

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

LABOUR REVISION NO. 263 OF 2021

*Arising from the decision of the Commission for Mediation and Arbitration of DSM at Temeke (**Hon. Makidadi: Arbitrator**) dated 24th day of May 2021 in Labour Dispute No. CMA/DSM/TEM/704/2018*

DAVID MSUMBAAPPLICANT

VERSUS

TANESCORESPONDENT

RULING

K. T. R. MTEULE, J

12th September 2022 & 23rd September 2022

This Revision application emanates from the ruling of the Commission for Mediation and Arbitration of Dar es Salaam, Temeke (CMA) in Labour Dispute **No. CMA/DSM/TEM/704/2018**. This court has been asked to call for records, revise and set aside the ruling of the CMA.

The application is confronted by a Preliminary Objection raised by the Respondent to challenge the jurisdiction of the CMA and that of this court. The preliminary objection is premised on the fact that this matter being filed against TANESCO which is a public corporation, the applicant is a public servant and he has to exhaust the remedies provided under **Section 32 A of the Public Service Act**, prior to lodging any matters vide the labour laws.

The applicant did not object the gist of the preliminary objection. Although the applicant concedes to the preliminary objection, he prayed for the court not to dismiss the application but to strike it out to allow future determination through the appropriate forum.

Having considered the applicant's submission and prayer I have a question to determine as to whether this application needs to be struck out or dismissed.

Although it is agreed by the parties that this court and the CMA lacks jurisdiction, the matter is not conclusive. The lack of jurisdiction is due to the lodgement of the matter in a wrong forum. In law, dismissal renders a matter to have effect of being finally concluded. In this matter, the applicants have more options to continue with pursuing his rights. I agree dismissal will bar more claims in respect of this matter.

I agree with the applicant that striking out is the appropriate measure for parties who still have chance in law to proceed with the claims. The instant application is therefore struck out and the matter in the CMA is quashed and set aside for being filed in wrong forums.

Each party shall bear its own cost. It is so ordered.

Date at Dar es Salaam this 23rd Day of September 2022.



KATARINA REVOCATI MTEULE

JUDGE

23/09/2022

