

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

**REVISION APPLICATION NO. 27455 OF 2023**

*(Arising from Award issued on 02/11/ 2023 by Hon. A. Makanyaga, Arbitrator in Labour Dispute No.  
CMA/DSM/ILA/191/2022/121/2022 at Ilala)*

**JOACHIM JOLIGA ..... APPLICANT**

**VERSUS**

**DURBAN HOTEL LIMITED &**

**CONCORD HOTEL LTD.....RESPONDENT**

**EXPARTE JUDGEMENT**

*Date of Last Order: 23/02/2024  
Date of Judgment: 27/02/2024*

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

Brief facts of this application are that, applicant had a one-year fixed term contract of employment with the respondent. It happened that respondent terminated employment contract of the applicant. Aggrieved with termination, applicant filed Labour dispute No. CMA/DSM/191/22/121/2022. The said dispute was heard exparte in favour of the applicant. The Arbitrator ordered the respondents to pay TZS 2,500,000/=. Respondents being aggrieved with the said exparte award, filed Revision Application No. 307 of 2022 praying the court to

revise and set aside the said exparte award. Applicant raised a preliminary objection that respondents were supposed to file an application before the Commission for Mediation and Arbitration (CMA) to set aside the said exparte award. On 13<sup>th</sup> February 2023, this court(Hon. Katarina Revocati Mteule, J) sustained the preliminary objection and struck out Revision No. 307 of 2022.

After struck out of Revision No. 307 of 2023 by this court, respondent filed an application at CMA praying to set aside the said exparte award. It happened that applicant did not enter appearance, as a result, the said application was also heard exparte. In short, an application to set aside exparte award filed by the respondents was also heard exparte. On 15<sup>th</sup> March 2023, Hon. Lucia Chrisantus Chacha, Arbitrator, deliver exparte ruling in favour of the respondents setting aside the exparte award that was issued in favor of the applicant and ordered the dispute that was filed by the applicant be heard interparty.

Applicant was aggrieved with the exparte ruling that set aside the exparte award as a result, he filed before this court, revision application No. 94 of 2023. Respondents successfully raised a preliminary objection that the said Revision was prematurely filed before this court, as a result, Hon. Mlyambina J, struck it out and directed the parties to go back to CMA so that they can be heard interparty. On the date the

parties were called for hearing at CMA, respondents raised a preliminary objection that the dispute is untenable as it contravenes the provisions of Rule 1(3) of Order XXIII of the Civil Procedure Code[Cap. 33 R.E. 2019] as the same dispute was withdrawn with no leave to refile. On 2<sup>nd</sup> November 2023, Hon. Makanyaga, A.A, Arbitrator, having heard submissions of the parties, delivered the ruling upholding the preliminary objection raised by the respondents and struck out the dispute.

Again, applicant was aggrieved hence this application for Revision. In his affidavit in support of the application, applicant three issues namely:-

- 1. Whether the honourable arbitrator was properly arrived on her ruling that there was no complaint to be determined at the CMA.*
- 2. Whether the CMA arbitrator was properly that the applicant did withdraw the complaint CMA/DSM/ILA/191/22/121/2022.*
- 3. In presence of court order of 29/05/2023 remitted the CMA file No. CMA/DSM/ILA/191/22/121/2022 whether the CMA arbitrator was properly on her option to disrespect the court order.*

Though duly served with the application, respondents did neither file the Notice of Opposition and the Counter Affidavit nor enter appearance on the date of hearing this application. Due to that, this application was heard exparte.

During hearing, Applicant was represented by Hamza Rajabu, the Personal Representative.

Arguing in support of the application, Mr. Rajabu submitted generally that, the arbitrator erred to hold that Labour dispute No. CMA/DSM/ILA/191/22/121/2022 was withdrawn by the applicant vide applicant's letter dated 15<sup>th</sup> May 2023. Mr. Rajabu strongly submitted that, the said letter did not withdraw the said dispute, rather, it intended to withdraw the Miscellaneous Application that was filed by the applicant so that CMA can vacate its exparte order. During hearing, Mr. Rajabu conceded that, on the heading of the said letter, applicant indicated that he prayed to withdraw the dispute. He further conceded that, even in the last but two paragraph, applicant indicated that he prayed to withdraw the dispute and not Miscellaneous Application. In the same submission, he changed and submitted that applicant withdrew Miscellaneous Application (Maombi) and not the dispute (shauri) because at that time, revision No. 94 of 2023 that was filed by the applicant was pending before this court. With those submissions, the personal representative of the applicant prayed the application be allowed.

I have examined the CMA record and submissions that was made on behalf of the applicant in this application and find that, the only issue is whether applicant withdrew the dispute he filed at CMA or not.

It is undisputed by Mr. Rajabu, the Personal Representative of the applicant that, on 15<sup>th</sup> May 2023, applicant wrote a letter to CMA. The only dispute is whether, in the said letter applicant was praying to withdraw Miscellaneous Application or the dispute. I have read the said letter, and I am convinced that, applicant withdrew the dispute(shauri) and not the Miscellaneous Application(Maombi Madogo). I am of that view because, the said letter reads:-

"...  
YAH: TAARIFA YA KUONDOA SHAURI (TO WITHDRAW)

KWA AFISA MFAWIDHI,  
TUME YA USULUHISHI NA UAMUZI,  
S.L.P  
DAR ES SALAAM

*Tafadhali rejea mada tajwa hapo juu,*

*Napenda kukujulisha na kuijulisha Tume kwa ujumla kuwa mnamo tarehe 20/3/2023 nilileta Maombi ya kutengua Amri ya Tume iliyotolewa mnamo tarehe 15/03/2023 mbele ya Mheshimiwa LUCIA, ambapo Uamuzi niliupokea tarehe 17/03/2023 kuhusiana na Shauri tajwa juu.*

*Kwamba, pamoja na hayo tayari nimekwisha wasilisha Maombi ya Marejeo Mahakama Kuu Kitengo cha Kazi na kusajiliwa kwa namba Revision Application No. 94/2023.*

***Kwa Msingi huo nimelazimika kuliondoa shauri hili kwa kuwa tayari lipo Mahakama Kuu ya Kazi.***

*Kwa heshima Kuu naomba kuwasilisha.  
..."(Emphasis is mine)*

It is my view that, the bolded sentence tells all. I am of the view that, submissions by the personal representative of the applicant that applicant withdrew the Miscellaneous Application cannot be valid. The

quoted letter is clear that applicant withdrew the dispute and not the Miscellaneous application. Since the dispute was withdrawn on 15<sup>th</sup> May 2023, there was no dispute between the parties that was pending at CMA to be arbitrated by the parties. I therefore confirm the ruling of the arbitrator and dismiss this application.

Dated at Dar es Salaam on this 27<sup>th</sup> February 2024.



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

Judgment delivered on 27<sup>th</sup> February 2024 in chambers in the presence of Joachim Joliga, Applicant but in the absence of the respondent.



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