

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 15 OF 2023

(Arising from the decision of the Commission for Mediation and Arbitration of Dar es Salaam at Temeke, Labour Dispute No. CMA/DSM/MISC/65/2021 by Hon. Mbeni, M.S. Arbitrator dated 03rd October, 2022)

BETWEEN

ABBAS ABDALLAH ISHABAILU APPLICANT

VERSUS

BHRITHI MINING PVT LTD. 1ST RESPONDENT

BHUMI MINING LTD. 2ND RESPONDENT

BHAVANI RAJESH VARMA PERICHARLA 3RD RESPONDENT

SAID ABDALLAH HAMOUD 4TH RESPONDENT

EX-PARTE JUDGEMENT

Date of last Order: 19/05/2023

Date of Judgement: 08/06/2023

MLYAMBINA, J.

The Applicant was aggrieved with the ruling delivered by the Commission for Mediation and Arbitration (herein CMA) in the *Labour Dispute No. CMA/DSM/MISC/65/2021* by Hon. Mbeni, M.S. Arbitrator dated 3rd October, 2022 but received by the parties on 8th December, 2022 which ordered the ex-parte Award delivered on 21st December, 2017 to be set aside.

Historically, the matter between the parties was heard for the first time in through *Labour Dispute No. CMA/DSM/KIN/R.654/14* whose award was delivered on 21st December, 2017 by ordering the Respondent to pay the

Applicant TZS 70,200,000/=. The copy of Award was collected on 8th April, 2019. The Award was not honored in the application for *Execution No. 64 of 2018*. Then the first and the second Respondent filed the application for extension of time to file an application to set aside the ex-parte Award via *Case No. CMA/DSM/MISC/65/2021* of which their application was granted. Thereafter, the matter was heard through the application which is hereby applied to be revised and the ex-parte Award was set aside. Aggrieved by the decision, the Applicant filed this application.

The application is supported by the Applicant's affidavit setting out the grounds for revision as follows:

1. *That, the Honourable Commission erred in law and fact for holding that the address used by the Applicant to serve documents to the Respondents were not their address.*
2. *That, the Honourable Commission erred in law and fact for holding that the Respondents were neither served summons nor other documents for arbitration hearing through the proper address of the Respondents.*
3. *That, the Honourable Commission erred in law and fact for not honouring the ex-parte award issued by Hon. Mwidunda E. Arbitrator.*
4. *That, the Honourable Commission erred in law by holding false statement of Respondents that they were just aware of the*

dispute in September 2021 without considering the High Court Order (Hon. Simfukwe S.H. Dr) dated 18/03/2019.

- 5. That, the Honourable Commission erred in law and fact for not considering the correction of the ex-parte award made by the Honourable Commission (Hon.Massay A. Arbitrator on 03/07/2020).*
- 6. That, the Hon. Commission (Hon.Mbena M.S., Arbitrator) failed to evaluate documental evidence tendered by Respondents.*
- 7. That, the Hon. Commission (Hon.Mbena M.S. Arbitrator) erred in law and fact for not considering the Ruling delivered by the Hon. Commission (Hon.Massay A.Arbitrator).*
- 8. That, the Hon. Commission (Hon Mbena M.S., Arbitrator) erred in law and fact by deciding the dispute with bias.*
- 9. That, the Honourable Commission (Hon.Mbena M.S. Arbitrator) erred in law and fact by delivering misconceived Ruling for extension of time which was time-barred.*
- 10. That, the Hon. Commission (Mbena M.S. Arbitrator) erred in law and fact by delivering misconceived Ruling for extension of time which was time barred and a res judicata to the Ruling delivered by the Hon. Commission (Hon.Massay A., Arbitrator).*
- 11. The legal issues that arise from the material facts sufficiently to enable the Applicant to rely to the listed documents are: -*
 - a) Whether the Respondents have shown good cause for the delay to comply with the law.*
 - b) Whether the Respondents' applications for extension of time and to set aside the ex-parte award have been unreasonably delayed.*

The matter proceeded ex-parte following the order made on 27th April, 2023 after all trials to serve the Respondents have been exhausted. The Applicant in his submission prayed for this Court to revise the decision of CMA on *Dispute No. CMA/DSM/MIC/65/2021* delivered on 08/12/2022 on three grounds: One, that the CMA erred in holding that the address used to serve the documents to the Respondents were not their address while exhibit P1 shows that the address belonged to them. He continued that the Respondents were properly served through exhibit P1 as it shows that the address belonged to them. He submitted further that the Respondents were properly served through exhibit P21, P3 and P4. It was the Applicant's view that CMA erred for not honouring the ex-parte award issued by Hon. Mwidunda E. Arbitrator (exhibit P5).

