

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

REVISION NO. 17 OF 2023

BETWEEN

ATLAS MARK GROUP TZ LTD APPLICANT

VERSUS

KENNEDY OUMA OMOTERESPONDENT

RULING

Date of last Order: *23/03/2023*

Date of Ruling: *23/03/2023*

MLYAMBINA, J.

The application before the Court is for revision of the Award of the Commission for Mediation and Arbitration at Kinondoni in respect of *Labour Dispute No. CMA/DSM/KIN/011/21/102*.

In response, the Respondent raised three preliminary points of objection namely:

1. That, the Applicant's Application is incompetent for failure to file a mandatory notice of intention to seek Revision (CMA F.10) contrary to *Regulation 34(1) of the Employment and Labour Relations (General) Regulation G.N. No. 47 of 2017*.
2. That, the application has been filed by a wrong person who has never been a party to the Commission for Mediation and Arbitration (CMA).

3. That, the Applicant's affidavit is incurably defective for being sworn by the Advocate of the Applicant without authority.

On 23rd March, 2023 at 10:00 am, when the application was called on, learned Counsel Conrad Felix for the Applicant conceded to the 1st and 2nd points of legal objection. He however, beseeched the Court not to grant the relief(s) sought based on the decision of this Court in the case of **Geita Gold Mining Limited v. Lucas Ntobi**, Labour Revision No. 46 of 2022, High Court of Tanzania Mwanza sub registry at Mwanza (unreported). The other reason as regards to the 2nd objection was that of correcting the misnomer of the name. That, before the CMA, the party was "Atlas Mark Group Ltd". But in this Revision, there is an addition of "TZ". The party read: "Atlas Mark Group TZ Ltd".

When further probed by the Court on the Mandatory nature of *Regulation 34(1) (supra)*, Counsel Conrad conceded for the application to be struck out, a fact which was welcomed by Counsel Boniface Erasto for the Respondent.

Upon digesting the prayer advanced by Counsel Conrad, I do agree that the 2nd legal objection falls within misnomer doctrine. It is not a pure point of law. The law amply supports the preposition that where there is a

misnaming of a party, an amendment may be made to correct the misdescription or misnomer -regardless of time limit. This was the position of the Court in the case of **Reverend John Mathias Chambi and 548 Others v. The Registrar General (Registration Insolvency and Trusteeship) & 5 Others**, Misc. Cause No. 21 of 2020, High Court of Tanzania Main Registry (unreported).

I have further gone between lines of the decision in the case of **Geita Gold Mining Ltd.** (*supra*). As observed therein, rules of procedures are made to be complied with. Parties should not be allowed to disregard the law or rules of procedure as that will cause anarchy. Indeed, Labour Institutions, this Court inclusive, is a Court of equity. It is not bound by legal technicalities. The same principle is reflected under *Rule 55(1) &(2) of the Labour Court Rules, G.N. No. 106 of 2007.*

However, unlike in this case, the file from CMA has not been brought to the attention of this Court, as opposed to the facts in the case of **Geita Gold Mining Ltd** (*supra*). As such, allowing the Revision to proceed without the mandatory required notice, would be condoning an illegality blatantly.

In the upshot, I hereby struck out this application for contravening the provision of *Regulation 34(1) of the Employment and Labour Relations (General) Regulation G.N. No. 47 of 2007.*

It is so ordered.



Y.J. MLYAMBINA
JUDGE
23/03/2023

Ruling delivered and dated 23rd day of March, 2023 in the presence of learned Counsel Conrad Felix for the Applicant and learned Counsel Boniphace Erasto Meli for the Respondent.



Y.J. MLYAMBINA
JUDGE
23/03/2023