 28th day of **October 2022**.




E.Y. MKWIZU
JUDGE
28/10/2022