

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

REVISION APPLICATION NO. 504 OF 2020

*(Arising from the Decision of the CMA in Labour Dispute No. CMA/DSM/ILA/R.489/17,
ILALA DAR ES SALAAM ZONE)*

BETWEEN

ANDREA SILAS MAGANGA.....APPLICANT

VERSUS

ZENITH SECURITY SERVICES LTDRESPONDENT

JUDGEMENT

13th April 2022 & 06th May 2022

K. T. R. MTEULE, J.

The Applicant here in one **ANDREA S. MAGANGA** has filed the present application seeking for a revision and setting aside of the decision of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/DSM/ILA/R.489/17. The Applicant herein is praying for the orders of the Court in the following terms:-

1. That this Honorable Court be pleased to revise and set aside the whole proceedings and award/ruling of the Commission for Mediation and Arbitration dated 20th October, 2020 in Labour Dispute No. CMA/DSM/ILA/R.489/17.
2. Any other relief this Honorable Court may deem fit, just and

equitable to grant.

The background of the dispute in brief is that; on 26th July, 2016 the Applicant was employed by the Respondent as a Security Officer under yearly fixed term contract. Their relationship changed on 23rd January, 2017 when the Applicant was alleged of misconduct and a notice to attend a Disciplinary meeting on 25th January, 2017 issued to him. Due to this, the Applicant filed a dispute before CMA on 24th January, 2017 hence the disciplinary meeting could not be conducted. The matter in the CMA was settled on 14th March, 2017 where it was agreed among other issues that the applicant should return to work on 16th March, 2017 and that the salaries covering the time of his absence would not be paid. In the CMA, it was alleged by the Applicant that the Respondent did not make the payments hence he filed the dispute at the CMA which rendered the impugned decision. That the CMA determined the matter not in his favor hence the present application.

In the affidavit, the statement of facts and laws identified therein can be paraphrased into the following issues:-

1. That, the arbitrator escaped to discuss the issue framed as, "Je, mlalamikaji hakuwepo kazini bila taarifa kuanzia tarehe

24/01/2017 mpaka tarehe 14/03/2017?" which was agreed to be one among the issues in dispute.

2. That, the arbitrator procured the award contrary to the evidence tendered.

In disposing the application, on 23rd November, 2021 parties were ordered by this Court to file their written submissions as per their prayers. Only the applicant complied with the Court's order to timely file the submission hence, the Court decided to proceed in accordance with Rule 37 (1) of the Labour Court Rules.

During hearing the applicant had long submissions however what I grasp from its substance is that the in the Labour Dispute No. CMA/DSM/ILA/R. 87/17 which was filed on **24th January, 2017** the Applicant was claiming for subsistence allowance, resulting from disturbance caused by the respondent from 24th January, 2017 up to 14th March, 2017.

It is Applicant's further submissions that in his second Dispute filed on 9th May, 2017 he was claiming for subsistence allowance to the tune of TZS 2,730,769.23 which includes dairy rest allowance TZS 399,999.99, public holiday allowance TZS 130,769.23, deducted wages TZS 200,000.00 and compensation allowance TZS

1,000,000.00.

In his submission, the Applicant challenged the Arbitrator of having acted ultra vires in serving the summons, by not following all the stages of arbitration.

After going through the applicant's submissions and CMA record, there are two major issues for determination, which are:-

1. Whether there are sufficient grounds to warrant setting aside the whole proceedings and award in the CMA decision of 20th October 2020.
2. To what relief are the parties entitled.

With regards to the **first** issue, I will address the issues raised in the affidavit. The **first** one concerns the coverage of the issues raised in the CMA. The Applicant is of the view that the arbitrator neglected the issue framed as; "**Je, mlalamikaji hakuwepo kazini bila taarifa kuanzia tarehe 24/01/2017 mpaka tarehe 14/03/2017?**". I have gone through the decision of the arbitrator and the proceedings. The issues framed were two and they were properly addressed by the arbitrator and decided accordingly. In the proceedings, I could not find any issue framed as "Je, mlalamikaji hakuwepo kazini bila taarifa kuanzia tarehe 24/01/2017 mpaka tarehe

14/03/2017?" This issue seems to be applicant's own creation at revisional level. It can not be used to fault the decision of the CMA since the arbitrator did not have a mandatory duty to address an issue which was not formally framed.

The second ground raised by the applicant is that, the arbitrator procured the award contrary to the evidence tendered. Having gone through the decision of the arbitrator, I have noted that the arbitrator based her decision on the evidence available especially "kielelezo Z1" which was the employment contract between the Applicant and the Respondent. The arbitrator was satisfied that by that employment contract, provided for a salary which included overtime payment and holiday payments. The arbitrator based on the evidence of the settlement which took place in their previous Labour Dispute No. CMA/DSM/ILA/R.87/17 (Kielelezo Z2) where it was agreed that the 50 days payment should not be paid because it covered a period when the Applicant was absent from work. From the aforesaid, I find that the applicant's assertion that the award was given without the support of the available evidence is not founded.

From the foregoing answers to the two questions, I will respond to the 1st issue that there has been no sufficient ground established by

the Applicant to warrant this court to set aside the decision and the proceedings of the CMA in Labour Dispute No. CMA/DSM/ILA/R.489/17.

What follows is to what remedies are the parties entitled? Since it is found that no sufficient ground established to justify the application, the only remedy is to have it dismissed.

From the above reasoning, I find the Application with no merits, and it is dismissed. No order as to costs. It is so ordered.

Dated at Dar es Salaam this 06th day of May, 2022.



KATARINA REVOCATI MTEULE

JUDGE

06/05/2022