

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

**REVISION NO. 190 OF 2022**

**BETWEEN**

**NATIONAL BANK OF COMMERCE..... APPLICANT**

**VERSUS**

**CEDRICK RUTALALA ..... RESPONDENT**

**JUDGMENT**

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

The application is made under the provisions of Rules 24(1), 24(2)(a)-(f) and Rule 28(1)(d)&(e) and 55(1)&(2) of the Labour Court Rules, G.N No. 106 of 2007 ("the Rules"). The Applicant is moving the court for an order in the following terms:-

1. The Court may be pleased to call for, examine and revise and set aside the ruling and order of the Commission for Mediation and Arbitration in Labor Dispute No. CMA/DSM/ILA/452/21 by Hon. Massawe Y. Arbitrator, dated 06<sup>th</sup> June, 2022.
2. That this Honorable Court be pleased to make any other or further orders as it may just and convenient in the circumstances of the case

The application is supported by an affidavit of Ms.Gladness Mugisha, the applicant's Principal Officer dated 17/06/2022. The respondent opposed the application by filing a notice of opposition and a counter affidavit of Elibahati Thomas Akyoo, the respondent's advocate, dated 06<sup>th</sup> July, 2022.

The background which leads to the current application is brief. There was lodged a Labor Dispute No. CMA/DSM/ILA/452/21 ("the Dispute") at the Commission for Mediation and Arbitration for Ilala ("CMA") whereby the respondent herein was the complainant, complaining of unfair termination by the applicant. In due course of arbitration, the respondent lodged a notice to produce under Rule 29(1) (c) of the Labor Institutions (Mediation and Arbitration) Rules, G.N. No. 64/2007. The applicant did not produce the document and instead, she argued that the requested documents had no connectivity with the matter at hand. They also argued that the documents were confidential and could not be disclosed to the CMA. Having heard the parties' submissions for and against the notice, on the 06<sup>th</sup> day of June 2022, the CMA ordered the applicant to produce the requested documents pursuant to Rule 19(2)(b) of the Labor Institutions (Mediation and Arbitration Guidelines), G.N. No. 67/2007. The applicant

was aggrieved by the order of the CMA and lodged this revision whereby she raised the following legal issues:

1. Whether the trial arbitrator erroneously entertained and considered a document which was brought under a wrong provision.
2. Whether the trial arbitrator erroneously held that the documents be produced while the notice to produce contained a list of documents which were not part of the List of Documents filed by the respondent.
3. Whether the trial arbitrator while giving the order, erroneously relied on wrong provision of law.
4. Whether the applicant was bound to produce additional documents for the respondents.

The applicant prayed that this court revise and set aside the entire ruling. On the 15<sup>th</sup> day of July, 2022 when this matter came for mention, I directed the applicant to address the court on the propriety of his application with regard to finality of the order that revision is sought for pursuant to the provisions of Rule 50 of the Labor Court Rules, G.N. No. 106/2007 ("the Rules"). The parties addressed the court through written submissions. The applicant's submissions were drawn and filed by Mr.

Dickson Tugara, learned advocate while the respondent's submissions were drawn and filed by Mr. Elibahati Akyoo, learned Advocate.

In his submissions on the propriety of the application, Mr. Tugara was of the view that the ruling of the CMA, despite having interlocutory orders, it also contains permanent orders which if effected, will impact the trial proceedings and the outcome of the final decision leading to injustice. His argument is that Section 39 of the Employment and Labor Relations Act, Cap. 366 R.E 2019 ("ELRA") imposes the burden to prove that the termination was fair on the employer (applicant herein), thus, the order of the CMA stands to interfere the burden of proof as it finally determines the documents to be used to prove the matter.

He submitted further that the main purpose of interlocutory orders is to prevent irreparable harm from occurring to a person during a pendency of a suit or proceedings. Further that they also aim to maintain status quo till rights are determined. He supported his submissions by citing the case of **Simon Kilesi Samwel Vs. Mairo Marwa Wansago (T/A Mairo filling Station), Civil Application No. 45/2021**, High Court Musoma Registry (unreported). He then argued that in the current case, there is no harm that could be caused if that order would not have been pronounced,

rather it is the order which brings irregularity to the proceedings. He concluded that because the arbitrator was functus officio after pronouncing the order, it is this court that is the proper forum to revise and set aside the ruling and subsequent order.

