

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

**LABOUR REVISION NO. 342 OF 2021**

**BETWEEN**

**TANZANIA ZAMBIA RAILWAY AUTHORITY(TAZARA) ..... APPLICANT**

**AND**

**MICHAEL MWANUKA AND 45 OTHERS ..... RESPONDENTS**

**RULING**

**S.M. MAGHIMBI, J:**

At the Commission for Mediation and Arbitration for Temeke (“CMA”) the respondents herein were granted condonation of time so that their intended Labour Dispute No. CMA /DSM/TMK/08/2021 (“the dispute”) could proceed on merits. The applicants are aggrieved by the ruling of the CMA and have lodged the current application moving the court to call for and examine the records of the proceedings and ruling of the CMA dated 10<sup>th</sup> August, 2021 for purpose of satisfying itself as to the correctness, legality and propriety of the said decision and revise the same accordingly. On the 02<sup>nd</sup> day of March, 2022 when the matter came for mention, the parties were directed to address the court on the competence of this application in particular, whether the order of the CMA can be challenged by way of Revision and whether it has the effect of finally determining the

controversy between the parties. They were to submit by written submissions. The applicant's written submissions were drawn and filed by Ms. Hosana Mgeni, learned State Attorney while the respondent's submissions in reply were drawn and filed by Mr. Alpha Mchaki, learned Counsel.

To my surprise, instead of making submissions on the competence of the application, Ms. Mgeni completely ignored the court order and instead, at her own pleasure she went on to submit on the merits of the application for revision. I shall therefore proceed to determine the merits or otherwise of the application by considering the submissions made by the Mr. Mchaki.

In his submission, Mr. Mchaki admitted that the Application before this Court is not proper and is unprocedural in as much as the decision of the CMA did not put this matter to finality. That under the Law, which he did not identify, no revision, appeal or review lie on interlocutory orders of the Court. He submitted further that the decision of the CMA on extension of time is an interlocutory order, and therefore filing a Revision on such order became premature in as much as the decision of the CMA did not determine the matter to finality regarding the claims of the employees of TAZARA.

He then pointed out that Rule 50 of the Labour Court Rules 2007 G. N. No. 106 ("the Rules") states inter alia as hereunder:

*"No appeal, Review or Revision shall lie on interlocutory or incidental decisions or order unless such decision has the effect of final determining the dispute".*

He argued that the Revision filed by his learned brothers is premature as the decision of the Temeke CMA did not put the matter to an end. He supported his submissions by citing the decision of this court in Labor Revision No. 514 of 2019 between **The Board Of Trustees Of National Social Security Funds (Nssf) Vs Pauline Matunda** before Aboud. J. when she cited a case of **The Board Of Trustees Of Nssf Vs Yacoub Kidula, Revision No. 104 of 2019** where it was held as hereunder: -

*"a decision or order of preliminary or interlocutory nature is not appealed unless it has effect of final determination of the suit"*

He then submitted that interlocutory order is also defined under, Legal Dictionary by S. L. SWAN and U.N NARANG, 25<sup>th</sup> Edition 2015 as quoted in High Court Case in Labor. Revision No. 514 of 2019 between **The Board Of Trustees Of National Social Security Funds (NSSF) Vs Pauline Matunda** where at page 5 it was held to mean:-

*"Order determining an intermediate issue made in cause of pending litigation which does not dispose of the case but abides further action for resolving the entire controversy. They are step taken towards the final adjudication for assisting the parties at the prosecution of their case in the pending proceedings"*

I need not be detained much by this issue. As per the cited Rule 50 of the Rules, no Revision shall lie on interlocutory order unless such decision has the effect of finally determining the dispute. Looking at what was lodged at the CMA, in his CMA Form No. 1 the respondents lodged a dispute claiming for payment of arrears of terminal benefits including severance pay and NIC balance. It is in due course of filing the form, that at clause 7 the respondent declared that they need condonation of time. Therefore condonation of time was not the actual dispute that was before the CMA rather it was an application that would give the CMA jurisdiction to determine the dispute. The actual determination of the dispute would have come after the CMA extended time. And that is why in its ruling, after granting the order condoning time, the CMA ordered the dispute to come for mediation on 28<sup>th</sup> day of August, 2021. This means the dispute for determination had not been determined, rather the CMA condoned time so that it can have jurisdiction to proceed with the dispute.

I join hands with the cited decision of this court in the case of **The Board of Trustees of National Social Security Funds (NSSF) Vs Pauline Matunda** where at page 5 it was held to mean:-

*"Order determining an intermediate issue made in cause of pending litigation which does not dispose of the case but abides further action for resolving the entire controversy. They are step taken towards the final adjudication for assisting the parties at the prosecution of their case in the pending proceedings"*

As for this case, the order of the CMA determining an intermediate issue made in cause of pending litigation did not dispose of the case or determine the rights of the parties to finality; it was an obvious interlocutory order which marked the commencement of the determination of the dispute. Owing to that, the application beforehand is a pure abuse of court process. Consequently, it is hereby struck out.

Dated at Dar es Salaam this 27<sup>th</sup> day of April, 2022.

  
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**S.M. MAGHIMBI**  
**JUDGE**