IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION APPLICATION NO. 100 OF 2023

(Arising from the decision Commission for Mediation & Arbitration of DSM at Kinondoni dated 24th March 2023 in Labour Dispute No. CMA/DSM/KIN/674/2023)

BETWEEN

AMINA SANGALI & 200 OTHERS.....APPLICANTS

VERSUS

ST. JOHN'S UNIVERSITY OF TANZANIA.....RESPONDENT

RULING

Date of last Order: *25/07/2023*

Date of Ruling: *04/08/2023*

MLYAMBINA, J.

The Applicants filed this *Labour Revision Application No. 100 of 2023* challenging the Award of the Commission for Mediation and Arbitration (herein CMA) in Labour Dispute No. CMA/DSM/KIN/674/2022. In response, the Respondent raised one point of preliminary objections to the effects that the application is legally incompetent for failure to file a mandatory notice of intention to seek revision contrary to *Regulation 34 (1) of the Employment and Labour Relations (General) Regulations G.N No. 47 of 2017.*

The Historical background of this application as extracted from CMA record, affidavit and counter affidavit filed by the parties is as follows: The

Applicants were employed by the Respondent on diverse date, their relationship ended on 2019 for the alleged constructive termination resulted from salary arrears claims.

After closure of the Respondents business, the Applicants were aggrieved, hence filed the matter at the CMA seeking for extension of time so as to challenge the Respondent's decision. The application for condonation was rejected on the reason that the Applicants failed to adduce good reason for the delay. Being resentful with the ruling of the CMA, the Applicant filed the present application.

The hearing of the preliminary objection proceeded orally. The Respondent was represented by Mr. Sosthen Mbedule, Advocate from HESL ATTORNEY while the Applicant was represented by Mr. Sylivanus Mayenga, Advocate from West End Law Group.

In support of the preliminary objection, Mr. Mbedule submitted that the law requires any party aggrieved to the decision of Arbitrator before filing a revision before this Court should file a notice to apply for revision. He said that Regulation 34 (1) (supra) uses the word "shall" in accordance to the specific form. It was added by Mr. Mbedule, that when the law provide a certain word especially "shall" according to the Interpretation of the Laws Act, it means mandatory. But the Applicant has not complied

with the legal requirement which render the application to be incompetent.

According to Mr. Mbedule, CMA Form No. 10 is a mandatory document which moves this Court for determination of any revision. He averred that the Notice in prescribed form as shown in *G.N. No. 47 (supra)* is the same to other notices in Civil cases – like the Notice lodged before the Court of Appeal of Tanzania. It has been the position of this Court that before filing any revision before the Court, one must lodge the mandatory notice. Bolstering his stand, he cited the case of **Antony John Kazembe v. Inter Testing Serves (EA) (PTY) Ltd,** Revision. Application No. 391 of 2021, High Court of Tanzania Labour Division at Dar es Salaam (unreported), p.6. Also, the case of **Access Bank Tanzania Ltd v. Dixon Bohela,** Labour Revision No. 85 of 2023 High Court of Tanzania Labour Division at Dar es Salaam (unreported), p.3.

Mr. Mbedule submitted that the essence of the notice is to inform the other party that there is an application for revision to be filed, this gives the other party to prepare. He added that it is the rule against surprise. It was further added by Mr. Mbedule submitted that another advantage of filing notice is to prepare the CMA proceedings. He insisted that the procedures are there to be followed. Thus, the overriding

objective was not meant to circumvent the procedure. He was of the view that fairness to both parties can be reached by adhering to the procedure. Regarding time, Mr. Mbedule argued that; the same cannot be measured against the right of people and against the procedures. Time is for those who are vigilant fighting for their rights. It was the view of Mr. Mbedule that the Court is not like an automatic teller machine of which a bank customer can go at any time he wishes and cash in any how.

In reply, Mr. Mayenga differed with the position refereed. It was his stand view that the non-filing of the notice does not make the application redundant/defeated.

