

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

**REVISION APPLICATION NO. 249 OF 2023**

*(Arising from the award of the Commission for Mediation & Arbitration of DSM at Kinondoni  
Issued by Hon. M, Abdallah: Arbitrator in Labour Dispute  
No. CMA/DSM/KIN/246/2022)*

**HASSAN KONDO KUGA.....APPLICANT**

**VERSUS**

**TANZANIA SOCIAL SERVICES**

**INDUSTRY WORKERS UNION.....RESPONDENT**

**RULING**

**OPIYO, J**

Date of last order; 23/11/2023

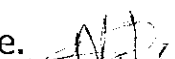
Date of Judgement 28/2/2024

In this application, the applicant is seeking for this Court to call for the record of Labour Dispute No. CMA/DSM/ILA/436/2022/257/2022 from the Commission for Mediation and Arbitration of Dar es salaam (herein CMA). The object is to revise and set aside the CMA award. He further prayed for this Court to make any other orders as it may deem just and convenient in the circumstances of the case.




Historical background of the challenged matter is extracted from CMA record, affidavit and counter affidavit filed by the parties, leading to this application. The applicant was employed by the respondent as Assistant Accountant since 1<sup>st</sup> February 2017 till 31<sup>st</sup> December 2021 when he was terminated for misconduct (withdrawing money not authorized by the Secretary, honoring payment without authorization from responsible authority, hence caused a loss of TZS 65,093565/=). Aggrieved by the decision applicant filed the matter at CMA on 25<sup>th</sup> November 2021 claiming for unfair termination and his terminal benefits. At CMA the matter was determined on respondent's favor. This triggered the present application. This application is vehemently opposed by respondent who raised the following preliminary objections to the effect that: -

- i) The application before this Honorable Court is time barred contrary to law.
- ii) That the application for revision is anonymous to the respondent.

The preliminary objection was disposed of via written submissions, the respondent was represented by Ms. Isabela Alex, Legal Secretary while applicant was represented, by Mr. Paul Elias, Advocate. 

Supporting the first point of preliminary objection Ms. Isabela submitted that the Applicant in this application obtained an award against the Respondent from the Commission for Mediation and Arbitration on 10<sup>th</sup> July, 2023. He stated that, the Applicant and Respondent had a right to file revision application within 42 days from the date on which the award was issued by the Commission for Mediation and Arbitration.

By the order issued on 10<sup>th</sup> July 2023, Ms. Isabela argued that the applicant was supposed to ensure that their application for revision is presented for filing not later than 21<sup>st</sup> August 2023. He added that, for reasons best known to the applicant, the application was presented for filing to the Court on 13<sup>th</sup> October 2023 thus the same being late for fifty four (54) days in terms of the order of the Commission for Mediation and Arbitration. She further argued that on this delay, it suffices to say that the Order of the Commission for Mediation and Arbitration granting forty-two (42) days to file their application has not been respected by the applicant who chase to file his application after fift four (54) days contrary to the time fixed by the Commission. On that basis she is of the view that the application is time barred and it supposed to be struck out by this Court.



Notwithstanding the above raised preliminary objection on point of law, Ms. Isabela argued that the dispute from which the applicant filed this application is referred as Labour Dispute No. CMA/DSM/KIN/246/2022. Henceforth, the referred Labour Dispute does not involve the Respondent thus it is very clear that the Respondent is a wrong party to this application. According to her, the Respondent to this application is wrongly with malicious intent involved by the applicant and this Honorable court is moved to strike out this application with costs.

In reply, Mr. Elias submitted that, the Applicant in this application had obtained an award from the Commission for Mediation and Arbitration on 10<sup>th</sup> July 2023, Whereof, the applicant and respondent had a right to file revision application within a period of 42 days from the date the award was issued by the Commission for Mediation and Arbitration.

Mr. Elias argued that after receiving an award of the Commission for Mediation and Arbitration before expiration time to lodge revision, before this Court, the applicant discovered that the Commission award has typographical error on respondent name by being written TANZANIA SOCIAL INDUSTRIAL WORKES UNION instead TANZANIA SOCIAL SERVICES INDUSTRY WORKERS UNION as the correct name pursuant to



the amended CMA F 1 which was filed on 10<sup>th</sup> March, 2022 and the same amended form was accepted accordingly.

On that typographical error, Mr. Elias argued that around end of the July 2023 he filed an application for correction of the said award of the Commission for mediation and Arbitration on the said typographical error name of the respondent before the same commission and application was heard on merit on 8<sup>th</sup> Day of September 2023 and the order was issued, on 5<sup>th</sup> Day of October 2023 the present application was filed, that's means the applicant used 28 days in filing application for revision before this Honourable Court. According to him the arguments of the respondent that the application was filed out of time lacks merits.

On the second preliminary objection, Mr. Elias averred that, the applicant has lodge an application for revision with unknown case number which does not involve the respondent herein. With due respect the applicant wishes to admit it was mistaken typing error by being identified as a Labor Dispute No. CMA/DSM/KIN/246/2022 instead of Labour Dispute No. CMA/DSM/ILA/483/21/2/22 as correct case number. He stated that since there was no doubt that the respondent is aware of



the existence conflict with the applicant and the award delivered by the commission for mediation and arbitration through Labour Dispute no. CMA/DSM/1LA/483/21/2/22.