The Applicant submitted further that the CMA also erred in blessing the false statement of the Respondents that they became aware of the dispute in September, 2021 without considering the order of Hon. Simfukwe S.H. Deputy Registrar issued on 18/03/2019. He added that the Respondents were aware as early as on 18/03/2019 because the 1st and 4th Respondent entered appearance before Hon. Simfukwe (exhibit P6).

Again, he stated that CMA erred in evaluating or not considering the correction of the ex-parte Award made by Hon. Massay Arbitrator on 3/07/2020 (exhibit P7, exhibit P8 and exhibit P9). In his view, the Arbitrator was bias (exhibit P10) by extending time on the time barred application (exhibit P11). He then prayed for this Court to revise and set aside the decision of the CMA so that he can be paid his rights.

I have dutifully gone through the records of this application, the Applicant has asked this Court to revise the decision of CMA in Dispute No. CMA/DSM/MIC/65/2021 delivered on 08/12/2022. Going back to the records the said decision was a ruling which ordered the ex-parte award delivered on 21st December, 2017 to be set aside for the reason that the Applicants thereto (Bhrithi Mining PVT Ltd and Bhumi Mining Ltd) were not duly served with the summons and so their right to be heard was infringed. Also, the matter was scheduled for hearing on 27th January, 2023 whereby the Applicant did not appear. For easy reference:

27/01/2023

Corum...

Status: Arbitration

Commission

This matter is supposed to proceed arbitration interparte but since the exparte award has been set aside complainant has never appeared before this commission to collect summons to call Respondent for arbitration.

Order: This case is adjourned until March 23, 2023 to wait for complainant to come and collect otherwise on that day if he does not show up this case will be dismissed.

The Applicant filed for this application for revision on 19th January, 2023. This shows that not only by the time the Applicant was filing for this application the matter was still on at CMA but also the matter was not finalized to its finality as the next order was the date for hearing the matter interparte. This proves that the matter is interlocutory and so cannot be revised by this Court. *Rule 50 of the Labour Court Rules, G.N. No. 106 of 2007* is very clear that:

*No appeal, review or revision **shall** lie on interlocutory or incidental decisions or orders, unless such decision has the effect of finally determining the dispute. [Emphasis is mine]*

The word 'shall' mean it must be complied with. In the case of **Britania Biscuits Limited v. National Bank of Commerce and Doshi Hardware (T) Limited**, Civil Application No. 195 of 2012 as was referred in the case of **Pardeep Singh Hans v. Merey Ally Saleh & 3 Others**, Civil Application No. 422/01 of 2018, Court of Appeal at Dar es Salaam p. 7 (unreported) it was held that:

... we are of the opinion that the Ruling and Orders of the High Court sought to be revised is an interlocutory order... because in that order nowhere it has been indicated that the suit has been finally determined.


In the same case of **Pardeep Singh Hans (supra)**, the Court made reference to the case of **Junaco and Another v. Harel Mallac Tanzania Limited**, Civil Application No. 473/16 of 2016 (unreported) at page 8 to give the meaning of the word '*finally determine the suit*' to mean:

An order or decision is finally if it finally dispose the rights of the parties.

It is evidently in the CMA record that the matter between parties in the *Labour Dispute No. CMA/DSM/MIC/65/2021* which was delivered on 08/12/2022 did not dispose the rights of the parties, that is why the date for


the hearing was set. Going through the CMA records, I noted the said application was dismissed on 23rd March, 2023 in terms of *Rule 28 (2) of GN No. 64 of 2007* for non-appearance of the Applicant to prosecute the matter. The Applicant shall therefore be required to seek setting aside of such order before the CMA so that the matter can heard on merits interparties.

In the end, I find this Court has no jurisdiction to entertain an interlocutory application. The application is dismissed accordingly. No order as to costs.


Y.J. MLYAMBINA
JUDGE

08/06/2023

Ex-parte Judgement pronounced and dated 8th June, 2023 in the presence of the Applicant and absence of the Respondent.


Y.J. MLYAMBINA
JUDGE

08/06/2023

