

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

**LABOUR REVISION APPLICATION NO. 113 OF 2023**

*(Arising from an Award issued on 3/4/2023 by Hon. Johnson Faraja, L, Arbitrator in Labour dispute No.  
CMA/DSM/ILA/437/2021/203/21 at Ilala)*

**SHEHE AHMED SHUGHULI.....APPLICANT**

**VERSUS**

**TANZANIA RAILWAYS WORKERS UNION (TRAWU).....RESPONDENT**

**JUDGMENT**

*Date of last Order: 19/06/2023  
Date of judgment: 27/06/2023*

**B. E. K. Mganga, J.**

Facts of this application briefly are that, Tanzania Railways Workers Union (TRAWU), the respondent, is an association of employees of both the Tanzania Railways Corporation hereinafter referred to as TRC and the Tanzania Zambia Railways Authority(TAZARA). It is undisputed that, Shehe Ahmed Shughuli is one of the employees of TRC. It is further undisputed that, on 1<sup>st</sup> May 2020, applicant was seconded from TRC to work with the respondent as Acting General Secretary for one year that is to say; up to 30<sup>th</sup> April 2021 at monthly salary of TZS 2,000,000/= . It happened that,

after expiry of the said period, respondent removed applicant from that position. Applicant was aggrieved, as a result, on 11<sup>th</sup> October 2021, he filed Labour dispute No. CMA/DSM/ILA/437/2021/203/21 before the Commission for Mediation and Arbitration henceforth CMA at Ilala for breach of contract. In the Referral Form (CMA F1) applicant indicated that he was claiming to be paid (i) TZS 4,800,000/= being salary arrears, (ii) TZS 180,000,000/= being loss suffered, (iii) TZS 2,000,000/= being PPF pay and (iv) TZS 11,000,000/= being severance pay. He prayed also respondent be ordered to write a letter returning him to his employer namely TRC and be allowed to attend at office.

On 3<sup>rd</sup> April 2023, Hon. Johnson Faraja, L, Arbitrator, having heard evidence and submissions from both sides issued an award dismissing the dispute filed by the applicant for lack of merit. The arbitrator ordered applicant to pay the respondent TZS 2,000,000/= as he found that the dispute filed by the applicant was frivolous.

Applicant was aggrieved by the said award and filed this application seeking the court to revise it and grant him the prayers that were made in the CMA F1. In support of the Notice of Application, applicant filed his affidavit containing six (6) grounds namely:-

1. *That, the Arbitrator erred both in law and in facts for failing to properly analyze evidence adduced by the parties and further erred in law and facts for failure to consider evidence adduced by the applicant.*
2. *That, the Arbitrator erred both in law and facts for delivering an award that is not supported by evidence adduced by the parties.*
3. *That, the Arbitrator erred both in law and fact for failure to order the respondent to write a letter returning the applicant to his employer namely TRC.*
4. *That, the Arbitrator erred both in law and facts by failure to summarize, evaluate and record key issues presented by the parties.*
5. *That, the Arbitrator erred both in law and facts for not giving reasons for his decision.*
6. *That, the Arbitrator erred both in law and facts for issuing an award that is incompetent and incapable of determining rights of the parties.*

Respondent opposed the application by filing both the Notice of Opposition and the counter affidavit sworn by Raphael Kazyoba.

When the application was called on for hearing, applicant was represented by Michael Mgombozi, the Personal Representative. On the other hand, respondent was represented by Benedict Mwakyusa, the Zonal secretary.

Mr. Mgombozi argued the aforementioned grounds generally submitting that, applicant is an employee of TRC under permanent and pensionable terms since 1988. He went on that, on 1<sup>st</sup> May 2020 applicant was appointed as Acting General Secretary of the respondent. Mr. Mgombozi

submitted further that, applicant filed CMA F1 showing that respondent breached the contract and that, in his evidence, applicant testified that he was claiming salary arrears as reflected in the opening statement. In his submissions, Mr. Mgombozi conceded that the dispute relating to salary arrears or breach of contract was supposed to be filed within 60 days from the date it arose and further that, the dispute was filed out of time. He submitted further that, both salary arrears and breach of contract arose in June 2021 when respondent was paid half salary. He conceded further that, there was neither application for condonation nor an order for condonation that was granted by CMA. Mr. Mgombozi was quick to submit that there were internal communications between applicant and the respondent that caused the delay because applicant wrote several letters (exhibit P5 collectively) to the respondent demanding to be paid. He maintained that arbitrator erred not to award applicant to be paid salary arrears because failure of the respondent to pay applicant salary amounted to breach of contract.

