**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**REVISION APPLICATION NO. 27570 OF 2023**

**REFERENCE NO. 20231213000027570**

**BETWEEN**

**LA GLOIRE DE DIEU TRADING & TRANSPORT LIMITED ..... APPLICANT**

**VERSUS**

**ALOYCE MATHEW MTUI ..... RESPONDENT**

## RULING

**Date of last Order:** *23/02/2024*
**Date of Ruling:** *12/03/2024*

**MLYAMBINA, J.**

This ruling is in respect of a preliminary objection raised by the Respondent's counsel against an application for revision of the decision of the Commission for Mediation and Arbitration (herein CMA). Initially, at the CMA the Applicant filed an application claiming for salary arears. Such application was accompanied with an application for condonation. The CMA granted the condonation as sought. Aggrieved by the CMA's decision, the Applicant filed the present Applicant. In response to the application, the Respondent's Counsel raised a preliminary objection to the effect that:

The application is prematurely filed before the Court as against the decision of the *CMA No. CMA/DSM/ILA/399/2023* contrary to *Rule 50 of the Labour Court Rules GN. No. 106 of 2007*

The preliminary objection was argued orally. Whereas, Joseph Basheka, Personal representative appeared for the Applicant, Mr. Jimmy Mnkeni from CHAWATA Trade Union was for the Respondent.

Arguing in support of the preliminary objection, Mr. Mnkeni submitted that Applicant filed an application for revision against the ruling of the CMA on the application for condonation which was granted by the CMA. It was ordered that the main case be tried on merits. He informed the Court that the matter is proceeding at the CMA now. It is being scheduled on 07/03/2024 before Hon. Kihwelo Arbitrator. He also stated that the Ruling on condonation did not decide the matter conclusively on merits.

Mr. Mnkeni argued that; as per *Rule 50 of the Labour Court Rules (supra),* no revision or appeal is allowed against the interlocutory decision. He strongly submitted that the ruling on condonation is interlocutory decision. He added that the Applicant's application is prematurely being preferred. In support of his position, he referred the

Court to the case of **International Tax Consultants Ltd v. Macdonald Justus Rweyemamu,** Labour Revision No. 199 of 2023, High Court of Tanzania Labour Division at Dar es Salaam. In the upshot, he urged the Court to dismiss the application for being interlocutory.

In response to the objection, Mr. Basheka submitted that the decision of the CMA is not interlocutory rather a final decision. He was of that stance because the relief claimed in that application was to file the case out of time and such application was granted. He argued that the application for condonation is different from the Labour dispute. He added that; before the application for condonation is granted there is no any dispute. Therefore, the claim before the CMA is a different claim. It is therefore not correct to say that the case is proceedings before the CMA.

Mr. Mnkeni further maintained that; the decision of the CMA on condonation can be challenged before the Labour Court by way of Revision. To strengthen his argument, he referred the Court to the case of **Brookly Media (T) Ltd v. Bakary Ally Mzee**, Revision No. 329 of 2021, High Court of Tanzania Labour Division (unreported). That, the referred decision was the revision decision against the decision of the CMA which granted condonation. During hearing, the Respondent raised

a similar objection. The Court dismissed such objection at page 8 paragraph 3.

Also, the Respondent's representative cited the case of **Nyanza Road Works Ltd v. Giovanni Guidon,** Civil Appeal No. 75 of 2020, Court of Appeal of Tanzania at Dodoma (unreported). He stated that; the cited case shows that the ruling on condonation can be challenged. The case started before CMA. The application for condonation was dismissed. The employee came to the High Court. On revision, the High Court granted condonation and it was ordered the file be remitted to the CMA. The employer challenged the High Court decision before the Court of Appeal. On appeal, the Court of Appeal set aside the High Court decision and restored the CMA decision.

He further referred the Court to the case of **Commissioner General Tanzania Revenue Authority and Another v. Milambo Limited**, Civil Appeal No. 62 of 2022, Court of Appeal of Tanzania Dar es Salaam (unreported). It was an application for extension of time. That, the High Court granted an application for extension of time. The other side appealed before the Court of Appeal against the ruling that granted an application for extension of time. The Respondent raised a preliminary objection that the decision was an interlocutory and

incapable of being challenged before the Court of Appeal. In its decision at page 12 paragraph two, the Court of Appeal held that:

> Therefore, in the matter under scrutiny, since the Respondent was granted, the relief sought on enlargement of time to apply leave to seek prerogative rights, the matter was wound up and as such, the respective ruling is not an interlocutory order at any stretch of imagination. Thus, we agree with Mr. Nyoni that the preliminary objection is misconceived, unmerited and it is accordingly dismissed.

