

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

REVISION APPLICATION NO. 430 OF 2021

*(Arising from the Ruling delivered on 15/10/2021 by Hon. Kalinga, C, Mediator, in Labour dispute no.
CMA/DSM/KIN/319/2021 at Kinondoni)*

BETWEEN

ULTIMATE SECURITY (T) LTD APPLICANT

AND

JOSEPH GOLIAMA & 2 OTHERS RESPONDENTS

RULING

*Date of last order: 09/06/2022
Date of ruling: 17/6/2022*

B. E. K. Mganga, J.

Respondents were employees of the applicant at different positions. It happened that relationship between the two parties did not go well, as a result, on 24th August 2021, respondents filed labour dispute No. CMA/DSM/KIN/319/2021 before the Commission for Mediation and Arbitration henceforth CMA at Kinondoni claiming to be paid TZS 94,550,000/= as salary arrears and TZS 72,000,000/= as compensation for 12 months. In the CMA F1, respondents showed that the dispute arose on

17th August 2021. Respondents attached to the CMA F1 details of their claims showing that (i) Joseph Goliama was claiming salary arrears from June 2019 to July 2021, (ii) Ruth Kaaya was claiming salary arrears from March 2019 to July 2021 and (iii) David Chambua was claiming salary arrears from March 2019 to July 2021.

On 7th September 2021, applicant filed a notice of preliminary objection that the matter was time barred. Having heard submissions from both sides, on 15th October 2021, Hon. Kalinga, C, Mediator, delivered a ruling that the preliminary objection required evidence to be disposed considering that the dispute was filed within time. In the same ruling, the Mediator made reference to the attachment on the CMA F1 and hold that claims for salary arrears were out of time and that respondents were supposed to file application for condonation. The Mediator therefore struck out the dispute holding that respondents were at liberty to follow the procedure.

Aggrieved with the said ruling, applicant filed this application for revision. On 27th October 2021, Tatu Elias, the applicant's Human

Resources officer, sworn an affidavit in support of the application raising two grounds namely: -

- 1. That, the Mediator erred in law and fact by striking out the complaint.*
- 2. That, the Mediator erred in law and fact by holding that respondents were to file the matter in a manner required by the law.*

On 12th November 2021, Joseph Goliama and Ruth Kaaya, the 1st and 2nd respondents filed a joint counter affidavit, notice of opposition and a notice of preliminary objections that (i) that the application is bad in law hence unmaintainable for contravening Rule 50 of the Labour Court Rules, GN. No. 106 of 2007, and (ii) alternatively, that the application is misconceived hence incompetent for failure by the applicant to cite enabling provisions of the law.

At the time of hearing both the application and the preliminary objections, Mr. Elipidius Philemon, learned counsel appeared and argued for and on behalf of the applicant, while Mr. Elisaria Mosha, learned counsel appeared and argued for and on behalf of the respondent.

In arguing the preliminary objection, Mr. Mosha, learned counsel for the respondents prayed to withdraw the 2nd preliminary objection and argued only the 1st one. In his submissions, counsel for the respondent

was very brief that the ruling was interlocutory hence not subject to revision in terms of Rule 50 of the Labour Court Rules G.N. No. 106 of 2007. He went on that, the order to struck out the dispute did not finally determine rights of the parties. He argued further that, the dispute was struck out on ground that it was filed within time but some of the reliefs were filed out of time while others were within time. He concluded that the application was struck out and respondents ordered to file a proper application.

On the other hand, Mr. Philemon, learned counsel for the applicant submitted that the order was not interlocutory. He referred the court to the case of ***Agness Simbambili Gabba v. David Samson Gabba, Civil Appeal No. 26 of 2008***, CAT (unreported) and submit that in the said case, the Court of Appeal gave criteria as to what is interlocutory. In his submissions, he conceded that the Mediator just struck out the dispute.

In rejoinder, Mr. Mosha submitted that ***Gabba's case*** (supra) is distinguishable hence cannot apply in the circumstances of this application.

I have examined the CMA record and the ruling that is the subject of this application and find that the Mediator struck out the dispute because

some of the claim by the respondents were within time and others were out of time. The Mediator also found that, evidence was required to prove that the matter was time barred or not. Confronted with that situation, the Mediator struck out the dispute and directed the respondents to file a proper dispute. It was argued by counsel for the respondents that the order was an interlocutory not subject to revision but counsel for the applicant argued to the contrary. It is a well settled law that an order that does not finally determine rights of the parties is interlocutory. In fact, there is a litany of authorities to that effect including the case of **General Logic v. Eli Mukuta**, Civil Appeal No. 272 of 2019, CAT (unreported), **Junaco (T) Ltd and another v. Harel Mallac Tanzania Limited**, Civil Application No. 473/16 of 2016, CAT (unreported) to mention but a few. In **Mukuta's case**(supra) the Court of Appeal held that: -

"... it is our view that an order or decision is final only when it finally disposes of the rights of the parties. That means that the order or decision must be such that it could not bring back the matter to the same court".

In the application at hand, the order of the Mediator just struck out the dispute between the parties and did not finalize the dispute. The order

was an interlocutory not subject to Revision in terms of Rule 50 of the Labour Court Rules, GN. No. 106 of 2007.

That said and done, I hereby uphold the preliminary objection and dismiss the application.

Dated at Dar es Salaam this 17th June 2022.



B. E. K. Mganga
JUDGE

Ruling delivered on this 17th June 2022 in the presence of Elipidius Philemon, Advocate for the applicant and Elisaria Mosha, Advocate for the respondents.



B. E. K. Mganga
JUDGE