Mr. Mgombozi also submitted that, the Arbitrator was supposed to direct the respondent to return applicant to TRC. He submitted further that, the Arbitrator raised issues that were unrelated to the dispute between the

parties contrary to the provisions of Rule 27(3) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, GN. No. 67 of 2007. He went on that, the Arbitrator erred to order applicant to pay TZS 2,000,000/= that was not claimed by the respondent because there was no counter claim.

Mr. Mgombozi further criticized the Arbitrator that, the latter did not direct his mind on documentary exhibits including but not limited to exhibit D5 collectively tendered by the parties. He submitted further that, it was only the Executive Committee that had powers to remove applicant from his post as per exhibits P7 and P6 and not the Acting General Secretary as it happened in the application at hand. He therefore prayed the application be allowed.

Resisting the application, Mr. Mwakyusa submitted that, applicant was seconded by TRC to work with the respondent from 1<sup>st</sup> May 2020 to 30<sup>th</sup> May 2021 only and that, thereafter, respondent was supposed to go back to his employer namely TRC. In his submissions, Mr. Mwakyusa argued that, the order directing applicant to pay TZS 2,000,000/= was not proper. He submitted further that, the dispute that was filed at CMA by the applicant was breach of contract allegedly that respondent did not allow

him to continue to work with the respondent. He added that, in the CMA F1, applicant did not indicate that the dispute was on salary arrears. Brief as he was, Mr. Mwakyusa prayed the application be dismissed for want of merit.

In rejoinder, Mr. Mgombozi submitted that, applicant was seconded to work with the respondent from May 2020 to April 2021. He added that, exhibit D3 shows that applicant did not report back to TRC after expiry of the said period. With all these, Mgombozi prayed that the application be allowed.

I have carefully examined the CMA record and evidence of the parties and considered submissions made on their behalf in this application. It is undisputed that, applicant was seconded by TRC to work with the respondent from May 2020 to April 2021 and that, during that period, applicant was receiving TZS 2,000,000/= as monthly salary from the respondent. It is also undisputed that, on 11<sup>th</sup> October 2021, applicant filed the dispute at CMA complaining that respondent breached the contract and was claiming to be paid *inter-alia* TZS 4,800,000/= as salary arrears.

It was testified by Shehe Ahmed Shughuli (PW1) applicant that, the said claim of salary arrears was for the months of June 2021 to September

2021 because during that period he was paid half salary. On the other hand, it was testified by Fadhili Yassin Mleke(DW1) on behalf of the respondent while under cross examination that, the money applicant alleges was paid as half monthly salary for the said months was not monthly salary, rather, was gratuity because contract of the applicant ended in April 2021. It is evidence of Raphael Lazaro Kazyoba (DW2) and DW1 that, applicant was supposed to return to his employer(TRC) after 30<sup>th</sup> April 2021 and that, he was clearly informed that there would be no extension of time as evidenced by a letter written on behalf of the Registrar of Trade Union (exhibit D5). It is also on CMA record that on 24<sup>th</sup> May 2021, applicant wrote a letter (exhibit D4) inform the Director General of TRC that he will be in office on 1<sup>st</sup> June 2021. It is clear in my view from the foregoing evidence that, applicant was not supposed to be working with the respondent after the aforementioned period. In other words, evidence by the applicant that he was claiming to be paid salary arrears by the respondent from June 2021 to September 2021 has no base because at that time, his salary was supposed to be paid by his employer i.e., TRC.

It is undisputed that, applicant filed the dispute at CMA on 11<sup>th</sup> October 2021 indicating in the CMA F1 that the dispute arose on 2<sup>nd</sup> October 2021. But, in his evidence, applicant testified that he was claiming salary arrears from June 2021 to September 2021. In short, applicant departed from his own pleadings in the CMA F1. There is a litany of case laws to the position that the parties are bound by their own pleadings and they are not allowed to depart therefrom. Some of those case laws are the case of *Barclays Bank T. Ltd vs Jacob Muro* (Civil Appeal 357 of 2019) [2020] TZCA 1875-Tanzlii, *Registered Trustees of Islamic Propagation Center (IPC) vs The Registered Islamic Center (TIC) of Thaaqib Trustees* (Civil Appeal 2 of 2020) [2021] TZCA 342-Tanzlii, *Yara Tanzania Limited V. Ikuwo General Enterprises Ltd*, Civil Appeal No. 309 of 2019, CAT(unreported), *Ernest Sebastian Mbele vs Sebastian Sebastian Mbele & Others* (Civil Appeal 66 of 2019) [2021] TZCA 168, *Salim Said Mtomekela vs Mohamed Abdallah Mohamed* (Civil Appeal 149 of 2019) [2023] TZCA 15 and *Charles Richard Kombe T/a Building vs Evarani Mtungi & Others* (Civil Appeal 38 of 2012) [2017] TZCA 153 to mention but a few. In the *IPC's case*, supra, the Court of Appeal held that: -



