IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

LABOUR REVISION NO. 54 OF 2022

(*From the decision of the Commission for Mediation and Arbitration of DSM at Temeke*) **(Ngalika: Mediator)** dated 09th February 2022 in

Labour Dispute No. CMA/DSM/TEM/194/2021

ASHA AHMAD ISSA (Administrator of the estate of the late AHMAD ISSA MOYO.....APPLICANT

VERSUS

TANZANIA ZAMBIA RAILWAYS AUTHORITY (TAZARA)....1ST RESPONDENT

MWANASHERIA MKUU WA SERIKALI .....2ND RESPONDENT

JUDGMENT

K. T. R. MTEULE, J

26th September 2022 & 7th October 2022

This is a Revision application arises from the award of the Commission for Mediation and Arbitration in Labour Dispute No. CMA/DSM/TEM/194/2021 at Dar es Salaam, Temeke (CMA). The applicant is asking for this Court to call for the CMA record, revise it and set aside the award therefrom.

The applicant is an administratrix of the estate of the late Issa Moyo. It is deponed in the affidavit that the late Ahmad Issa Moyo was employed by the respondent for a period from 1st March 1973 to 30th June 2005 when he retired. It is further deponed that upon retirement there was a defect in calculating retirement benefits on wrong exchange rate from

the United States Dollars (USD) to Tanzania Shillings. That on 8th July 2020 they received a letter from the President's Office with a directive that all the complaints to get redress through Court process.

Before the hearing of the main application, on 28th May 2022 the Court raised a point of law *suo moto* and called upon the parties to address it as to whether the Court is clothed with jurisdiction to entertain the matter since the respondents are public authorities. Ms. Rose Kashamba, State Attorney appeared and argued on behalf of the Respondents while the Applicant was represented by Mr. Thomas Brash, Advocate. The point of law was argued by a way of written submission.

The Court having noted that the matter in the CMA was as well decided on point of law, reserved the ruling on the point of law and ordered parties to argue the main application so that the decision on jurisdiction should be given in the judgment. Parties proceeded to submit on the revision application. In this regard, before I embark on the main revision, I will firstly consider the point raised by the court as to whether it has jurisdiction in a matter where TAZARA in involved being partly owned by the government.

Arguing on the issue of jurisdiction, the applicant contended that, CMA had jurisdiction to entertain the matter, as TAZARA differ with other public offices by being owned by two states, with its unique

management structure, recruitment of the employees and salary schemes. According to Mr. Brash, workers of TAZARA are not public servants as per the decision of Court of Appeal in which the issue of ownership was considered. He added that the dispute arose on 30th June, 2005 prior to the introduction of section 32A of the Public Service Act. In his view, the section does not act retrospectively. He referred to decision of the Court of Appeal in the case of **Johansen Khenani Versus Nkasi District Council, Civil Appeal No. 126 of 2019** at page 12 last paragraph to 13 paragraph 1 quoting the following words: -

> *"In the case at hand, it is apparent that the appellant filed the complaint before the CMA when it was quite in order to do so without exhausting the remedies provided for in the Public Service Act. That was the law then, the requirement to exhaust all remedies under the Public Service Act came later; when the matter the subject to this appeal was already in the MA. Was the enactment meant to apply retrospectively? We have serious doubt, for Parliament did not sate so in clear terms. Was the requirement*

purely procedural? We equally have serious doubts. Having deliberated on the matter at some considerable length, we think to hold that the appellant ought to have withdrawn his matter before the CMA with a view to complying with section of section 32A of the Public Service will be too much an overstatement and will, in our considered view, leave justice crying. The appellant will certainly be prejudiced. We were confronted with an akin predicament in Raymond Costa (supra). In that case we hesitated to hold that a procedural amendment to law applied retrospective because that course of action would occasion injustice on the adversary party."

It is the applicant's view that the above quoted word addressed an issue similar to the instant one and therefore this matter cannot be covered by Section 32 A of the Public Service Act.

On the other side, the respondent maintained that all what is stated by the applicant is merely how the authority has organized itself on the smooth running of the daily operations but does not change the fact

that TAZARA is a public corporation whose shares are fully owned by the government.

Regarding retrospectivity of the amendment to the Public Service Act, the Applicant submitted that what matters is the date when the matter was instituted and not the date when the cause of action arose. He challenged the applicability of the decision of **Johansen cited supra** on the ground that in that case the court was confronted with a matter which was already decided by the CMA.

Having considered the parties' submissions including I find it worth to address the last ground argued by the applicant as to whether the matter is covered by Section 32 A of the Public Service Act which was enacted after the arising of the cause of action.

It is not disputed that as per CMA Form No.1 the dispute arose in 2005. This was before the amendment of **Public Service Act which added Section 32A** which imposed the requirement of exhausting lacal remedies. It is apparent that the Section 32 A came into operation on 18th November 2016.

Since the issue of filing application at CMA or exhausting internal remedies is a matter of procedure, guided by the case of Johansen cited by the applicant's counsel, the provision cannot apply retrospectively.

On this ground, it is my finding on this point of law that this Court have jurisdiction to entertain the matter because the cause of action arose before the enactment of Section 32 A.

Now I come to the actual revision application. In the CMA, the arbitrator refused condonation and the application was dismissed for being time barred. The arbitrator found that the applicant was appointed as an administratrix of the estate of the late Ahmad Issa Moyo since 2013. He found further that the applicant did not explain what exactly prevented her from lodging the labour dispute from the time she was appointed an administratrix.

The reasons adduced by the applicant for delay included the follow-ups they were making administratively until on 8th July 2020 when she received a letter advising them to get redress from the court. According to the applicant, by the time the letter came to her attention, other employees had already lodged their applications which were based on similar reasons as adduced by the applicant. She stated further that, it was only the applicant's condonation prayer failed.

Factors to be considered in deciding on the sufficiency of the reasons to grant condonation have been a subject of discussion in various case laws. The list of the factors has not been exhaustive and they differ from one case to another since each case has its unique circumstances.

In the instant matter, it is not disputed that the applicant was having internal discussions with the Ministry for Works, Transportation and Communication which culminated the matter by advising the applicants to seek court redress. It is further not disputed that the said letter came to the attention of the applicant in 2021. In my view, this constitute explanation to account for what was the applicant doing for the days she delayed lodging the matter in the CMA.

I have read the decision of the same mediator involving parties who had the same claims as the applicants. They were granted condonation based on the same ground adduced by the instant applicant. The doctrine of stare decisis means **"to stand by things decided"**. It means *"when a court faces a legal argument, if a previous court has ruled on the same or a closely related issue, then the court will make their decision in alignment with the previous court's decision"*. (**See Law Cornell School, Legal Information Institute** (https://www.law.cornell.edu/wex/stare_decisis) **- (accessed on 7 October 2022**). The arbitrator issued two decisions based on the same facts, history and genesis but issued distinct decisions, one allowing the condonation while the other denying it and no reasons assigned for the distinction.

From the foregoing, I am of the view that there is sufficient grounds to justify condonation and that the mediator was wrong in not granting the said condonation. As such I set aside the mediator's order and grant the condonation to the applicant in Labour Dispute No. CMA/TEM/194/2021. The record to be remitted back to CMA for the matter to proceed on merit.

It is so ordered.

Dated at Dar es Salaam this 7th Day October 2022.

KATARINA REVOCATI MTEULE

JUDGE

07/10/2022