In his rejoinder submissions, Mr. Tugara brought to the attention of this court that the reply submissions filed by Mr. Akyoo were filed out of time. Looking at the records, indeed I ordered that the respondent file his reply submissions by 29/07/2022 and Mr. Akyoo filed his reply submissions on the 02<sup>nd</sup> August, 2022 without leave of the court. The submissions are therefore struck off from the records. I will proceed to determine the application only on the submissions in chief of Mr. Tugara.

The applicant was to address the court on the propriety of his application pursuant to Rule 50 of the Rules. The Rule prohibits any appeal, review or revision on interlocutory or incidental decisions or orders, unless such decision has the effect of finally determining the dispute. Mr. Tugara argued that pursuant to Section 39 of the ELRA, the burden to prove that the termination was fair is on the employer (applicant herein) hence the order of the CMA stands to interfere the burden of proof as it finally determines the documents to be used to prove the matter.

At this point, it is important to define the meaning of an interlocutory order as opposed to the order with an effect of finally determining the dispute. Thereafter I will relate this to the dispute that was pending at the CMA and the order issued by the CMA which is a subject of this Revision. Starting with an interlocutory order, the definition was clearly made by the Court of Appeal in the case of **Seif Sharif Hamad v. S.M.Z (1992) TLR 43** where the court held that it was an order which decide not the cause, but settle some intervening matter relating to it. The Court of Appeal further elaborated an interlocutory order in the case of **Vodacom Tanzania Public Limited Company vs. Planetel Communications Limited, Civil Appeal No. 43 of 2018** (unreported) where the Court adopted the test in the case of **Bozson vs. Artincham Urban District Council (1903) 1 KB 547** wherein Lord Alverston stated as follows:

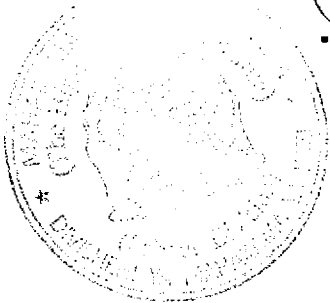
*"It seems to me that the real test for determining this question ought to be this: Does the judgment or order; as made, finally dispose of the rights of the parties? If it does, then I think it ought to be treated as final order; but if it does not, it is then, in my opinion, an interlocutory order."*

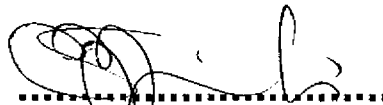
As per the records, the respondent herein had lodged a notice to produce some documents by the applicant under Rule 29(1) (c) of the Labor Institutions (Mediation and Arbitration) Rules, G.N. No. 64/2007 and upon hearing parties, the CMA issued an order for the applicant to produce those documents under Rule 19(2)(b) of the Labor Institutions (Mediation and Arbitration Guidelines), G.N. No. 67/2007. Starting with an order finally determining a matter, as held in the cited case of **Vodacom Tanzania Public Limited Company Vs. Planetel Communications Limited** (Supra), if an order finally dispose of the rights of the parties then it ought to be treated as a final order. Few examples of an order which finally determines the rights of parties would be when the application for condonation is dismissed whereby the applicant's right to bring an action would be determined, the final determination of matters of controversy on merits, dismissal for lack of jurisdiction, just to name a few.

On the other hand, an interlocutory order is any order made in due course towards the determination of the real controversy between the parties in order to assist the parties in prosecuting their case in the pending arbitration proceedings. It does not finally determine the rights of parties. It may be an order to maintain status quo until final determination

In conclusion, the order that this revision is sought for is an interlocutory one hence filed contrary to the provisions of Rule 50 of the Rules. That being the case, the records are remitted back to the CMA to proceed with the arbitration accordingly. As for this application, it is hereby dismissed.

Dated at Dar-es-Salaam this 15<sup>th</sup> day of August, 2022



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