IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

LABOUR REVISION NO. 366 OF 2021

(From the decision of the Commission for Mediation and Arbitration of DSM at Ilala)
(Hon Mbeyale: Arbitrator) dated 20th August 2021 in
Labour Dispute No. CMA/DSM/939/19/20)

SALLY MMBANDO .....APPLICANT

VERSUS

TECHNO BRAIN (T) LIMITED.....RESPONDENT

JUDGMENT

K. T. R. Mteule, J

24th August, 2022 & 14th September, 2022

In this Application for Revision, the applicant is praying for this court to call for the record of Labour Dispute No CMA/DSM/939/19/20 from the Commission for Mediation and Arbitration of DSM at Ilala (CMA) dated 20th August 2021, revise and set aside the whole award therefrom.

Vide CMA form No. 1, the applicant lodged the above-named labour dispute in the CMA, claiming to have been unfairly terminated from employment and seeking for payment of notice, compensation of 24 months salaries, shake hands and certificate of service. The labour dispute was dismissed for want of prosecution due to nonappearance of the applicant.

Following that dismissal, the applicant made an application for restoration on reason that he was verbally informed by the arbitrator that a summons will be issued to inform on the specific date of hearing due to BRN program. He stated that he never received such summons until when he made follow up only to be told that the matter was dismissed for his nonappearance. Upon hearing of the application for restoration in the CMA, the arbitrator found that the applicant did not have sufficient reasons for nonappearance and disallowed the application for restoration. This aggrieved the applicant who preferred this revision.

In his affidavit to support this application, the applicant maintained that despite of being not served with the summons of hearing under BRN program, the matter proceeded where two days adjournment was made without their notification. The affidavit raised four legal issues as follows:-

1. That, Arbitrator error in law and fact By holding that the application for restoration of the dismissed application had no merit without taking into account that the applicant was never served with the summons to appear to the BRN session as scheduled.

2. That, Hon Arbitrator error in law and fact by acting with prejudice in the entire process of determining the dispute in question.
3. That the Award made by the Arbitrator contains errors material to the merits of the dispute occasioning injustice to the Applicant
4. THAT, Arbitrator error in law and fact deciding the dispute in favour of the respondent while there was insufficient evidence or not at all

This application was heard by written submission where the applicant was represented by Lucco Stephen from Creston Attorneys while the Respondent was represented by Symphorian Kitare from Kitare and Compony Advocates.

In the submissions, Lucco Stephen spent most of his effort to explain the importance of right to be heard. He is of the view that lack of service to the applicant when the matter was scheduled for BRN amounts to denial of such rights. Several authorities have been cited by Mr. Lucco to support this contention.

Mr. Luccos attributed any negligence with the applicant's counsel who did not make sufficient follow-up when the matter was called for two times in the absence of the applicant.

On his part, Mr. Kitare disputed any denial of right to be heard to the applicant. He maintained that the applicant could not adduce sufficient grounds for the court to set aside its dismissal order.

Having heard the parties, I note that the three issues raised in the applicant's affidavit, all revolve around one issue as to whether there were sufficient grounds which could justify nonappearance of the applicant to convince the CMA to order the restoration of the matter.

On oath, the applicant is claiming to have been informed that a summons will be communicated to him to inform him about the date of hearing for BRN program. He kept on waiting for that summons, but he did not receive it. It is not disputed that there was a special BRN program to clear backlog of cases in the CMA and that the impugned labour dispute was one of the matters fixed for that program. The applicant pleaded that he was informed by the arbitrator that they will receive the summons for the BRN program but the said summons was never served upon him.

Since the fact that the arbitrator promised to send summons to the parties was not formally put on record, this fact needed proof. The applicant's statement is given on oath which constitute evidence in law. It constitute a reliable cause to justify the delay. I have gone through

the record. It was on 19th October when the applicant was found missing in court. The matter was adjourned for two days to 21st October 2021 where the applicant was again missing and on the same date the application was dismissed. It is not in dispute that no notification was issued to the applicant concerning the next hearing date. I have gone back to check the history of the applicant, it appears that there was no previous tendance of missing court record. In a reasonable apprehension, no one would expect the applicant to be present within just two days from the date the matter was adjourned if no notice to communicate the chance offered to him.

This being the case, I have view that, for the sake of substantive justice which needs to be given primacy by having the matter heard interparty, when a special program is planned to accelerate proceedings, sufficient notice is crucial to iron out any confusion. The arbitrator ought to have considered the BRN program being a new aspect in the proceedings to have a possibility of causing confusion and may have caused the pleaded confusion upon the applicant. Taking into account the length of time offered to the applicant to appear between the first date of hearing and the second date which was not accompanied with any notification to the applicant I have view that the purported chance was not effective. I

find it reasonable to have the labour dispute restored for the interest of substantive justice upon the matter being heard interparties.

From the foregoing, the application is allows. The labour dispute No CMA/DSM/939/19/20 is hereby restored and reverted back to the CMA for continuation of hearing from the dates before the dismissal order was issued.

It is so ordered.

KATARINA REVOCATI MTEULE

JUDGE

14/9/2022