IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION APPLICATION NO. 308 OF 2021

(Originating from CMA award issued by Hon. Igogo, M, arbitrator, in Labour complaint No. CMA/DSM/UBG/141/18 at Ubungo dated 4th June 2020)

BETWEEN

RASHID RAMADHANI & 3 OTHERS ..... APPLICANTS

AND

UTALII FOOD CATERS..... RESPONDENT

RULING

Date of last order: 15/3/2022
Date of Ruling: 22/4/2022

B. E. K. Mganga, J.

This ruling emanates from two preliminary objections raised by the respondent on 3rd October 2021. The two preliminary objections are that (i) the application is not preceded by a mandatory notice of intention to apply for revision and (ii) that the application is incompetent for failure to state material facts on which the application is based.

Submitting on those preliminary objections, Mr. Benitho Mandele, counsel for the respondent argued that Regulation 34(1) of the

Employment and Labour Relations (General) Regulation, GN. No. 47 of 2017 requires any person intending to seek revision before the Court, to file CMA F10 at CMA and serve it to the other party before filing revision before the court. Counsel for the respondent submitted that the requirement is mandatory and that failure to fail the notice renders revision application before the court to be incompetent. To bolster his argument, counsel for the respondent cited this court's decision in the case of ***Unilever Tea Tanzania Limited v. Paul Basondole, Labour Revision No. 10 of 2020*** (unreported). Counsel for the respondent prayed the revision application filed by the applicant be struck out.

On the other hand, Mr. Madaraka Ngwije, from CHODAWU, the personal representative of the applicant, resisted the preliminary objection submitting that section 91 of the Employment and Labour Relations Act [Cap. 366 R. E. 2019] requires the person aggrieved with the award to file revision within six weeks. Counsel for the applicant argued that many revision applications have been filed and determined countrywide without filing notice of intention to seek revision. Counsel went on that failure to file notice of intention to seek revision has no effect and that counsel for the respondent did not submit the effect of that failure. Counsel was of the view that upholding this preliminary

objection will cause delay of finalization of many applications countrywide though he did not state how.

As pointed above, counsel for the respondent raised two preliminary objections but in his written submissions argued only one preliminary objection and said nothing on the other. I take it that, impliedly, counsel for the respondent abandoned the preliminary objection relating to failure to state material facts on which the application is based on. This court has held several times, that professionalism and courtesy both to the court and the other party demands that, whenever a party abandons an issue that was raised earlier, must do so expressly and not by implication. The reason and logic behind are clear that is to say; the issue was expressly raised, requiring the other party expressly to respond, and the court expressly to pronounce its decision. Therefore it cannot be impliedly abandoned. In short, matters expressly raised should be expressly abandoned to enable the other party and the court remain focused. That is what legal professionalism demands from all of us otherwise it may be unprofessional. Since the parties did not make submissions on the second ground of preliminary objection, I will not consider it in this ruling.

It is undisputed that before filing this application, applicant did not file the notice to seek revision as provided for under Regulation 34(1) of the Employment and Labour Relations (General) Regulation, GN. No. 47 of 2017. It was argued by counsel for the respondent that the requirement to file the notice is mandatory and prayed the application be struck out. On the other hand, counsel for the applicant was of the view that it has no effect. I have carefully considered these rival arguments and I am of the settled opinion that the requirement is mandatory. The argument by counsel for the applicant that failure to file the notice is of no effect, in my view, is not correct. The said Regulation 34(1) of the Employment and Labour Relations (General) Regulation, GN. No. 47 of 2017 was enacted with a purpose and not for cosmetic or decoration in our Labour laws. The Regulation is clear that prior to filing revision before the court, a party seeking to file revision, must file a notice to seek revision. That is the law, we have no option but to fall it to the letter. In the case of ***Sylvester Hillu Dawi and Another v. the Director of Public Prosecutions, Criminal Appeal No. 250 of 2006, CAT*** (unreported), the Court of Appeal had this to say:-

"...***The law on the issue is unambiguous and specific. It might appear harsh and perhaps unjust,*** ... ***But we cannot disregard it*** *as gallantly argued ... The mandate given to the courts to administer justice in the country by the Constitution is very clear. We*

cannot circumvent the Constitution. The judiciary as provided under article 107 A of the Constitution is the only organ of the state having the final say in the administration of justice in the country. But it does not have unbridled powers. The courts must operate within the parameters of the Constitution. The Constitution in Articles 107A and 107B enjoins us to administer justice in accordance with the law of the land being guided by the five principles enunciated in article 107A(2). ***So the invitation... to disregard the clear provisions of the law for sake of breaking new ground is not only an invitation to anarch but an invitation to violate the Constitution. We are not prepared to do that...We take it as settled law that if the language of a statute is clear, it must be enforced at all times to the letter. We cannot ignore it for the sake of venturing into the realms of idealism or breaking new grounds of the law. If we attempt to do so we shall only lose the confidence of the society which we are supposed to serve but also our legitimacy. Yes, in appropriate cases, but within the confines of the law, we shall not afraid of breaking new grounds in order to improve the justice we deliver. We are afraid to say that this is not one of those cases".***

A similar preliminary objection was raised in the case of ***Arafat Benjamin Mbilikila v. NMB Bank PLC, revision No. 438 of 2020, Anthony John Kazembe v inter Testing Services (EA) (PTY) Ltd, Revision application No. 391 of 2021*** and ***Basondole's case*** (supra). In all these cases, this court found that filing the notice to seek revision prior to filing revision application is a mandatory requirement and that failure to file the notice makes the revision application incompetent.

It is my considered opinion that the argument by counsel for the applicant that many revisions have been filed and heard without notice to seek revision as an invitation for the court not to uphold the preliminary objection has no merit. In his submissions, counsel for the applicant did not give reasons as to why the court should ignore the regulation requiring a notice to be filed. He did not also mention the applications that were so heard and whether an objection was raised or not and whether they were filed before revocation of the Employment and Labour Relations (Forms) Rules, 2007 and coming into force of the Employment and Labour Relations (General) Regulations, 2017 that introduced Regulation 34(1) that requires a notice to seek revision be filed prior filing application for revision or not.

It was further submitted by counsel for the applicant that upholding the preliminary objection will cause delay of determination of many revision applications. That argument as it is, is bound to fail because counsel for the applicant failed to prove as to why and how it will cause delay. But whatever reasons may be advanced, the law must be followed. If applicant and the would-be applicants want, they should abide by the law. In my view, the argument by counsel for the applicant is an invitation that the court should allow applicants not to follow procedural rules and laws governing how disputes or applications should

be filed for fear of delay of their determination. That cannot be allowed. By the way, the court has its own way and ability to find ways on how to determine disputes timely. Pressure of pilling up of disputes or applications cannot be a warrant of the court not to abide by the law.

For all said and done, I uphold the preliminary objection and struck out the application for being incompetent.

Dated at Dar es Salaam this 22nd April 2022.

B.E.K. Mganga
JUDGE

Ruling delivered on this 22nd day of April 2022 in the presence of Madaraka Ngwije, from CHODAWU, for the applicant and Benito Mandele, advocate, for the respondent.

B.E.K. Mganga
JUDGE