

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

REVISION APPLICATION NO. 118 OF 2023

*(Arising from the decision Commission for Mediation & Arbitration of DSM at
Kinondoni) Dated 18th April 2022 in Labour Dispute No.
CMA/DSM/KIN/96/2022/39/2022*

KEBBYS HOTEL.....APPLICANT

VERSUS

JOSEPH MAINA.....RESPONDENT

JUDGEMENT

16th Aug- 6th Sept. 2023

OPIYO, J.

This Revision application emanates from the decision of the Commission for Mediation and Arbitration of Dar es Salaam at Kinondoni (CMA) in Labour Dispute No. CMA/DSM/KIN/96/2022/39/2022. The prayers contained in the Chamber summons are: -

1. This Honourable Court be pleased to revise and set aside the award of the Commission for Mediation and Arbitration at Dar es salaam in the Labour Dispute No. CMA/



DSM/KIN/96/2022/39/2022 which was delivered on 18th April 2023.

2. This Honorable Court after setting aside the said award be pleased to determine the matter and/ or dispute in the manner it consider appropriate.
3. Any other relief(s) the Honorable Court deems just and equitable to grant.

The historical background of the dispute leading to this application is grasped from CMA record, affidavit and counter affidavit filed by the parties as stated hereunder. The respondent was employed by the Applicant since 2013. In 2020 their relationship turned sour, resulted from pandemic disease (Corona Virus). Thereafter the applicant made effort to know the status of his employment. It was alleged that on 24th January 2022 the respondent accepted the applicant to resume his work, subject to the condition that he should sign a new contract and his salary to be deducted. Being dissatisfied with the applicant's decision on 18th February 2022 the respondent herein referred the matter to the Commission. CMA decided the matter in favour of the respondent. Dissatisfied, preferred the present application. At paragraph 9 of their



affidavit, the Applicants advanced nine grounds of revision which can be paraphrased as follows: -

- i) Whether the arbitrator was correct not to determine the first issue on time limitation.
- ii) Whether the dispute was referred within prescribed time.
- iii) Whether the arbitrator was right to rely on Exhibit P1, P2 and P3 in concluding that the respondent was employed by the applicant.
- iv) Whether the arbitrator was right to award 3 months arrears in salary while the same was time barred.
- v) Whether the arbitrator was correct in holding that the respondent was employed by the applicant.
- vi) Whether the arbitrator was right and correct to hold that, the applicant terminated the employment of the respondent.
- vii) Whether the arbitrator was correct to award TZS 11,492,308/= to the respondent herein.
- viii) Whether the applicant's corporate name appears in the CMA Form No. 1 and in the dispute referred to the Commission.
- ix) Whether the applicant was properly sued in the Commission.



Rejoining on the matter the applicant reiterated his submission in chief insisting that the issue of time limitation was not addressed by the trial Commission at all. He also reiterated his prayer for the CMA award to be quashed and set aside.

From the above submission and CMA records, their issue for determination in relation to this ground is whether the preliminary objection on time limitation was dealt with as required by the law at CMA or whether the arbitrator was correct for not addressing the issue of time limit. It is alluded by applicant's Counsel that the decision of the Commission for Mediation and Arbitration is tainted with material irregularity as the same was not centered on all the the issues framed.

It is a well-known principal of law that that a point of law when raised has to be addressed first before the main application (see **Thabit Ramadhan Maziku and another vs Amina Khamis Tyela and another**, Civil Appeal No. 98 of 2021 at page 4 citing the case of **Bank of Tanzania Ltd V. Devran P. Valambia**, Civil Application No 15 of 2002 (CAT) (unreported)). In the case it was held that:

"The aim of a preliminary objection is to save the time of the court and of the parties by not going into the merits of the application



because there is a point of law that will dispose of the matter summarily."

From the above authority and the case of **Stanbic Bank Tanzania Ltd** since the issue of time limitation was indeed raised and even the commission deciding on 31st August 2022 that, it will be determined as the first issue, the arbitrator was not only legal bound to address it, but also had a duty of affording parties a chance to argue on the same before its determination. According to the records available including CMA award from page 8 to 17 nothing is revealed about the issue of time limitation as raised by the applicant at trial Commission. Parties were not given a chance to address the commission on it to enable its determination.

It is therefore my considered view that given the nature of the objection, it had a chance of disposing the matter summarily if upheld, as its prior determination was paramount even before commencement of hearing of the matter as it touches on the commission's jurisdiction to hear the matter. It was not proper to put it as an issue to be determined after hearing of the dispute in the first place, if the commission was to go with the spirit of the holding in of **Bank of Tanzania Ltd V. Devran P. Valambia (supra)** of saving time by refraining to go to the merits of



the matter. Thus, failure to determine the matter indeed constituted a fatal irregularity in the proceedings of the CMA.

From the above legal findings, I am of the view that the applicant right to be heard was denied as was held in the case of **Kumbwandumi Ndenfoo v. Mtei Bus Services Ltd**, Civil Appeal No. 257 of 2018, Court of Appeal of Tanzania, at Arusha (unreported). Again, in the case of **Safi Medics v Rose Peter, Mganga Mussa and Richard Karata**, Revision No 82 of 2010, High Court of Tanzania Labour Division, at Tanga, (Unreported), the Court held that a successful arbitration requires that both the arbitrator and the parties in the dispute have a common understanding of the issues in controversy.

In such circumstance the applicant's allegation that the first issue regarding time limitation was not addressed has legal stance as the Arbitrator failed to address it. Hence, the subsequent proceedings and award become irrational and illogical as it was arrived at before the court determining whether it had jurisdiction to determine the matter. the same is therefore worth nullifying as I hereby do. The file is to be remitted back to the CMA for the matter to be heard afresh before another competent arbitrator who has to resolve the issue of time limitation first.

Since the first ground has completely disposed of the matter, I find no need to labour much on other grounds of revision. Each party shall bear his or her own costs.

It is so ordered.



M. P. OPIYO,

JUDGE

6/9/2023