According to Mr. Mayenga, there is a misconception regarding *Regulation 34(1) (supra)* and the form itself. Thus, looking *Regulation 34(1) (supra)* does not require any person aggrieved with the decision of the Arbitrator must file a notice. He stated that *Rule 30 of the Labour Court Rules* gives a mandatory procedure of lodging notice of appeal. Had it been mandatory, the notice for filing revision could have been incorporated in *the Labour Court Rules.*

Mr. Mayenga submitted that *Rule 30(1) of G.N. No. 106 of 2007* provides for the time frame to lodge notice of appeal to this Court, but *Regulation 34(1) of G.N. No. 47 of 2017* does not provide time within which notice has to be lodged, there is a lacuna. He was of the view that;

if the issue of notice is more important, *Regulation 34(1) (supra)* should have provided time frame.

Mr. Mayenga went on to aver that the notice may be important in a certain situation but not mandatory. He stated that; if one looks closely CMA Form No. 10, will realize that it was not intended for the Respondent. It was intended for CMA alone to forward the CMA record to this Court and not for the Respondent. Since there was no any complain regarding CMA record, he believed that nothing bad in not filing it.

It was submitted by Mr. Mayenga that the Notice is of administrative in nature and not Judicial requirement and the purpose of the same is to enable the CMA to ensure all the proceedings required to be forwarded to the Court. According to him, it is not true that the Respondent was not given notice. The procedure in lodging revision to this Court are provided under *Section 91 of Employment and Labour Relations Act* and *Rule 24 of the Labour Court Rules* which requires any application to be made on notice, that is why the Applicant attached notice of application. Such notice, in view of Mr. Mayenga, is a clear and relevant document to notify the party what the other party intends.

There are several decisions of this Court to the affect that it is the notice of application which initiates the application, in some circumstances the notice of application and the affidavit are sufficient to initiate the

application because the notice contains all relevant information including the time frame within which to file the revision. In this case, all the documents have been lodged by the Respondent. He believes that the requirement of *Regulation 34(1) (supra)* acts as a movement order.

Mr. Mayenga was of the view that the notice serves two purposes. *First*, if the Respondent is the Decree holder, the notice gives him alert that the Decree cannot be executed. *Second*, the Respondent is made aware where the CMA records are sent. It was his firm position that the two reasons are not prejudicial to the Respondent.

It was further added by Mr. Mayenga that; had it been a mandatory requirement, the Labour Court Rules ought to have been amended to accommodate the requirement of G.N. No. 42. Since *Regulation 34(1)* does not provide any consequences or penalties on failure to lodge the notice, then striking out the application will be against *Rule 3 of the Labour Court Rules* which recognizes this Court as the Court of equity. Mr. Mayenga argued that the procedures are there to be followed. In this case, it should be measured as to what extent the Applicant has failed to comply with the laid procedure. There is a parent provision which is *Section 91 and Rule 24* which have not been breached. The non filing of the notice does not go to the root of the matter.

It was submitted by Mr. Mayenga that the Respondent failed to answer if there is any apparent prejudice to the Respondent. The purpose of labour law throughout is to overspeed the economic development of the nation. If there is no such prejudice, he thus prayed for this matter to be heard and determined. He emphasized that the good thing is, the Respondent will be heard fully and there is no any decision of the Court of Appeal in Civil matters in initiating appeal, except for criminal appeal.

In rejoinder, Mr. Mbedule reiterated his submissions in chief but urged that the issue of filing notice is not an option. It is a law requirement as per *G.N. No. 47 in 2007* of which all forms in Labour issues were created. Forms No. 1 are the Pleadings moving CMA. He added that one cannot separate Forms No. 1 and 10. It is totally wrong to say Form No. 10 is an administrative Form, while has equal value with Form No. 1. It is a procedural form for determination of parties' rights which should be complied with.

In consideration of the parties' submissions, I agree with the Respondent's Counsel that the issue of filing notice is the law requirement and not an option for some one to have a room of filing it or not. This is justified by the meaning given under *Regulation 34(1) of G.N No.47 of 2017* For the sake of clarity, I find worth to reproduce the same, as hereunder:

> The forms set out in the Third Schedule to these regulations *shall* be used in all matters to which they refer.

