

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

LABOUR REVISION NO. 147 OF 2021

BETWEEN

KHADIJA LUMBI.....APPLICANT

VERSUS

TANZANIA REVENUE AUTHORITY.....RESPONDENT

(From the decision of the Commission for Mediation and Arbitration of DSM at Kinondoni) (Mwidunda: Arbitrator) dated 04th December 2018 in Labour Dispute No. CMA/DSM/KIN/R.151/17

JUDGEMENT

K. T. R. MTEULE, J.

27th July 2022 & 02nd August 2022

Aggrieved by the award of the Commission for Mediation and Arbitration [herein after to be referred to as CMA] in **Labour Dispute No. CMA/DSM/KIN/R.151/17, Dar es Salaam Kinondoni**, the applicant has filed this application under Sections 91 (1) (a) (b), (2) (a) (b) (c), (4) (a) (b) and 94 (1) (b) (i) of the Employment and Labour Relations Act No. 6 [CAP 366 RE 2019] as amended from time to time [herein to be referred to as ELRA]; Rules 24 (1), (2) (a) (b) (c) (d) (e) (f), (3) (a) (b) (c) (d) and 28 (1) (c) (d) and (2) of the Labour Court Rules, GN. No. 106 of 2017 praying for this Court to call for and revise the ruling and order of the CMA (Hon. E. Mwidunda, Arbitrator) issued on 04th December 2018. The

applicant is further praying for the costs of this application and any other and further relief the Court deems fit and just to grant.

At this juncture this Court finds it worth, to give a brief sequence of facts leading to this application as grasped from CMA record, the Applicant's affidavit and the Respondent's counter affidavit.

The Applicant was employed by the respondent as a Security Inspector until 19th December 2007 when she was terminated for the reason of misconduct being alleged of insubordination and negligence. Being aggrieved with the termination, the Applicant referred the matter to the CMA vide Labour Dispute No. CMA/DSM/KIN-ILA/106/09, where the respondent was ordered to reinstate the applicant and pay all of her salaries for the period she was out of work without any loss of remuneration. On such award it is on record that the respondent opted to compensate the Applicant instead of reinstatement. The Respondent claimed to have paid the applicant through a cheque which expired before it was deposited. In a bid to compel the Respondent to reinstate her, the applicant pursued several applications for execution where a debate emerged as to whether the applicant was paid in lieu of reinstatement or not. This dilemma being in place, the Applicant decided to seek

clarification in the CMA. The applicant filed the impugned application vide Labour Dispute No. CMA/DSM/KIN/R.151/17 seeking for interpretation of the CMA award. The CMA, having found a dilemma with regards to the stale cheque, did adjourn the matter pending sorting out of the issue. This adjournment decision aggrieved the applicant who filed this application seeking for the revision of the decision of the Arbitrator.

Along with the Chamber summons, an affidavit of the applicant was filed, in which after expounding the chronological events leading to this application, the applicant alleged that; the arbitrator erred in law by not interpreting the award as per the law requirement upon the parties having consented to the interpretation.

The affidavit of the applicant was challenged by the counter affidavit sworn by Ms. Jacqueline Chunga respondent's Counsel. According to the Applicant, there was no need to have the sought interpretation from the CMA because the awards was clear and unambiguous.

In this application parties enjoyed legal services. The applicant was represented by Mr. Godfrey Ukwong'a, Advocate, whereas the Respondent was represented by Ms. Jacqueline Chunga, Advocate. The Court ordered for the hearing of the matter to proceed by way of

written submissions following the parties' prayer on 26th May 2022. I thank both parties for complying with the Court's schedule.

Arguing in support of the application Mr. Ukwong'a submitted that the arbitrator erred in law by adjourning the application for interpretation on the reason that the issue of cheque was not settled, while parties consented for interpretation as they filed necessary documents for the intended application. He stated that for the execution to be effective the award must be interpreted and not otherwise.

Mr. Ukwong'a submitted that since the applicant was ordered to be reinstated as per CMA award, and the order had never been challenged by way of appeal to date, he is of the view that the applicant is entitled to all terminal benefits without loss. Bolstering his position, he cited the case of **Tanzania Harbours Authority v. Wenderine Ludeger**, Civil Appeal No. 8 of 1986, High Court of Tanzania, at Dar es Salaam, (unreported). Thus, they prayed for the application to be revised.

Opposing the application Ms. Chunga submitted that the Respondent is allowed by the law to pay remuneration instead of reinstatement. He stated that the said remuneration was paid by cheque but from the beginning the applicant decided to file several applications

instead of collecting her cheque for payment. He stated that the applicant neither bothered to collect back the alleged expired cheque nor to collect another one for her payment to be made, thus why till today the respondent failed to honour payment.

It was further submitted that the arbitrator was right in his ruling as there was uncertainty on the amount to be paid. Therefore, the interpretation of the award should wait the clarification of cheque.

In rejoinder the applicant reiterated his submission in chief but insisted that since the applicant has not been paid to date, therefore she is entitled to be paid her compensation in accordance with Section 40 (3) of ELRA. They thus prayed for the application to be allowed.

Guided by the submissions made by the parties, affidavits and CMA record, this Court finds that the major issue for determination is **whether the applicant have assigned sufficient ground for this Court to revise the CMA award.**

In resolving the above issues, the grounds pin point in the affidavit will be considered in sequence. Commencing with the first issue as to whether the arbitrator was legally wrong to have ruled the way he

did instead of interpreting the award as per law required upon the parties having consented to the interpretation.

In the CMA, the arbitrator ruled out that the interpretation of the award is adjourned pending determination, as to whether the Cheque was honored or not. Contesting for the disputed issue the applicant contend that the arbitrator was not right by not interpreting the award on the reason that there was misunderstanding on the issue of cheque.

On other hand the respondent maintained that the arbitrator was right by not interpreting the award on the reason that there was misunderstanding on the issue of cheque.

It is not disputed that the application in the CMA was not finally determined but only adjourned with a specific instruction for the parties to sort out the issue of cheque. This means, the impugned application in the CMA is still pending. The question which comes is whether it was proper for the applicant to lodge this revision application for a matter which is still pending with a last order of adjournment. Rule 50 of the Labour Court Rules, GN. No. 106 of 2007 which prohibits appeal or revision over an order which did not finally determine the matter. An order of adjournment was not a final in the

impugned application. Although this was not raised in the parties' submissions, I feel obliged to raise it suo moto. Rule 50 of the Labour Court Rules, GN. No. 106 of 2007 provides:-

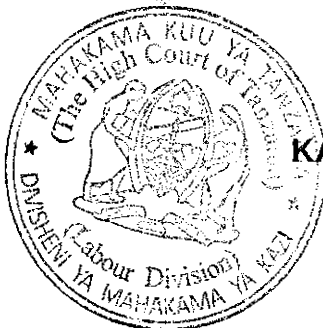
"No appeal, review or revision shall lie on interlocutory or incidental decisions or orders, unless such decision has the effect of finally determining the dispute".

Revisions in High Court Labour Division are equivalent to appeal. The above prohibition must apply in this matter because, the order which is being challenged did not set the application into finality.

On such defectiveness I hereby dismiss the application for being prematurely filed. The matter is remitted back to the CMA to proceed with the determination of the application on merit. Each party in this application to take care of its own cost.

It is so ordered.

Dated at Dar es Salaam this 02nd day of August, 2022.



KATARINA REVOCATI MTEULE

JUDGE

02/08/2022