

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

**LABOUR REVISION NO. 474 OF 2021**

**BETWEEN**

**REHEMA OMARI NKUU.....APPLICANT**

**VERSUS**

**ARDHI UNIVERSITY.....RESPONDENT**

**JUDGMENT**

**11<sup>th</sup> & 11<sup>th</sup> May 2022**

**K. T. R. MTEULE, J.**

This is an application seeking for Revision of CMA decision in Labour Dispute No. CCMA/DSM/KIN/5.525/17 delivered on 16/05/2018. In that decision, the Arbitrator, J. Gerald held that CMA did not have jurisdiction to entertain the matter due to the amendment of the Public Service Act which was amended by S. 26 of the Written Law (Miscellaneous Amendment) (No. 3) Act 2016 which amended S. 32A of the Public Service Act which excluded the CMA from having power to determine matters related to public servants. The applicant filed the application with 3 issues, 2 of them addressing the jurisdiction of the CMA.

Due to the nature and sensitivity of jurisdiction, the court called upon parties to address the issue of jurisdiction before proceeding with the other issues of the application.

On the date the matter fixed for hearing of parties, Mr. Hemed Omar, Personal Representative notified the court that he is not intending to waste the court's precious time in something already settled by the Court of Appeal. He cited the case of **Tanzania Posts Corporation Vs. Dominic Kalangi** and states that it is already settled there in that this court has no jurisdiction to entertain matters concerning public servants. He therefore prayed to withdraw the application with this court leave to allow the applicant to pursue his claim vide a proper forum.

Mr. Ayoub, State Attorney disputed withdrawal of the application on ground that since the court has no jurisdiction, the application is improper before the court and something which is wrongly lodged cannot be withdrawn by a party who brought it but only by the court. He further disputed power of the court to grant leave to applicant to pursue the matter in proper forum.

Having considered parties submission, I appreciate Mr. Hemed Omar, Personal Representative for his wisdom of not wasting the precious

time of parties and the court by conceding to what is obvious I congratulate the spirit which is a good professional conduct amended for the legal fraternity. However I cannot agree with his two prayer. To start with withdraw, there was already a court direction for the parties to address the court on the matter. It is my consideration that the application is heard, and a judgment need to be constructed. At this stage the applicant cannot withdraw the matter.

With regards to leave to the applicant to pursue her claims through the public service commission. Since this court does not have jurisdiction in the matter. In the absence of jurisdiction, the court cannot give any order other than the order raising and intending to address that issue of jurisdiction. This prayer as well fails.

Having said so, since Mr. Hemed Omar, Personal Representative of the applicant concedes to the fact that CMA did not have jurisdiction, and in the strength of the Court of Appeal decision in Tanzania Posts Corporation supra, I find this court lacking jurisdiction in the matter and dismiss the application accordingly. It is so order.



**KATARINA REVOCATI MTEULE**

**JUDGE**

**11/05/2022**