

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

REVISION APPLICATION NO. 37 OF 2023

(Arising from the Labour Dispute No. CMA/DSM/ILA/163/2022)

MARIAM A. KUIGWA..... APPLICANT

VERSUS

PRINCESS LEISURE (T) LTDRESPONDENT

RULING

K.T.R MTEULE

17th May 2023 & 17th May, 2023

In this Application for revision, the Applicant is praying for this court to call for the record of the Commission for Mediation and Arbitration of Dar es Salaam Ilala (CMA) in Labour Dispute No. CMA/DSM/ILA/483/2021/217/2021. The Respondent raised a preliminary objection with two points of law. The court noted several discrepancies in the applicant's pleadings and asked the parties to argue the preliminary objection with the propriety of the pleadings having the discrepancies.

The preliminary objection was argued by a way of oral submissions. The respondent dropped the first point of objection and remained with one point asserting that the application is drawn by an unqualified person

contrary to **Section 39 and 41 of the Advocates Act, Cap 341 of 2019 R.E.**

In arguing the second point of objection, Advocate Eliya Ryoba submitted that the application is prepared by Denis Mwamkwala who is a personal representative of the Applicant while **Section 56 (b) of the Labour Institutions Act, Cap 300**, limits such representation to appearing in proceedings before the Court. According to Advocate Ryoba, the law which regulates drawing of Court documents is the Advocates Act, **Cap 341 under section 39**, the person who qualifies as an advocate in Court is the one who draws documents and **section 41 & 43** of the Advocates Act prohibits a person not qualified to be an advocate from performing duties of advocates including drawing documents.

He referred to a similar scenario discussed in **Ruth Langeni Mfanga vs. Ilemela Municipal Council Labour Revision No. 66 of 2019** where Hon. Rumanyika expunged from record the pleadings for being drafted by unqualified person within the meaning of **section 39 and 41** of the **Advocates Act Cap 341**.

He prayed, for the sake of consistence, all the documents prepared by unqualified person to be expunged from the record.

Briefly submitting on the point raised *suo moto* by the Court, Advocate Ryoba stated that according to **section 91 of Cap 366 of R.E 2019** the law allows filing of Revision application within 42 days from the date CMA award was served to the applicant. He stated that the award was served to the applicant on **12 December 2022** and the applicant filed his application indicating numerous calendar dates which contradicts the spirit **section 91 of cap 366 of 2019 R.E.**

He referred the endorsement at the top of the application, which seems to have a court stamp dated **10 February 2023**, and that this makes a presumption that this was the date it was brought to Court and counting from, the date of arbitral award, to the date of stamp, the application was filed out of time. He prayed for this application to be struck out for its own contradictions for avoidance of future conflicts.

Mr. Denis Mwamkwala replied that **section 56 of cap 300** there are 3 types of representation and the documents were prepared by a person specified in **item (b) of section 56** who is a personal representative who should be appointed by parties. According to Mwamkwala, after being appointed, a personal representative becomes a party according to **Rule 2 (ii)** of the Labour Court Rules. In his view, the person who drew the documents had all qualities. According to him, **Section 39 of the Advocates Act** are qualifications of an advocate and not a personal

representative. He denied relevance of the case of **Ruthi Langeni** cited by the Respondent's counsel because when **Ruth Langeni** was asked who prepared the documents, she said she didn't know which means the drawer of the document was not appointed by the applicant.

Regarding discrepancies in the dates indicated in various documents of the application, Mr. Mwamkwara admitted existence of the contradictory dates in the pleadings where some show to have been prepared on 16/12/2022, submitted on 17/12/2022 and others admitted on 19/12/2022. He asked the court to allow correction since the summons bears **Revision No. 37 of 2023** and not 37 of 2022 as indicated in the pleadings. According to him, the Court wrongly Registered the application as Revision No. 37 of 2022 hence the Application had year 2022 instead of year 2023.

It is the duty of the court to assign a case Number so he prayed for the for the Court to allow correction under the principle of overriding objective.

In rejoinder the Mr. Ryoba denied a possibility of having the irregularities in the application cured by correction. He insisted on dismissal or striking out.

Having considered parties submissions, I would like to address first the point concerning dates discrepancies which is so obvious. Parties are in

agreement that there are various dates in the application which seems to contradict each other. The Notice of Application bears to have been presented for filing in 2021 while it was signed and dated in 2022 at the same time sealed to have been received in Court on 10/2/2023.

Each document filed appears to contain one or more of these discrepancies. Further the matter is registered as Revision Application No. 37 of 2022 which means, it was registered a year before it was received in Court.

Mr. Denis Mwamkwala is asking for the Court to allow connection under the overriding objective principle. In my view, the discrepancies are so many and have brought a different meaning in the entire application. This means the Court has been dealing with Revision Application No. 37 of 2022 while there is already another Revision of this kind which was registered in 2022.

This cannot be cured by overriding objective. In my view the error is fatal as two Registration Numbers cannot co-exist. Although it is an error of Registry, the Applicant cannot escape his share of blame because parties diligence is vital in ensuring proper record in Court. It is on this reason I hold the application incurably defective due to numerous and confusing errors in the pleadings. Since this point suffices to dispose off the matter, I see no reason to labour on the other

points of law. As such, the application is struck out for being incompetent.

Dated at Dar es Salaam this 17th day of May 2023.



KATARINA REVOCATI MTEULE

JUDGE

17/05/2023

Labour Court TZ.