

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

MISCELLANEOUS LABOUR APPLICATION NO. 84 OF 2023

BETWEEN

IMPALA TERMINALS TANZANIA LTD. APPLICANT

VERSUS

ELIPIDIUS CONCORDIO MKOKERWA RESPONDENT

RULING

Date of last Order: 25/04/2023

Date of Ruling: 25/04/2023

MLYAMBINA, J.

This application test the doctrine of Res subjudice on appeal basis. It is an application to halt the proceedings before the Commission for Mediation and Arbitration (herein CMA) at Dar es Salaam in *dispute No. CMA/DSM/TEM/326/2020*. The application has been brought pursuant to *Section 94(1)(e),(f)(i) of the Employment and Labour Relations Act No. 6 of 2004, Rules 24(1),2(a),(b),(c),(d),(e) and (f), 24(3)(a),(b),(c) and (d) and Rule (11)(a), 55(1), (2) of the Labour Court Rules, G.N. No. 106 of 2007, and Section 95 of the Civil Procedure Code, Cap 33 (Revised Edition 2019).*

It is not in dispute that: One, the Respondent was employed by the Applicant in 2014 until 30th March, 2020 when he was terminated for gross

misconduct (testing positive for alcohol and not adhering to the Respondent Policy and Procedures after testing positive on the breathalyzer. Two, The Respondent was dissatisfied with the Applicant's decision to terminate his contract. On 9th September, 2020 he filed Labour *Dispute No. CMA/DSM/TEM/326/2020* claiming that he was unfairly terminated. Three, the Respondent filed a notice of preliminary objection to the effect that the *Referral number CMA/DSM/TEM/326/2020* is time barred. On 9th November, 2020 the CMA upheld the objection by striking out the referral.

Four, on 19th September, 2020, the Applicant filed with condonation a new referral claiming that he was given leave to do so. Dissatisfied with the Procedure the Applicant on 11th October, 2020. Unsuccessfully filed a Preliminary Objection on point of law to the effect that the CMA had no powers to hear and determine the matter and the referral was misplaced. Five, the Preliminary Objections were orally dismissed by CMA without availing the parties opportunity to be heard and its Ruling and Proceedings were never supplied to the parties to date.

Six, being aggrieved the Applicant is intending to file Revision application against the whole Ruling and Proceedings in *Referral Number CMA/DSM/TEM/326/2020*. However, the time required by the law to file Revision application had lapsed. Therefore, the Applicant sought for the

Court's indulgence to bridge the gap and allow to file revision application out of time.

Seven, the Applicant filed *Misc. Application Number 88/2022* seeking this Court to extend time to file Revision out of time.

However, the Respondent successfully raised preliminary objection and the said application was struck out.

Eight, the Applicant was aggrieved by the said decision. He filed an appeal challenging it. Parties have already exchanged the pleadings and are waiting for summons to appear for hearing at the Court of Appeal.

Nine, the Applicant prayed the matter before CMA be stayed pending determination of *Civil Appeal No. 361 of 2022* at the Court of Appeal. But the CMA kept mentioning the same; and it has set for ex-parte hearing on 27th April, 2023.

On 25th April, 2023 when the application came for hearing, learned Counsel Mary Ganga for the Respondent told the Court that she is aware it is not proper for the CMA to proceed with the matter while there is a pending appeal before the Court of Appeal of Tanzania. She therefore conceded with the application. I subscribe to the submission of Counsel Mary Ganga. It is an elementary Principle of law that once there is an appeal, the lower Court jurisdiction becomes suspended.

The Labour Court Rules and in case of *lacuna*, the *Civil Procedure Code, Cap 33 R.E. 2019* are procedural laws providing the mechanism in which manner the labour matter hearing are to be conducted on the basis of substantive Labour laws. The Primary objective is to ensure that the labour issues determination are fair.

Once the matter is referred to the higher Court on appeal or revision or review, whether it is meritorious or not, the lower Court cannot proceed with the same matter. The situation becomes most serious when the appeal is questioning on the jurisdiction of the lower Court.

It is Res subjudice which denotes that the same matter of the same parties is being considered by the Court. The purpose to serve is to avoid wastage of Court resources, avoid conflicting decision, avoid complicating the matter with multiplicity of cases, respect of the doctrine of *stare decisis* and Rule of law by avoiding abuse of Court process.

In the premises, the CMA proceedings in *dispute No. CMA/DSM/TEM/326/2020* are halted/stayed until final determination of *Civil Appeal No. 361 of 2022* before the Court of Appeal. It is so ordered.



Y.J. MLYAMBINA
JUDGE
25/04/2023

Ruling delivered and dated 25th day of April, 2023 in the presence of learned Counsel Gilbert Mushi for the Applicant and Mary Ganga for the Respondent.




Y.J. MLYAMBINA
JUDGE
25/04/2023