*"As the parties are adversaries, it is left to each one of them to formulate his case in his own way, subject to the basic rules of pleadings... For the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties".*

In **Yara Tanzania Limited case** (supra) the Court of Appeal quoted its earlier decision in **Barclays Bank T. Ltd vs Jacob Muro**, Civil Appeal No. 357 of 2019 [2020] TZCA 1875 that:-

*"We feel compelled, at this point, to restate the time-honored principle of law that parties are bound by their own pleadings and that any evidence produced by any of the parties which does not support the pleaded facts or is at variance with the pleaded facts must be ignored- See **James Funke Ngwagilo v. Attorney General** [2004]T.L.R. 161. See also **Lawrence Surumbu Tara v. Hon.Attorney General and 2 Others**, Civil Appeal No.56 of 2012; and **Charles Richard Kombe t/a Building v. Evarani Mtungi and 3 Others**, Civil Appeal No. 38 of 2012 (both unreported)".*

In the application at hand, applicant was bound by his pleading that the dispute arose on 2<sup>nd</sup> October 2021 and was not supposed to change in his evidence and testify that he was claiming salary arrears from June 2021 to September 2021. All evidence of the applicant that is at variance with

his pleadings that the dispute arose on 2<sup>nd</sup> October 2021 should be ignored. Once that evidence is ignored, then, there is no evidence left to support his claims against the respondent.

It was, in my view, correctly conceded by Mr. Mgombozi, the personal representative of the applicant that, both the dispute relating to claims of salary arrears and or breach of contract must be filed at CMA within 60 days as provided for, under Rule 10(2) of the Labour Institutions (Mediation and Arbitration) Rules, GN. No. 64 of 2007. It was further correctly conceded by Mr. Mgombozi that, applicant's claims for salary arrears from June 2021 to September 2021 was time barred and there was no application for condonation because counting from 1<sup>st</sup> June 2021 to 11<sup>th</sup> October 2021, the date applicant filed the dispute at CMA, is more than 60 days and no condonation order that was granted.

It was submitted on behalf of the applicant that there was internal communication between applicant and the respondent meaning that, that period should be considered. With due respect, presence of internal communication between applicant and the respondent cannot stop operation of the law. The Court of Appeal put this issue very clear in the

case of *M/s. P & O International Ltd v. the Trustees of Tanzania National Parks (TANAPA)*, civil Application No. 265 of 2020, CAT (unreported) when it held: -

*"It is trite that pre-court action negotiations have never been a ground for stopping the running of time...the statute of limitation is not defeated or its operation retarded by negotiations for a settlement pending between the parties...negotiations or communications between the parties...did not impact on limitation of time. An intending litigant, however honest and genuine, who allows himself to be lured into futile negotiations by a shrewd wrong doer, plunging him beyond the period provided by the law within which to mount an action for the actionable wrong, does so at his own risk and cannot front the situation as defence when it comes to limitation of time."*

I have examined evidence in the CMA proceedings especially exhibits tendered by the parties and find that there were no negotiations whatsoever between the parties. Even if it can be assumed that there were negotiations as Mr. Mgombozi wants the court to believe, that cannot, in my view, in the strength of the above quoted case law, help the applicant. Since the dispute was time barred and there was no condonation, then, CMA had no jurisdiction and the whole CMA proceedings is a nullity.

It was submitted by Mr. Mwakyusa on behalf of the respondent that the order requiring applicant to pay TZS 2,000,000/= to the respondent

was erroneously made. I agree with that submission. That order, in my view, has no legs to stand.

Since I have held hereinabove that the dispute was time barred, I hereby nullify CMA proceedings, quash and set aside the award arising therefrom.

Dated at Dar es Salaam on this 27<sup>th</sup> June 2023



B. E. K. Mganga  
**JUDGE**

Judgment delivered on this 27<sup>th</sup> June 2023 in chambers in the presence of Shehe Ahmed Shughuli, the Applicant and Benedict Mwakyusa, the Zonal Secretary of the Respondent.



B. E. K. Mganga  
**JUDGE**