Basing on the above argument, Mr. Elias prayed for this Court to consider the present application, since the said defect does not prejudice the respondent in filing reply. For those reasons he is of the view that this honorable court has discretion power of ordering amendment, instead of striking out the application. As was held in the case of **Joseph Magombi v. Tanzania National Parks (TANAPA)**, Civil Appeal No, 114 of 2016, CAT, (reported in Tanzlii), at Page 12 up to 16 it was held that; -

*"it that regard we order amendment of all the proceedings by stating the proper respondent the way it was in enquiry No. 67 of 2002"*

On that basis, Mr. Elias prayed for this Court to use the principle of overriding objection (main objective) in defeating second objection. Supporting his position, he cited the case of **Johari Ibrahim v.**



**Mpanda Municipal Council & 2 Others**, Land Case No. 4 of 2021, High Court of Tanzania, at Sumbawanga, at page 12. It was held that: -

*"On my own considered view, it would be better for parties to dwell on the substantive issues rather than technicalities which do not go to the root of the matter. This is the position in Yakobo Magoiga Gichere v. Peninah Yusuph, Civil Appeal No. 55 of 2017 (CAT) (unreported): With the advent of the principle of Overriding Objective brought by the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2018 [ACTNO. 8 00018] which now requires the courts to deal with cases justly, and to have regard to substantive justice; section 45 of the Land Disputes Courts Act should be given more prominence to cut back on procedural technicalities, The overriding objective principle ensures that cases are decided on merit(s) and without undue delay and costs."*

Basing on the above arguments, they thus prayed for the application to be overruled and the matter to be heard on merits.

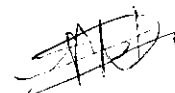
In resolving preliminary objections raised by the respondent, I find worth to be guided by the principle of law, established in numerous cases including the case of Thabit **Ramadhan Maziku and another vs Amina Khamis Tyela and another**, Civil Appeal No. 98 of 2021 also cited in the case of **Bank of Tanzania Ltd V. Devran P.**



**Valambia**, Civil Application No 15 of 2002 (CAT) (unreported) it was held:

*"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 the question before this Court is does the preliminary objections raised by the respondent dispose of the matter. Starting with the first, that the application was time barred. In resolving this question, I find no need to detain much, as record of this application reveals that the impugned award with reference No. CMA/DSM/1LA/483/21/2/22 was corrected as there was typographical error, specifically the name of the respondent, from TANZANIA SOCIAL INDUSTRIAL WORKES UNION to TANZANIA SOCIAL SERVICES INDUSTRY WORKERS UNION. Hence, the order for correction was issued on 8<sup>th</sup> Day of September 2023, and the applicant managed to file the present application on 5<sup>th</sup> Day of October 2023, that's means the applicant used 28 days in filing application for revision before this Honourable Court after being served with the corrected award. Since the






correction was made in accordance with Section 90 of the Employment and Labour Relation Act, Cap 366 R.E 2019 by inserting the proper party, as the same could have an effect in enforcing the award, the counting starts from the date of service of the corrected award.

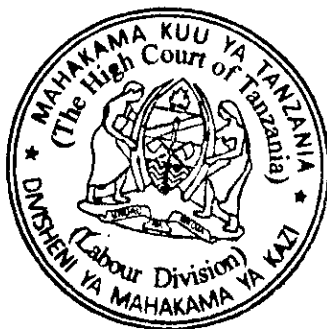
In such circumstances, claiming that the award was issued on 10<sup>th</sup> July 2023 while it had a typographical error is contrary to Section 91 of the ELRA, CAP 366 R.E 2019 on the reason that by that time, impliedly there was no award at all. Therefore, respondent's claim of computing time from 10<sup>th</sup> July 2023 lacks merits. It is overruled.

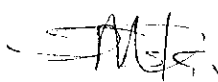
On allegation regarding unknown case number which does not involve the respondent herein. It is undisputed that applicant and respondent had a labour dispute to the Commission with Reference No. CMA/DSM/1LA/483/21/2/22 and no evidence that they had another dispute at CMA. All the records the records available refers to Labour Dispute No. CMA/DSM/1LA/483/21/2/22. On that legal basis I agree with applicant's Counsel by citing the *TANAPA's Case*, on the reason that such error attracts amendment and not striking out the whole application as it does not go to the root of the matter. The advantage of the same was discussed in Ugandan case of **Buffalo Youngster Inc. v. SGS Uganda Ltd**, HCMA, No. 6 of 2012 as was cited in the case of



**Rev. John Mathiasi Chambi & Another v. Registration Insolvency and Trusteeship & Another**, Miscellaneous Cause No.21 of 2020, where the Court emphasized avoidance of multiplicity of proceedings should as far as possible and all amendments which avoid such multiplicity should be allowed. From the above authority and in consideration of timely justice to the litigants, in my considered view, such errors of typographical nature attract amendment rather than striking out the main application. Such finding justifies overruling the objection.

As pointed out herein above, I have no hesitation to say that, all preliminary objections raised by the respondent failed to attract sustenance. They are all overruled, the application is ordered to proceed on merits.



  
**M. P. OPIYO,**  
**JUDGE**  
**28/2/2024**