IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION
AT DAR ES SALAAM

REVIEW APPLICATION NO. 08 OF 2023
(Arising from Revision Application No. 505 of 2020 originating from Labour Dispute No. CMA/DSM/KIN/882/18/364)

CHEMI & COTEX INDUSTRIES LTD..... APPLICANT

VERSUS

LAKSHMI NARAYAN RATHI..... ..... RESPONDENT

RULING

Date of last order: *31/05/2023*

Date of Ruling: *23/06/2023*

MLYAMBINA, J.

The Applicant has filed a Memorandum of Review under *Rule 27 (1), (2) (a) (b) (c) and (7) of the Labour Court Rules, 2007, G.N. No. 106 of 2007,* seeking an Order of the Court reviewing the Judgement and Order of the Court in the *Labour Revision No. 505 of 2020* (Hon. Rwizile, J.) dated 30th March, 2022 on the ground that:

> The judgement of the Court contains manifest and serious errors on the face of records in holding that the testimony of DW1 was not made under oath resulting in reaching erroneous finding, hence occasioned failure of justice to the Applicant.

With the above ground, the Applicant prayed for the Court to allow the review and issue the following order:

i. The Judgement of the Court (Rwizile, J.) dated 30th March 2022 be reviewed and the order of the Court nullifying the Award of Commission for Mediation and Arbitration (CMA) and rehearing of the Testimony of DW 1 be vacated and set aside, in line with recent legal development on the status of unsworn testimony as pronounced by the Court of Appeal in the case of **Tanzania Distillers Limited v. Bennetson Mishosho,** Civil Appeal No. 382 of 2019 and order *Labour Revision No. 505 of 2020* be reinstated and the matter be determined on merit.

IN THE ALTERNATIVE TO THE PRAYER ABOVE:

ii. The Court be pleased to substitute an order of rehearing of testimony of DW1 with rehearing of the Respondent case.

iii. Any other order (s) that the Honourable Court may deem fit.

When the application was called on for hearing, Mr. Jovinson Kagirwa, learned Advocate, appeared and argued for and on behalf of the Applicant, while Ms. Blandina Kihampa, learned Advocate, appeared and argued for and on behalf of the Respondent.

Advancing the argument for the application to be granted, Mr. Kagirwa, Counsel for the Applicant submitted on the first ground and argued that the Court of Appeal decision can apply retrospectively

because that was the object of the said Court of Appeal decision. He added that; what matters was the intention of the amendment, He cited the case of **Simon Nchagwa v. Majaliwa Bande,** Civil Appeal No. 126 of 2008, Court of Appeal of Tanzania at Dar es Salaam (unreported) and **Lala Wino v. Karatu District Council,** Civil Application No. 132/02/2018, Court of Appeal of Tanzania at Arusha (unreported) in supporting his position. He further submitted that the intention of the said Court of Appeal decisions was to rescue cases in the Labour Court caught by the web of *Rule 5 of the Labour Court Rules.*

On the second ground, about impeaching the proceedings of the Court, Mr. Kagirwa submitted that; it is a general rule parties cannot impeach the Court's records. Thus, there is a rebuttable presumption that the Court represents what happened but can be rebutted by presenting evidence or factual. Mr. Kagirwa cemented his stance by citing the case of **Salehe Omary Ititi v. Nina Hassan Kimaro,** Civil Application No. 583 /03 of 2021, Court of Appeal of Tanzania at Dodoma (unreported).

Mr. Kagirwa concluded by praying this application be allowed because the impugned ruling *inter alia* quashed the proceedings of CMA and ordered DW1 to testify under oath. But DW1 is no longer working with the Applicant and cannot be found in Tanzania, as he is in India.

In her reply submissions, Ms. Blandina, Counsel for the Respondent supported the application with the same reasoning. She added that, the case law is like any other law and that the decision in the case of **Tanzania Distillers Limited** (supra) was meant to apply retrospectively.

After hearing the submissions of both parties, before determining the merit of the application for review, it has to be noted that; the present Application for Review originated from the Court's Order on *Revision No. 505 of 2020* which reads as here under:

> For the foregoing reason, therefore, the Court, nullifies the evidence of DW 1 and so is the award in *Labour Dispute No. CMA/DSM/KIN/882/18/364.* The record is therefore remitted to the CMA for rehearing the testimony of DW1. Let the same be done before another Arbitrator with competent jurisdiction. Parties to bear their own costs.

