

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

REVISION APPLICATION NO. 166 OF 2023

(Arising from the award of the Commission for Mediation & Arbitration of Pwani at Kibaha Issued by Hon. L, Joyce: Arbitrator) Dated 15th March 2023 Labour Dispute No. CMA/PWN/KBH/MISC.O1/2023

**THE REGISTERED TRUSTEES
OF CHAMA CHA MAPINDUZI.....APPLICANT**

VERSUS

JOSEPH WASHOKERA MRISHO.....RESPONDENT

JUDGEMENT

Date of last order: 07th Nov. 2023

Date of Judgement: 28 Nov. 2023

OPIYO, J

This Revision application emanates from the ruling of the Commission for Mediation and Arbitration. The Applicant herein is praying for the orders of the Court in the following terms: -

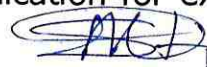
1. This Honorable Court be pleased to set aside, nullify, quash the decision in Labour Dispute No. CMA/DSM/KIN/28/22, the ruling which set aside the ex-parte award dated 18th August 2023 as the



same is full of illegality, error and material irregularity occasioned injustice.

2. That this honorable Court be pleased to revise the proceedings and set aside the ex-parte award entered on 15th April 2019 and make such orders as it deems fit.
3. Any other reliefs this Honorable Court deem may deem just to grant.

According to the CMA records and parties pleadings the respondent was employed by the applicant since 2006. Occasionally in 2013 their relationship turned sour for the reason of misconduct (embezzling of employees' NSSF funds). On such allegation he asserted that, he was suspended from work for unspecified term and without payment. Aggrieved by the termination, the respondent filed the matter at CMA claiming for unfair termination and his terminal benefits. At CMA the matter was heard ex-parte for the alleged non-appearance of the applicant. The *ex-parte* award was issued in respondent's favour to be paid compensation to the tune of TZS 129,944,974/= . When the matter was on execution stage, upon being summoned, reacted in a manner intending to oppose the *ex parte* award. Being out of time to challenge the executed award, the applicant filed the application for extension of



time to the Commission so as to file application for setting aside *ex-parte* award out of time. The application was not granted on the reason that the service for appearance was properly initiated and applicant failed to appear with no justifiable reasons. This triggered the present application.

This application is vehemently opposed by respondent, alleging that the service to appear was properly effected to the applicant's sub headquarters. That, the allegation of not being aware lacks legal stance, on the reason that the applicant was represented by an advocate.

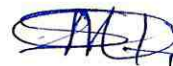
In disposing the application, it was argued by the way of written submissions, the applicant was represented by Mr. Fabian Donatus, Advocate while respondent was represented, by Mr. Edward Simkoko, Personal Representative. I appreciate their long rival submissions which helpful in drafting this judgement.

The applicant advanced two grounds for her non-appearance before CMA leading to the matter being heard *ex parte*. One is that the summons to appear before CMA was not properly procured and two is that she had never instructed an advocate to represent her. On that basis, she is of the view that, the *ex- parte* award was not properly



procured, hence arbitrator ought to have set aside the impugned award. Supporting his argument regarding proper procurement of the service and the effect of non-instruction for representation he cited different cases including the case of **Flavian Matata v. The Board of Trustees of Public Service Social Security Fund**, Civil Appeal No. 165/2022 where it was stated that in view of non-service of the applicant on the date of judgement, the very legality of the judgement is put into question. Also the case of **The Registered Trustees of the Kituo Cha Elimu na Maendeleo Matemanga(KIUMA) Trust Fund v. The Registered Trustees of Kanisa la Upendo wa Kiristo Masihi (KIUMA) and 2 others**, Civil Case No. 5 of 2022 explaining the importance of proper procurement of the service.

Challenging the application for revision Mr. Simkoko submitted that, the arbitrator was right in dismissing the application on the reason that the service to appear was properly made to the applicant via her sub headquarters, but she failed to appear several times without any justifiable reason. He added that, the applicant started to challenge the questioned award after execution being initiated.

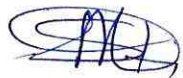


On allegations regarding representation, he contended that, since the Counsel namely Peter was in her sub headquarters office, then, she cannot deny that he was acting without her instructions.

From the above rival's argument, one notes that, the core of the debate between the parties is the procurement of summons and respondent's instructions to be represented by the Counsel. At CMA serving of document including summons is governed by provisions of Rule 6(1)(a)(ii), (2) and Rule 23 (1) of the Labour Institutions (Mediation and Arbitration) G.N No. 64 of 2007 which directs that a party shall serve a document to other party by delivering or handling a copy of document to a representative authorized in writing to accept service on behalf of the person or if it is a company or corporate body to the person in charge or acting on behalf.

Basing on the nature of this application, the above two provisions should not be applied in isolation in resolving the disputed questions. The records, including the CMA Form No. 1 shows that originally the respondent was UMOJA WA WAZAZI TANZANIA until notice of change of name was issued. Therefore, the current applicant came in the picture through notice of amendment of respondent's name (Exhibit J1). The ex



parte award with reference No. CMA/PWN/KBH/21/2018 shows that 1st and 2nd is the same person or the parties sued in the alternative. This is because, although both of them were named in the award, still the reference was made to respondent not respondents. In such circumstances, I see a great likelihood of improper procurement of service in that, if one is served, it is easy to ignore the other, believing it is the same person while in reality they are not. In records, all service seems to have been channelled through sub headquarter of CCM without specific without specifying a particular person receiving the same on behalf of the applicant herein. CCM is a big organisation with other sub institutions within, therefore service institution is important for the service to be effective. Serving the applicant through sub headquarters office of CCM itself without proof of serving the applicant in particular is not effective proof of service. Service should be made to the authorised person, not anybody related to the applicant. This is especially when the party involved is the legal person like the applicant herein. Therefore, service should be directed to specific office and through specific authorised person in power to be effective. It follows therefore that service that was not proved to have been made to the applicant specifically is not effective as against them. 

Furthermore, there is also a claim that some services were made through the applicant's advocate, one, Peter Seni. This fact is disputed by the applicants who contend that she was not represented by the said advocate. In my considered view, her argument is convincing because the CMA records reveals nothing about notice of representation signed by the applicant. It is also on record that, the said advocate is the one who was representing the former party before replacement with the current applicant and he is the one who filed notice of change of name, but no summons was ever issued subsequently in relation to the new party. All these gaps give benefit of doubt to the applicant as to whether summons was properly served for her to appear. The importance of serving summons is well expounded in the case of **The Registered Trustees of the Kituo Cha Elimu na Maendeleo Matemanga(KIUMA)'s (Supra)** that it is to make defendant aware of appearance date.

From the above legal reasoning for some one to claim there was a proper service, it must be effected to the party to the suit or authorized officer, not every person who happen to be related to the party. This is especially when it involves the legal person like the applicant herein. On that basis Peter Seni was not a proper party as there was no notice of

I am of the view that, the arbitrator ought to have considered the same as improper service to the applicant in in setting aside the *ex-parte* award. As pointed out herein above I differ with the arbitrator's finding resulting to rejecting to set aside the *ex-parte* award.

For that reasons, I hereby set aside an *ex-parte* award with reference No. CMA/PWN//KBH/21/2018 and proceedings thereto. The matter is remitted back to the CMA for inter-parties hearing. Each party in this application to bear its own costs.

It is so ordered.



M. P. OPIYO,

JUDGE

28/11/2023