The italized word shall justifies that the requirement of filing notice of intention to file revision CMA Form No. 10 is mandatory. Therefore, the Applicants' allegation regarding overriding lacks merits. This shortfall has been addressed in the case of **Mondorosi Village Council and 2 others v. Tanzania Breweries Limited and 4 Others,** Civil Appeal No. 66 of 2017, Court of Appeal of Tanzania at Arusha (unreported) cited in **Ayubu Simkoko v. Zera Robert,** Misc. Application No. 77 of 2022, High Court of Tanzania at Mbeya (unreported).

In ***Mondoroso's Case (supra),*** the Court of Appeal of Tanzania declined to apply the principle of overriding objective amid a breach of an important rule of procedure.

Likewise in this matter, the procedures are well stated by the law. Therefore, skipping such procedure without justifiable reason, will open a pandora box for others to violate laws by using a shield of overriding principle.

From the above legal principle, I have no hesitation to observe that there was a misconception on the part of the Applicants as they failed to differentiate notice of intention to seek revision as per CMA Form No. 10

and notice of application in filing revision. The former notice is like the plaint in normal civil cases. (See the case of **Martha M. Mwachemba v. Wanyama Hotel Limited,** Labour Revision No. 324 of 2013 as cited in the case of **Sylivester Mboje v. CRDB Bank PLC**, Labour Review No. 07 of 2023, High Court of Tanzania, Labour Division at Dar es Salaam). For that reason, the Applicants allegation regarding overriding principle, lacks merits.

I equally do agree with Counsel Mayenga that the object of labour law is to overspeed the economic development of the nation. As such, any procedure that humpers such goal has to be ripped away. However, the very purpose of filing notice of intention to file revision is aimed at speeding the proceedings of labour matters in order to achieve economic growth of the parties and of the nation.

Two more points should not go unattended. Counsel Mayenga has submitted that CMA Form No. 1 was intended for CMA alone to forward the CMA record to this Court and not for the Respondent and that the Notice is of administrative in nature and not judicial requirement. I must observe that there is no hard and fast rule of separating administrative and judicial functions in Court especially on matters which are governed by Statutes or Regulations. Such matters aim at enhancing justice.

Indeed, whatever is provided under the Regulations whether done by the CMA or the Court are for the benefits of the parties.

It is also the observation of this Court that CMA form No. 1 cannot be equated to the Courts file movement order because it is not a dispatch book. If it is to be equated to the file movement order then it is a judicial form intended to alert the CMA to forward the original records for revision purposes.

Therefore, the notice carries both administrative and judicial function. It is administrative in the sense that it alerts CMA to prepare the records as there is an intended revision. It is judicial in the sense that it gives alert to the Decree Holder that the Decree cannot be executed, and it informs the opposite party that revision process has commenced. It follows, therefore, that if the notice is not served it becomes prejudicial to the Respondent.

At all length, I agree with Counsel Mbedule that the Court is not like an automatic teller machine of which a bank customer can go at any time he wishes and cash in any how; and add that; though the Court of law is equated to the Synagogue or a Temple or a Mosque, there are procedures and taboos of joining or entering such places. Adhering to such procedures is what makes one part and parcel of such community.

In the premise, the preliminary objection sustained. Consequently, the application is hereby strike out for being incompetent. Each party to take care of his/her own costs.

It is so ordered.

Y. J. MLYAMBINA

JUDGE

04/08/2023

Ruling delivered and dated 4th day of August, 2023 in the presence of Counsel Rosalia Ntiruhungwa for the Applicant and Sosthen Mbedule for the Respondent.

MAHAKAMA KUU YA TANZANIA (The High Court of Tanzania) DIVISHENI YA MAHAKAMA YA KAZI (Labour Division)

Y. J. MLYAMBINA

JUDGE

04/08/2023