

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LABOUR REVISION NO. 1 OF 2021

(C/O CMA/RK/SMB/29/2020)

(O. Ngaruka, Arbitrator)

IDD HAMIS JUMA APPLICANT

VERSUS

CHARLES CHUNDA RESPONDENT

JUDGMENT

Date: 16 & 28/02/2022

NKWABI, J.:

I am called upon, by the applicant, to make a revision of the award issued by the Commission for Mediation and Arbitration in Labour Dispute No. CMA/RK/SMB/29/2020.

The Commission for Mediation and Arbitration for Rukwa region was satisfied that the respondent proved his claim and awarded him against the applicant who, however, was not a party to the proceedings of the labour dispute which resulted into this revision, as follows:

1. Payment for unlawful termination for 36 months as the respondent had permanent contract at Tshs. 7,200,000/=
2. Payment in lieu of notice at T.shs 200,000/=.

3. Leave payment at T.shs 200,000/=.
4. Severance payment at T.shs 107,692/= per section 44(e) of the Employment and Labour Relations Act.
5. Certificate of service.

The award in those terms, aggrieved the applicant, as a result, he filed this revision application under the services of Mr. Samwel Kipesha, learned counsel. The applicant is having among other questions, whether it was proper and justifiable for the Commission for Mediation and Arbitration to make its award against Idd Hamis Juma while he was not sued at the Commission for Mediation and Arbitration. For bringing this revision proceeding the applicant is having the basis of the decision of the Court of Appeal of Tanzania in **Jacqueline Ntuyabaliwe Mengi & 2 others v Abdiel Reginald Mengi & 5 others**, Civil Application No. 332/01 of 2021 where it was held:

"... Mr. Vedasto maintained the position which we associate ourselves with as the correct exposition of the law, that the applicants were not parties to that matter and thus the only way to challenge the decision of the High Court is by way of revision. It is common ground that a person does not become

a party to a proceedings merely because he testified in the matter as with the 1st applicant in the present case.”

In reply, the respondent, through the services of Mr. James Lubus, learned counsel argues that in revision, no new litigant is allowed as the 1st respondent one Ruchoro Express has been left and therefore in this case they are standing with new umbrella Idd Hamis Juma which did not stand at the first trial Court or Commission and therefore triggering the bullet to new litigant rather than the old litigant one RUCHORO EXPRESS, who seem to be satisfied with the arbitration award as if he could satisfy could apply for revision. He insists that the decision of Commission for Mediation and Arbitration was fair.

In my view, and as per the **Jacqueline's** case (supra), the respondent's complaint that it was wrong for the applicant to bring this revision application does not find purchase with me. In my considered opinion, even if the applicant would have impleaded Ruchoro Express, that would be meaningless as that is not a legal person or a natural person to sue or be sued.

On the above posed question, too, I am called upon to decide on whether the proceedings in respect of this matter in the Commission for Mediation

and Arbitration was proper or was a nullity. If it were a nullity, then it follows that the proceedings and the award of the Commission for Mediation and Arbitration would be nullity. Lest it be forgotten that it has been stated in our jurisdiction that the court cannot adjourn a nullity since the nullity means there is nothing before the Court, see **MIC Tanzania Ltd v Minister for Labour and Youth Development and Attorney General Civil Appeal No. 103/2004.**

The respondent in this revision is praying this court to dismiss this revision. Invariably, he is calling me to uphold the proceedings and the award of the Commission for Mediation and Arbitration. Can I do that and uphold the award? The answer, in my view, should be in the negative.

With the greatest respect to honourable Arbitrator, I am inclined to entertain a view that when he found that he had reached a dead end, to salvage the situation (the matter before him) decided to shoulder the award upon the applicant who was not a party to the proceedings. That happened after he became aware that Ruchoro Express is neither a natural person nor a legal person capable of being sued and sue so the award he was going to offer would be meaningless as it would be not

capable of being executed. What the learned Arbitrator did is not acceptable in law and cannot be left to stand. The decision of my learned sister, Mongella, J., in **Mbeya City Council v Janeth M. Massaburi & 10 Others, Misc. Civil Application No. 8/2019**, HC Mbeya (unreported) cited by the counsel for the respondent is distinguishable to this case since in the cited case, the application was for lifting the corporate veil while the present revision application is not the case.

I am therefore, prepared to hold that it was not proper and justifiable for the Commission for Mediation and Arbitration to make its award against Idd Hamis Juma who was not sued at the Commission for Mediation and Arbitration. It was further not proper for the Commission for Mediation and Arbitration to entertain the labour dispute against Ruchoro Express which is neither a legal person or a natural person.

Consequently, the application for revision is allowed. The proceedings and award of the Commission for Mediation and Arbitration are revised to the extent that the same are quashed and set aside respectively. I make no order as to costs as this is a labour matter.

It is so ordered.

DATED at **SUMBAWANGA** this 28th day of February, 2022



J. F. Nkwabi
J. F. Nkwabi,
JUDGE