

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

LABOUR REVISION NO. 346 OF 2022

*(Arising for the Commission for Mediation and Arbitration of Morogoro in Labour
Dispute No. CMA/MOR/65/2021, dated 25)*

SALEHE HASSAN MJINJAAPPLICANT

VERSUS

KIZUKA TPDF HIGH SCHOOLRESPONDENT

JUDGMENT

K.T.R, Mteule, J

23 February 2023 & 1ST March 2023

The Applicant lodged a Labour Dispute in the Commission for Mediation and Arbitration of Morogoro which was registered as **Labour Dispute No. CMA/MOR/65/2021**. On 8 April 2022 when the matter was called for hearing of the arbitration, the applicant asked for the CMA to conduct the hearing in English language. The request was disputed by the respondent who reminded the arbitrator about her previous order which decided that the matter will be heard in Kiswahili.

The arbitrator noted the provision of Section 5 of the Law of Interpretation Act cited by the applicant which allows both Kiswahili and English to be the languages of the Court but came with a better provision **Rule 35 (1) and (2) of the Labour Institution**

(Mediation and Arbitration) Rules GN 64 of 2007 which is applicable in the CMA. This Rule allows English and Kiswahili to be the language of the CMA. The arbitrator applied the Interpretation of Laws, (Use of English Language in Court) Rules which requires a party who wants to use English Language to file pleadings in English and maintained the previous decision that the matter should proceed in Kiswahili. The arbitrator fixed the matter to come on 22/4/2022 and allowed whoever is aggrieved to challenge the decision in the High Court.

From 22/4/2022, the matter proceeded with other issues until on 8/7/2022 when a debate arose after the Applicant questioned the respondent's giving evidence while he had already had such a chance on 3/6/2022. The arbitrator explained that there was no evidence given on 3/6/2022 but the arbitrator taking stock of witnesses and none of the parties gave evidence. The debate continued with some exchange of words and the arbitrator decided to stay the proceedings in the following words:-

*"Kutokana na tabia iliyoonyeshwa na Mlalamikaji
na mtiririko wa vitendo vyenye viashiria vya
kukwamisha Tume kufanya majukumu yake,*

Tume italazimika kutoa amri ya kusitisha dhidi ya mienendo ya shuri hili.

Usikilizwaji unasitishwa na pande husika fikenit tarehe 11/7/2022 kuchukua nakala za hukumu ya Tume kutokana na kilichojiri.

Kayugwa, H

8/7/2022"

From there, nothing seems to have taken place in the proceedings on the scheduled 11 July 2022. Instead, the impugned judgment seems to have been served to the Applicant on 25 August 2022 without any indication in the proceedings as to whether the said judgment was actually delivered. The Judgment indicates that the matter was decided on 25 August 2022.

In the Judgment, the arbitrator having narrated the background of what transpired in the proceedings of 8th July 2022, made the following conclusion:

"Hivyo basi kwa kuwa kitendo kilichofanywa ha malamikaji kimeendelea kudhihirisha kuwa mlalamikaj huyu hana uelewa wa taratibu, kanuni na Sheria za Kazi kwa pamoja na utaratibu wa

endeshwaii wa mashauri mbele ya Tume, na amekuwa aking'ang'ania/kulazimisha Tume ikubaliane na mtazamo wake kawa anaifahamu Sheria jambo ambalo siyo kweli, ambapo hali hiyo ilibainika na kuamuliwa na Tume tarehe 12/4/2022 shauri Na. CMA/MOR/65/2021."

Na kwa kuwa kumbukumbu zinaonesha mlalamikaji ameendeleza ukaidi na kuendelea kuisumbua Tume kwa kutotaka kwa kumtafuta mtetezi au kuzingatia maelekezo anayopewa ama kukatia rufaa uamuzi tajwa, katika ngazi ya Mahakama Kuu, ili aweze kujiridhisha juu ya uhalali wake, Basi kupitia hukumu hii, Tume itaendelea kufungwa mikono kupitia yaliyoamuliwa mnamo tarehe 12/04/2022 (Supra)."

Being aggrieved by the Judgment of the CMA, the applicant lodged this application seeking for revision of the decision of the arbitrator. The application was argued by written submissions. Only the applicant complied with the schedule for filing the submission. The respondent did

not file any submissions. The applicant filed his submissions in chief. They will be considered in determining this application.

The application was heard by a way of written submissions. The applicant challenged the following in the arbitrator's judgment of 25th August 2022;

- 1. Failure to complete the award timely*
- 2. The decision that the trial arbitrator was functus officio*
- 3. Arbitrator's reliance on self-imposed orders, directives and the impugned judgment*
- 4. Failure to give clear directives whether the dispute was dismissed, struck or stayed*

The applicant alleged the following against the arbitrator:-

1. Misconduct on the part of the arbitrator and the respondent's counsel.
2. Defamation
3. Denial of Justice
4. Abuse of judicial process
5. Undue influence.

Having considered the submissions of the Applicant and the entire proceedings of the CMA, I have noted some irregularities which calls for this court interference to mend the situation.

It is apparent that the arbitration was not finalised on merit and the last order was to halt the arbitration proceedings. Strangely, judgment came out of the halted proceedings.

According to Cornell Law School, Legal Information Institute, a court Judgment is defined as a

"... final decision made by a court or tribunal. After the judges consider all the relevant evidence of the legal trial and consider all rights and obligations, the plaintiff and defendant will receive the final ruling. This judgment could end the potential or existing dispute among the dispute parties by listing which side was ruled in favor of, and listing what remedies are to be awarded. According to U.S.C. §636(c)(3), each party could appeal directly to the court of appeal(s) against the existing judgment."

From the above definition, judgment has effect of determining rights of the parties. It is obvious in the record that the impugned judgment did not finalise the matter.

By its nature, contains errors relevant to all the applicant is challenging to wit:- the arbitrator has failed to complete the arbitration and the award as required by the law; that the trial arbitrator was not functus official as he did not finalised the arbitration, the trial arbitrator relied on self-imposed orders, directions and denial of fair hearing; the arbitrator issued a judgment which do not give clear remedy as to how the matter is finalised.

On the allegation of cross misconduct, defamation, denial of justice, abuse of process and undue influence, these are serious allegations which need evidence to be ascertained. These are fact which are not proved.

From the foregoing, I find that the applicant has managed to establish sufficient grounds for this court to interfere with the judgment of the CMA. As such, I revise the CMA proceedings, set aside the Judgment issued therein on 25 August 2022. I further set aside the order of 8 July 2022 which halted the proceedings and order the matter to proceed with hearing interparty from where it was on 8th July 2022. I revert the

record back to CMA to proceed with hearing of the matter before the CMA as directed herein. I hereby allow the application. It is so ordered.



A handwritten signature in blue ink, appearing to be 'Katarina Revocati Mteule'.

KATARINA REVOCATI MTEULE

JUDGE

01/03/2023

Labour Court