

THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM
REVISION APPLICATION NO. 54 OF 2021

BETWEEN

SALEHE HASSAN MJINJA APPLICANT

AND

VETARESPONDENT

JUDGMENT

Date of last order: 28/2/2022
Date of judgment: 6/4/2022

B. E. K. Mganga, J.

On 23rd July 2002, the respondent employed the applicant in the position of Vocational Instructor at Laboratory Trade at Mtwara RVTSC. The applicant remained to be an employee of the respondent until on 29th January 2010 when he was served with a letter terminating his employment. Aggrieved with termination of his employment, applicant filed labour complaint No. CMA/DSM/TEM/74/2020 before the Commission for Mediation and Arbitration henceforth CMA at Temeke. On 8th July 2020 the said dispute was dismissed. After dismissal of the said complaint, applicant filed labour complaint No. CMA/DSM/TEM/436/2020 together with an application for condonation.

The respondent raised a preliminary objection that CMA had no jurisdiction to determine the dispute and that the application is bad in law for seriously abuse of the legal process. It was argued at CMA, by the respondent that, the 1st dispute filed by the applicant was dismissed hence he cannot refile another dispute based on the same reasons instead of filing a revision before the High Court if he was aggrieved with the dismissal order. On 11th January 2021, Hon. Ngalika, E, arbitrator, delivered a ruling sustaining the preliminary objection raised by the respondent that after a dismissal order of the 1st dispute, applicant was supposed to file a revision Application before the High Court and not to file a fresh dispute. The arbitrator held further that, it has no power to vacate its dismissal order and dismissed that complaint by the applicant.

Further aggrieved by the CMA ruling, applicant filed this application seeking the court to revise and set aside the said Ruling. In the affidavit in support of the application, applicant raised the following issues for determination by the court:-

- 1. That, whether the Commission has no jurisdiction to determine the dispute.*
- 2. Whether the application was bad in law for seriously abuse of the legal process.*
- 3. Whether the early dispute was struck out or dismissed.*

Respondent filed a counter affidavit sworn by Mathias D. Kulwa, State Attorney resisting the application.

On 26th January 2022, in the presence of the applicant and Mathias Kulwa, State Attorney for the respondent, the court scheduled this application for hearing on 28th February 2022. When the application was called for hearing on 28th February 2022, only the applicant entered appearance but not the respondent and no reason was assigned. Due to non appearance of counsel for the respondent, applicant prayed to proceed exparte as a result leave was granted.

Submitting in support of the application, applicant argued that he was terminated on 4th February 2010 and filed the dispute on 12th March 2010. Applicant argued that arbitrator having found that had no jurisdiction, erred to dismiss the dispute. Applicant argued that instead of dismissing the application, arbitrator was supposed to struck it out. Applicant cited the case of ***Deogratias John Lyakwipa and Another v. Tanzania Zambia Railways Authority, Revision No. 68 of 2019*** to support his argument that CMA had jurisdiction.

On the 2nd ground, applicant submitted that he filed the 1st dispute at CMA in 2010 and the 2nd dispute on 28th September 2020 claiming that he was unfairly terminated. Applicant submitted further that, the

arbitrator erred to hold that applicant was bound to abide by the provisions of the Public Service Act.

On the 3rd ground, applicant submitted that the arbitrator erred in holding that the application was in abuse of legal process. Applicant went on that in terms of sections 90 of the Employment and Labour Relations Act [cap.366 R. E. 2019) and section 96 of the Civil Procedure Code [Cap. 33 R.E. 2019) all read together with Rule 33(1) of the Labour Institutions(Mediation and Arbitrations Guidelines) Rules, GN. 67 of 2007, CMA had jurisdiction over the dispute between the parties.

On the 4th ground, applicant submitted that arbitrator erred in holding that the 1st dispute was struck out while it was dismissed. Applicant prayed that the application be granted so that the dispute can be heard on merit at CMA.

I have carefully examined the CMA record and find that on 28th September 2020, applicant filed the complaint at CMA claiming to be paid TZS 574, 074,099/= on ground that he was unfairly terminated. In the CMA F1, applicant showed that his employment was terminated on 4th February 2010. Together with CMA F1, he filed application for condonation (CMA F2) and an affidavit in support of the application for condonation. In his affidavit in support of condonation applicant was

questioning the legality of the respondent to condemn him as a mental ill person and the legality of Hon. P. Mahenge, mediator, to dismiss his complaint for failure to produce compensation claim. He stated further that, he was late to file the dispute for about ten (10) years because of longtime social stress and depressions, and lack of legal aid.

I have examined the ruling of Hon. P. Mahenge dated 8th July 2010 and find that the dispute filed by the applicant was dismissed. It is my view that after the said dismissal, it was not open for the applicant to file a fresh dispute at CMA. If at all applicant was aggrieved by the CMA decision of dismissing his application, he was supposed to file revision application before the High Court. Hon. Ngalika, E, arbitrator correctly, in my view, on 1st January 2021, dismissed the second dispute that was filed by the applicant after dismissal of the earlier one because the arbitrator had no power to vacate the dismissal order issued by a fellow arbitrator. The argument by applicant that the arbitrator was supposed to struck out the dispute instead of dismissing it lacks substance. The ***Lyakwipa's case*** (supra) relied upon by the applicant cannot apply in the circumstance of the application at hand. That case was applicable if applicant could have opted to file revision application to challenge the dismissal order issued on 8th July 2010 by Hon. P. Mahenge. In the presence of the said dismissal order issued by P. Mahenge that was not

set aside by this court, it was improper for the applicant to refile the dispute at CMA based on the complaint of unfair termination. The arbitrator cannot be faulted for dismissing the dispute that was refiled because CMA lacked jurisdiction.

I have read the ruling by Hon. Ngalika, E, arbitrator, that is the subject of this revision application and find that, he did not say that applicant refiled the second complaint at CMA in abuse of the court process. That was arguments by the respondents and not the arbitrator. Since it was not so held by the arbitrator in the ruling, that argument dies naturally. I have found that all other arguments advanced by the applicant are of no help in determination of this application since they are not reflected in the mediator's ruling. I therefore disist to decide on them.

For the foregoing, this application lacks merit and is hereby dismissed.

Dated at Dar es Salaam this 6th April 2022.



B.E.K. Mganga
JUDGE

Judgment delivered on this 6th April 2022 in the presence of Salehe Hassan Mjinja, the applicant but in the absence of the respondent.



B.E.K. Mganga
JUDGE

Labour Court-TZ.