

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

REVISION APPLICATION NO. 401 OF 2021

BETWEEN

*(Arising from the decision Commission for Mediation & Arbitration of DSM at
Ilala)*

Dated 7th December 2020 in Labour Dispute No. CMA/DSM/MISC/49/21

THEREZIA MOSHI.....APPLICANT

VERSUS

CORNELIUS SECONDARY SCHOOL.....RESPONDENT

RULING

31st August 2022 – 09th September 2022

K. T. R. MTEULE, J.

This ruling is in respect of Preliminary objection raised in this Revision Application No. 401 of 2021. The application is challenging the CMA award in Labour Dispute No. CMA/DSM/ILA/140/20/122/20 by a way of revision. In response, the Respondent raised two points of preliminary objections which are: -

- i) That the present application is illegally incompetent for having emanated from interlocutory CMA decision.
- ii) That the application is legally incompetent for failure to file a mandatory notice of intention to seek revision contrary to

regulation 34 (1) of the Employment and Labour Relations (General) Regulations G.N No. 47 of 2017.

The historical background of this application is extracted from CMA record, affidavit and counter affidavit filed by the parties as stated hereunder. The applicant was employed by the Respondent. A dispute arose where the applicant claimed to have been unfairly terminated. She referred the matter to CMA challenging the respondent's decision. Mediation having failed, reference was made to the arbitration process. On 17th July 2020 while the matter was at arbitration stage in presence of both parties, the arbitrator issued an order of filing opening statement, but it was not honored. On 20th August 2020 the time was extended for the parties to file their opening statements and the date for hearing was fixed.

On 28th September 2020 when the matter was called for hearing the applicant opted not appear hence the order of ex - parte hearing was issued, which resulted into ex-parte award in applicant's favor to the tune TZS 8,115,384/= . Being dissatisfied with ex-parte award, the application for setting aside was instituted by the respondent, out of which, the ex-parte award was set aside. Being resentful with the order of setting aside the ex-parte award the applicant filed the

present application which is contested by the notice of preliminary objection.

The hearing of the preliminary objections was done by a way of written submissions. The respondent was represented by **Mr. Issa Mrindoko**, Advocate from Associated Attorneys Advocate while the applicant was represented by **Mr. Sigano M. Antony**, from Arrow & Co. Advocates.

Stating with the 1st point of objection, Mr. Issa Mrindoko submitted that the CMA having set aside its ex parte award ordinarily meant that the status of the case was restored to its earlier position before the ex parte order, and it was for the parties to be heard inter party. He stated that the ruling of the CMA was not final as it did not finally dispose the rights of the parties hence interlocutory. Bolstering his position he cited the case of **Tanzania Posts Corporation v. Jeremiah Mwandu**, Civil Appeal No. 474 of 2020, Court of Appeal of Tanzania, at Kigoma, (unreported) and the case of **Celestine Samora Manase & Twelve Others v. Tanzania Social Action Fund & Another**, Civil Appeal No. 318 of 2019, at Dar es salaam, (unreported).

On second limb of preliminary objection Mr. Issa Mrindoko submitted that the application is incompetent for failure to file CMA Form No.10

which is a notice of intention to seek revision in accordance with **regulation 34 (1) of the Employment and Labour Relations (General) Regulations G.N No. 47 of 2017**. He stated that filing of the said notice is mandatory, thus failure to file the same renders the application incompetent. According to him, the word 'shall' is used in the relevant provision to show that the same is couched in mandatory terms in accordance with **Section 53 of the Interpretation of Laws Act, Cap 1 R.E 2019**. Supporting his argument regarding notice he cited the case of **Arafat Benjamin Mbilikilla v. NMB Bank PLC, Revision No. 438 of 2020, High Court of Tanzania, at Dar es salaam**, (unreported). Thus they prayed for the application to be struck out.

In response, Mr. Sigano M. Antoni submitted that the notice of preliminary objection has offended the requirement of the law because it lacked necessary particulars to enable the Court and the applicant to grasp its nature and scope as the same elaborated by the Court of Appeal in the case of Tanzania in the case of **James Burchard Bugemalira v. The Republic and Mr. Harbinder Singh Sethi**, Criminal Application 59 of 201, Court of Appeal of Tanzania, at Dar es salaam, (unreported). He stated that the first preliminary objection deserves to be dismissed because it goes

contrary to **Rule 28 (1) (c) and (e) of the Labour Court Rules, G.N No. 106 of 2007** which mandates this Court to exercise its revisional power in matters where no appeal lies or has been taken thereto. He further added that the Samora's Case cited by the applicant is distinguishable because it was an appeal which was preferred by the appellant thereto and not revision as preferred by the applicant in the case at hand.

