

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

REVISION NO. 369 OF 2020

BETWEEN

CENTRAL PRE AND PRIMARY SCHOOL APPLICANT

VERSUS

NTIZEMANA BUKURU RESPONDENT

JUDGMENT

S.M. MAGHIMBI, J:

The application beforehand was lodged under the provisions of Section 94(1)(a) & (b) and (2)(a) and (b) and 94(1)(b)(i) of the Employment and Labour Relations Act of 2004 and Rules 24(1),(2)(a),(b),(c),(d) and (f) and 3(a)(b)(c) and (d) and 28(1)(a)(b)(c) and (e) of the Labour Court Rules GN No. 106 of 2007. The applicant was aggrieved by an order of the CMA dismissing an application to set an arbitration award which was determined ex-parte. Terming it as unreasonable disturbance, the CMA dismissed the application for non-appearance so that execution of the award may proceed. Surprisingly, instead of making an application to set aside the dismissal, in what I would term as an abuse of court processes and delaying tactics, the

applicant has lodged this application for revision moving the court for the following:

1. That, this Honorable Court be pleased to call for and examine the records of the CMA Order and proceedings which dismissed an Application to set aside an Arbitration award delivered by Honorable H. Makundi, Chairperson for purposes of satisfying itself as to the correctness legality and propriety of the said dismissal order therein and revise and set aside the same.
2. That, this Honorable Court-issue appropriate Orders according to the law.
3. That, this Honorable Court grants and other reliefs as it deems fit, fair and just to the parties.

Before this Court the applicant was represented by Mr. Evance Ignas John, learned advocate while Mr. Michael Kasungu, learned advocate represented the respondent. By consent of parties, the application was disposed by way of written submissions.

As per the affidavit in support of the Chamber Summons as well as the submissions to support the application, the applicant's main argument on the grievance is that there are some irregularities and injustices involved.

That by dismissing the Application to set aside the Arbitration award, the Applicant has been denied the right to be heard. He argued that the Chairman would have postponed the Application at a benefit of doubt to another hearing date since the same was called for the first time on 04th August, 2020. Further that the Arbitrator would have allowed the Applicant to explain why he was late to come to CMA on that date, since he was late due to the reason beyond control of the Applicant as already explained above. It was further deponed that the circumstances surrounding this matter are doubtful as the Application was dismissed at 10.00 am and its typed Ruling copy was ready by 10.30 am which he termed to be quite unusual. He therefore established the following issues:

1. Whether it was proper for the Chairman to dismiss the said Application on the first date it was scheduled for hearing.
2. Whether it was proper for the Chairman to dismiss the said Application before even the Respondent filed a Counter Affidavit
3. Whether the Chairperson's behavior generally reflects proper administration of justice and respects the principals of natural justice of the Right to be heard.

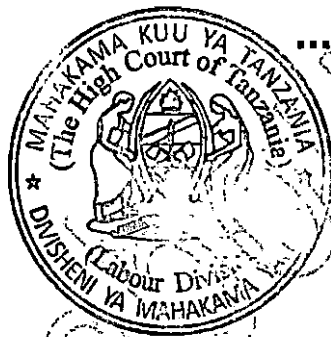
Unfortunately, more than half of his submissions, Mr. John spent explaining how it was unfair to proceed ex-parte by the CMA while his client was not properly served. He forgot that the revision emanates from an order dismissing the application for non-appearance of the applicant herein who was also an applicant therein. I am not sure whether this was by design or by default, I figured it might be that Mr. John thinks by bringing the submissions, he intends to gain court's sympathy on the ex-parte award. Unfortunately, that is not my time and place to do so. Before me is only a revision against an order dismissing an application to set aside an ex-parte award. The dismissal was because the applicant did not appear on the date set for hearing and that is what I will confide myself into.

Now Mr. John kept on submitting that "the applicant" got a car break down that is why she could not make it. What is unclear at this point is that the applicant is not a natural person, rather an institution which has more than one employee, so it is not clear which applicant could not make it to the CMA and why the other officers could not also make.

All in all, in an application for restoration of a matter dismissed for non-appearance, a party must show sufficient reason why she could not appear when the matter was so set for hearing. In the application at hand I see no

such sufficient reasons given by the applicant, there are only submissions on how it was unfair to proceed ex-parte by the CMA while his client was not properly served. It is trite law that litigations must come to an end, therefore the applicant's actions should not be a hindrance to the respondent to enjoy the fruits of the award. Since no sufficient cause was shown for non-appearance both at the CMA and in this court, I see no reason to interfere with the findings of the CMA. This application has no merits and it is hereby dismissed.

Dated at Dar es Salaam this 04th day of March, 2022.




S.M. MAGHIMBI
JUDGE