Ahead of dealing in the present Review, I find it convenient to state that; the power of review can be exercised for correction of a mistake apparent on the face of the record and not to substitute a view which may result into a different interpretation. It means that, the Court has power to review its decision, when there is an apparent error on the face of the record. review does not need a new reasoning. It was defined in the case **Omari Mussa (5) Selemani @Akwishi and Two Others v. Republic**,

Consolidated Criminal Application No. 117, 118 and 119/07 of 2018, Court of Appeal of Tanzania at Mtwara (unreported) that:

> ...as to what constitutes a manifest error.... to mean an obvious and patent mistake which upon reading will not involve a long-drawn process to come to a conclusion that there is an error.

It was held in the case of **Omari Mussa (5) Selemani @Akwishi and Two Others** (supra) that:

> Going along with the Applicants arguments would be tantamount to the Court sitting as an Appellate Court from its own decisions which is not what review is all about under our law.

Furthermore, in the case of **Elia Kasalile and Others v. The Institute of Social Work,** Civil Application No. 187 of 2018, it was held that:

> A review may be granted whenever the Court considers that it is necessary to correct an apparent error or omission on the part of the Court. The error or omission must be self evident and should not require an elaborate argument be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the Court proceeded on an incorrect exposition of the law and reached an errenous conclusion of law.

In the *Labour Revision No. 505 of 2020,* the evidence of DW1 and the decision of the CMA were nullified. If the prayers in this application, are allowed, the Court will be turning itself into an Appellate Court to its own decision. It is my view that the judgement and the drawn order extracted therein were reached according to the law (Court of Appeal decision which has never been vacated by the same. Indeed, there is no error to warrant any correction. The Applicant had no remedy of challenging the decision of this Court by way of this application for review.

Now, for the purpose of argument, the parties submitted that the Court of Appeal decision, to be more specific, **Tanzania Distillers Limited** (supra), could act retrospectively. However, the said decision was delivered on 23rd November 2022 and gave grace period of six months for the cases filed after its delivery. To be precise, the Court of Appeal stated:

> ...having considered that the position we have just taken is quite new to the cases filed before, and for timely resolution of employment disputes, we hereby suspend the requirement and operation of *Rule 25 (1) of the guidelines* for six months as grace period from the delivery of this judgement. That requirement shall apply in cases filed thereafter, for avoidance of doubt.

From the records, the impugned judgement which I am being asked to review was delivered on 30th March 2022 which is almost 8 months before the Court of Appeal judgement in the case of **Tanzania Distillers Limited** (supra), hence not applicable to the matter at hand. It will be an absurd that once a Court of Appeal decision is made, then the lower Courts decisions must be reviewed. If the call by the parties herein is entertained, it will create chaos. The decree holders will not benefit the fruits of their decrees, as a result, there will be breach of legal rights.

Indeed, cases will never come to an end. It is conceived in the larger public interest that every litigation must come to an end. The Court of Appeal of Tanzania in the case of **Pravin Girdhar Chavda v. Yasmin Nurdin Yusufal,** Civil Appeal 165 of 2019 (unreported) quoted the holding in the case of **Haystead v. Commissioner of Taxation** [1926] A.C. 155 that:

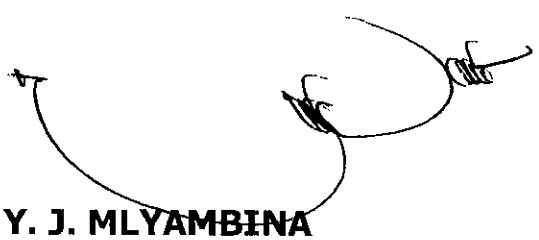
> Parties are not permitted to begin fresh litigation because of new views they may entertain of the law of the case or new versions which they present as to what should be a proper apprehension, by the Court of the legal result. If this were permitted, litigation would have no end excerpt when legal ingenuity is exhausted.

Having quoted the above quoted paragraph, the Court of Appeal concluded that the overarching policy objective being to ensure that litigation comes to an end.

Furthermore, a mere fact that DW1 cannot be procured as alleged on the Memorandum of Review, cannot be a ground to warranty this Court to review its decision. **Section 34C of The Tanzania Evidence Act [Cap. 6 R. E. 2022]** is very clear on the evidence of a person who can not be brought in Court as a witness on various reasons. It is my humble view that parties ought to have exhausted the prescribed legal procedures and not of filing review as they agreed in this application.

In the premises of the above, I hold that there are no good grounds to warrant this application to be granted. I therefore, dismiss it for want of merit. Being a labour matter, no order is issued in regard to cost.

It is ordered accordingly.



Y. J. MLYAMBINA

JUDGE

23/06/2023

Ruling delivered and dated 23rd June, 2023 in the presence of Counsel Simon Lyimo for the Applicant and Counsel Jacob Kaisi for the Respondent.

Y. J. MLYAMBINA

JUDGE

23/06/2023