Regarding the second limb Mr. Sigano M. Antoni submitted that since CMA Form No. 10 has to be filed at CMA and not at this Court, the same needs evidence, and on such requirement it cannot be termed as a pure point of law as was held in the case of **Jackline Hamson Ghikas v. Millatie Richie Assey**, Civil Application No.656 of 2021, Court of Appeal of Tanzania, at Dar es salaam, (unreported). It was further submitted that since it is a trite law that each case has to be decided on its merits and also being persuasive as the same was decided by this Court, he is of the view that **ARAFAT's Case (supra)** and **RASHID's case (supra)** has to be disregarded. He thus prayed for preliminary objections raised by the respondent to be dismissed with cost.

Mr. Mrindoko filed a rejoinder. Its contents will be duly considered when preparing the ruling.

Having gone through the rival submissions by the parties, Court's records as well as the relevant labour laws, it is my considered view that this Court is called upon to determine **as to whether the Preliminary objection raised by the respondent has merit.**

Before embarking to the substance of the objection, I will start with the point of law raised by the Respondent to condemn the preliminary objection to dismissal for lacking necessary particulars important to the adverse party to make preparations. This argument is contested in the Respondent's rejoinder where Mr. Mrindoko contended that the particulars of the Preliminary objection are clearly understood to allow the adverse party to make preparations.

For clarity, I find it appropriate to reproduce the contents of the first limb of the preliminary objection which states "***that the present application is legally incompetent for having emanated from interlocutory CMA decision***". In my view, this statement is concise and clear. I have read the case cited by the applicant concerning the particulars of preliminary objection. The Justices of Appeal were interpreting the **Rule 107** of the Court of Appeal Rules, as amended by GN No. 362 of 2017.

The Court of Appeal Rules are not applicable in this court. I find the case with distinction from the one at hand. In my view, when a

preliminary objection clearly communicates the particulars of objection to the extent of being understood by the adverse party, it can sufficiently move the court. I therefore find the Applicant's objection on this point to be unfounded.

Now back to the merit of the preliminary objection, starting with the first point of preliminary objection regarding revisability of interlocutory order, I feel obliged to seek guidance from **Rule 50 of the Labour Court Rules, G.N No. 106 of 2007**. The rule provides: -

"50; 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."

From the above provision this Court has been pre-cautioned that anyone who wishes his or her right of appeal or revision to be determined, such challenged decision or ruling must be final, which means, it must have finally disposed of the rights of the parties. In this revision application the applicant is asking for this Court to revise the ruling of the CMA in a **Labour Dispute No. CMA/DSM/ILA/MISC/49/21**, which set aside its ex-parte award in reference **No. CMA/DSM/ILA/140/20/122/20** by allowing parties to be heard interparty.

Since the impugned ruling allowed the matter to be heard inter parties, it means parties' rights are still undetermined with a door wide open for them to be heard inter parties. In my view this is an interlocutory order which **under Rule 50, of the Labour Court Rules, G.N No. 106 of 2007 Rule 50** revisions therefrom are prohibited.

I concur with respondent's Counsel on the principle in **Celestine Samora Manase & Twelve Others v. Tanzania Social Action Fund & Another, supra** where the court held; -

"all said, we are satisfied that the impugned decision granting the application to set aside the ex-parte judgement is not appealable. This appeal against the aforesaid decision is, therefore, incompetent and we, accordingly, strike it out".

The above authority which binds this Court, squarely fits in the circumstances of this revision application as they are of the same nature. Therefore, this shortfall has been well addressed by the Court of Appeal and I am bound to follow.

Basing on the above legal reasoning I find that the first point of preliminary objection has merit and it is sufficient to disposes of the matter as it can answer the framed issue affirmatively. As a result, I see no need to labour on the seconds point of objection.

For the above reason, I hereby strike out this application and remit the record back to CMA for the parties to proceed with hearing inter parties.

It is so ordered.

Dated at Dar es Salaam this 09th day of September 2022.



KATARINA REVOCATI MTEULE

JUDGE

09/09/2022