

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION**

AT DAR ES SALAAM

REVIEW NO. 12 OF 2022

**SHAFI TANZANIA INVESTMENT CO.LTD..... APPLICANT
VERSUS**

ASMIN F GOMBO..... RESPONDENT

(Arising from the decision of the High Court Labour Division at DSM)

(Rwizile: Judge)

Dated 16th September 2022

in

Revision No. 171 of 2022

RULING

16th & 24th February 2023

Rwizile, J

This is an application for Review. Accordingly, it is pegged under rule 7 and 27(a)(b) (c) of the Labour Court Rules, GN No.106 of 2007. The applicant therefore asks this court to review its decision dated 16th September 2022.

According to the memorandum of Review, two grounds are advanced as follows;

- i. That the hon. Judge didn't consider the reason for the respondents' termination whereby she was terminated due to the worldwide*

pandemic of Covid-19 the pandemic which made not only lots of business get closed but also lots of capital vanished

- ii. *That the hon. Judge's decision based on the procedures not followed. He didn't take into account that during the Covid-19 the situation was even hard to follow retrenchment procedure itself. Due to the stated pandemic, there was aircraft travelling closure where one couldn't travel from one country to another and the applicant's head office is in Dubai UAE, this made difficulties for the applicant representatives to travel to Tanzania to conduct meeting which was as well not advised due to Covid-19*

Mr Allen Mchaki learned advocate appeared for applicant while Mr. Adolf Temba was for the respondent. The brief hearing of this application was by oral arguments. This being an application for review, where I am asked to review my own judgement, I think as the court, I have such powers. In the exercise powers of review, the court is to correct an error or omission provided such an error exists, is manifest on the face of the record and has resulted in the miscarriage of justice.

In the case of **Chandrankat Joshubhai Patel v The Republic**, [2004] TLR 218, the Court of Appeal stated:

" ... Such an error must be an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points which there may conceivably be two opinions. That a decision is erroneous in law is no ground for ordering review. Thus, the ingredients of an operative error are that first, there ought to be an error second, the error has to be manifest on the face of the record, and third, the error must have resulted in miscarriage of justice..."

Further if I were to borrow a leaf from the persuasive decision of the Court of Appeal of Kenya in the case of the **National Bank of Kenya Limited v Ndungu Njau** [1997] eKLR, it was held in respect of review 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 to 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 law. Misconstruing a statute or other provision of law cannot be a ground for review. In the

instant case the matters in dispute had been fully canvassed before the learned Judge. He made a conscious decision on the matters in controversy and exercised his discretion in favour of the respondent. If he had reached a wrong conclusion of law, it could be a good ground for appeal but not for review. Otherwise, we agree that the learned Judge would be sitting in appeal on his own judgment which is not permissible in law. An issue, which has been hotly contested as in this case cannot be reviewed by the same court which had adjudicated upon it..."

Having restated the position of the law, and the reasons for review.

The issue for determination here is whether the two grounds for review raised by the applicant fall squarely within the ambits of the conditions for the grant of review.

Advancing his argument, in all grounds, the learned advocate asked this court to be guided by the **Palm Green Ltd vs CRJE Estate Ltd (Johari Rotana Hotel)**, Commercial Case 31 of 2022 at page 24, and **First National Bank Tanzania Limited vs Lulu Salehe Masasi**, Commercial

Case 62 of 2019. In his view, Covid-19 pandemic and its effects on contracts termination were canvassed.

In response to his submission, Mr. Temba was of the view that the decision to be reviewed considered the effects of Covid-19 at page 5 and held that it was not proved as the cause of termination. Lastly, he said, the application did not have qualities of a review and so be dismissed. He asked this court to refer to the cases of **Puma Energy T. Ltd vs Khamis Khamis**, Labour Review 496 of 2019 at page 10, the case of **Elia Kasalile & Others vs Institute of Social Work**, Civil Application 187 of 2018 at page 11 and 12 and **African Barrick Gold PLC vs Commissioner General Tanzania Revenue Authority**, Civil Application 350 of 2019.

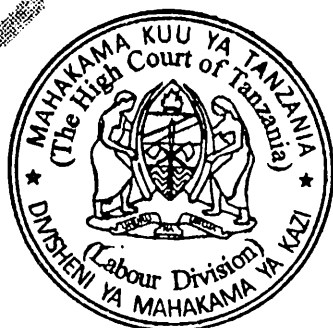
By way of a rejoinder, the learned advocate was of the submission that the cases he has cited in chief are valid. He added that the case of **Godfrey Rweikiza vs Stanly Mining Services**, Revision No. 23 of 2012, this court held that retrenchment process should not be applied in checklist. He said the application constitute grounds for review.

My determination on the asked question is simple and straight to the point. As the cases I have cited before showed, for the application for review to

succeed, there must be an error apparent on the face of the record and that which has occasioned failure of justice. The applicant has stated in the grounds that the court did not consider reasons for retrenchment. As submitted by the respondent failure by the court to deal with evidence in respect of covid-19 is not a manifest error.

In actual fact the same evidence was considered at page 5 of the judgement to be reviewed. The same might have not quenched the thirst of the applicant but if I go back to deal with same to his satisfaction I, think, it will be tantamount to sitting in my own appeal.

Looking at the grounds and the way they are coached, they are not different from presentation of evidence. The grounds are not, in my view, suited to call for review. This application, without mincing words, is hopeless and a mere sham. It should be dismissed just as I am doing. Because it is a dispute in labour realm, I order no costs.




A.K. Rwizile

JUDGE

24.02.2023