As regards the cited decision of **International Tax Consultants Ltd v. Macdonald Justus Rweyemamu** *(supra),* it was argued that; such decision is not binding because it is the decision of the High Court. The decision of the High Court Judge is not binding to the Judge of the same Court. He can depart. He urged the Court to be guided by the decision of the Court of Appeal cited. He therefore prayed for the Court to dismiss the preliminary objection and proceed to determine the application on merit.

I have dully considered the rival submissions of the parties, CMA and Court records as well as relevant laws. I find the Court is called

upon to determine only one issue; *whether the preliminary objection at hand have merits.*

The point of objection raised at hand is not virgin. The Court was faced with similar objection in the case of **Macdonald Justus Rweyemamu** *(supra).* In such case, the Court determined at length the issue as to; *whether the decision of the CMA on condonation matters is final or interlocutory decision.* Numerous Court decisions were referred in the mentioned decision. At page 21 of such decision the Court stated as follows:

> It is the observation of this Court that; if the application for condonation is denied, the order is final in effect. It is definitive of the rights of the parties because nothing remains in place for determination. As such, the aggrieved party will have the right to file revision before this Court. But if the application for condonation is granted, the primary consideration should be to accord the parties with the right to be heard on merits because that course will bring the just and expeditious decision of the major substantive dispute between them.

Therefore, the cited case of **Macdonald Justus Rweyemamu** *(supra)* expressly stated that; if the application for condonation is granted at the CMA, the decision arrived thereat is interlocutory and

cannot be challenged by way of revision. I still maintain in this matter the reasons stated in the **Macdonald Justus Rweyemamu** *(supra)*, The rationale of treating the grant of condonation at the CMA as interlocutory is to avoid piecemeals revision and serving Court's limited resources as well as bringing about just and expeditious decision of the major substantive dispute between the parties.

An application for condonation at the CMA does not stand alone as a distinct application from the main application like it is in other normal Courts. Such application must be accompanied with the main application which makes the grant of it an interim order because the main dispute is yet to be determined. On such basis, the grant of an application for condonation is interlocutory.

I don't disregard the decision of **Brookly Media (T) Ltd v. Bakary Ally Mzee** (supra). However, as rightly argued by Mr. Basheka, the decision of the High Court Judge is not binding to the Judge of the same Court. Consequently, a decision by one High Court serves as persuasive value for other Judge. Though not allowed to depart lightly, if there are good reasons to do so, a Judge can make a departure from the position of the fellow Judge. Since, condonation application do not bring substantive rights to their rest, it is important to discourage

revision application on interlocutory decisions. In interpreting the law, the Court must take into account that it is in the interests of justice and labour law that parties participate in production and service to achieve social stability and economic development. The purpose of *Rule 50 (supra),* however, is to expedite Court's business by allowing cases to be determined timely instead of having so many revisions which are pre-maturely.

Also, as I stated in the case of **Macdonald Justus Rweyemamu** *(supra), Section 3 (a) of the Employment and Labour Relations Act [Cap 366 Revised Edition 2019* discourages unnecessary litigation which wastes resources and impair social and economic development. The primary objects of ELRA in particular under *Section 3 (a) (supra)* is to promote expeditious resolution of labour disputes to achieve economic development through economic efficiency, productivity and social justice. I therefore forcefully maintain that decision of CMA on condonation matters which do not bring the matter to its end are interlocutory decisions which are not amenable to revision by the High Court Labour Division.

Mr. Basheka also cited the case of **Commissioner General Tanzania Revenue Authority and Another** *(supra),* which in my

its finality. Thus, the aggrieved party has the right to challenge such decision. In the premises, I find the circumstances in the cited case are distinguishable to the case at hand where the application for condonation was granted and the matter was ordered to proceed on merit.

Worse enough, in the application at hand, the matter is proceeding on merit. As submitted by Mr. Mnkeni, the matter was scheduled on 07/03/2024 before Hon. Kihwelo Arbitrator, and there is no order to stop determination of the same. The circumstances which, in my view, makes it necessary to discourage applications of this nature so as to align to the purpose of enacting labour laws with its own peculiar from other normal civil laws.

In the result, I find the preliminary objection at hand has merit. This application was prematurely filed contrary to *Rule 50 of the Labour Court Rules* (supra). The same is hereby dismissed for lack of merit. The matter is ordered to proceed with at arbitration stage before the CMA.

It is so ordered.

**Y.J. MLYAMBINA**

**JUDGE**

**12/03/2024**

Ruling delivered and dated 12th March, 2024 in the presence of Jimmy Mnkeni, Legal Officer from CHAWAMATA Trade Union for the Respondent and in the absence of the Applicant.

**Y.J. MLYAMBINA**

**JUDGE**

**12/03/2024**