

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 313 OF 2013

ZANZIBAR PETROLEUM LIMITED.....APPLICANT

VERSUS

HUSSEIN J KILONGO.....RESPONDENT

(CMA ORIGINAL FILE CMA/DSM/106/2012)

J U D G M E N T

10/06/2014 & 31/07/2014

Mipawa, J.

This application for revision of the award procured from the Commission for Mediation and Arbitration (herein after to be referred to as CMA) in labour dispute number CMA/DSM/TEM/106/2012 revolves around the issues of geographical jurisdiction of the CMA specifically in regard to the place where the cause of action arose. The same was issued on 13/07/2012.¹

¹ See CMA Form No.1 and award.

The application was filed in this Court vide a Notice of application made under rules 24 (1) (2) (a) (b) (c) (f), 3 (a) (b) (c) and 28 (1) (a) (b) (c) (d) of the **Labour Court Rules, GN. No. 106/2007**; a Chamber Summons made under Section 91(1)(a) and (3) and 94 (1) (b) (i) of the **Employment and Labour Relations Act, 2004** (to be referred to herein as ELRA)², section 51 of the **Labour Institution Act, 2004** (herein referred to as LIA),³ and again rule 28(1) of the **Labour Court Rules, GN. No. 106 of 2007** and an affidavit of one Salim Sadrudin Hashim. The grounds for revision as advanced by the applicant in the affidavit are:-

That, the issue pertaining to this application to this application revolves around the act of the CMA Temeke entertaining the labour dispute and granting the application for condonation in which the following issues arise:-

- a) Whether the CMA Temeke acted in exercise of jurisdiction not vested on it by the law, hence in exercise of its jurisdiction, by entertaining a labour dispute whose cause of action arose in Zanzibar;*
- b) Whether there was sufficient cause which was established by the Respondent so as to be entitled to the extension of time so requested and granted;*
- c) Whether, by mere statement contained in the affidavit by the Respondent that the delay to file the labour dispute at CMA Temeke was occasioned by wrongly filing it in Zanzibar*

² Act No.6/2004.

³ Act No.7/2004.

*while he did not attach any proof to
substitute his allegations constitute sufficient
ground;*

d)⁴

The respondent replied to that filed application by filing a notice of opposition as well as the Counter Affidavit with numerous grounds and reasons for opposing the applicant's application, but the said grounds are of no immediate concern for now.

During the hearing of this application the parties had the representation of Advocates namely Mr. Tairo for the applicant from Adept Chambers Advocates, while the respondent enjoyed the legal services of one Ms. Sahemba Advocate from Zeal Mark Co. Advocates. It is worthy to note that the same Advocates from the same firms had represented the parties during the hearing of the dispute at the CMA.⁵

The Advocates for both parties advanced fruitful arguments to support their application so as at the end to justify the same. Unfortunately I will not go further to discuss and evaluate the same which would have supported me to lay a platform for my

⁴ Ground 17 of the Affidavit.

⁵ See the pleadings filed in this Court and CMA records.

reasoning, conclusion and final decision thereto, rather I will dwell on something else, an escapable one, namely the anomaly/discrepancy that I *suo moto* noted during the critical perusal of the filed documents when preparing this judgment.

That anomaly is in the documents filed by the applicant especially in **the notice of application** and **the chamber summons** is that the cited enabling provisions of the law are not sufficient to make the application be proper before the court and therefore make the Court exercises its revision powers over CMA proceedings and award, in other legal style I can simply say that there is **non-citation/incomplete citation** of the enabling provisions of the law as well as **wrong citation**. As I showed earlier the applicant brought a Notice of application made under **rules 24 (1) (2) (a) (b) (c) (f), 3 (a) (b) (c) and 28 (1) (a) (b) (c) (c) (d) of the Labour Court Rules, GN. No. 106/2007; a Chamber Summons under Section 91 (1) (a) and (3) and 94 (1) (b) (i) of the Employment and Labour Relations Act, 2004, Section 51 of the Labour Institution Act, 2004 and rule 28 (1) of the Labour Court Rules, GN. No. 106 of 2007.**

In a quick but careful legal perusal that one can make in the above cited provisions by the Advocate for the applicant in support of the application draws one's attention on the non cited mandatory and parent provisions which mandate the labour Court to have jurisdiction in this matter at hand, and wrong citation these are:-

- a) *Section 91 (2) (a) or (b) or (c)⁶ or both of the ELRA. This section clearly gives the grounds for revision of the CMA award which any applicant must show so as to justify revision, and those grounds under this section not cited by the applicant are to be explained more by the provisions in the Labour Court rules.⁷ Failure of the advocate for the applicant to cite that crucial section makes his grounds for revision to hang.⁸*
- b) *Section 91 (3) of the ELRA.⁹ The Advocate for the applicant cited this section in his chamber summons.*

*To my understanding this section 91 (3) deals with application for **stay of the enforcement of the award pending this court's decision on revision**. I am afraid of believing that the section was properly cited and therefore application for stay of the CMA award, if yes then it would amount to omnibus application as*

⁶ *Op.cit* note 2 and The Written Laws (Miscellaneous Amendments) No.3 of 2010. It added another ground for revision when the award is unlawful, illogical or irrational.

⁷ Rule 28 of GN. No. 106/ 2007.

⁸ *Op.cit* note 2.

⁹ *Ibid.*

this application is for revision of the CMA award.¹⁰ If not then wrong citation of the enabling provisions of the law when applying for revision of the CMA award before this Court.

It is a trite law that non citation or wrong citation of the enabling provisions of the law makes the application to be improperly before the Court, fatal and the only remedy available if for the matter to be struck out. There are numerous celebrated decisions regarding this aspect originating from the Court of Appeal of Tanzania (CAT) to mention a few are **Alliance Insurance Corporation and 9 others Versus Commissioner of Insurance and two others¹¹; City Bank Tanzania Ltd Versus TTCL and 4 others,¹²** in this application for example the CAT emphasized the need to cite the specific section and subsection, the appellant had cited only section 4 of the **Appellate Jurisdiction Act, Cap 141 RE. 2002** and did not cite the subsection like the case at hand, for ease of reference I produce that portion of the CAT:-

.....the applicant however did not go further enough and mention the specific sub section that was

¹⁰ See page 1 of the Notice of Application; page 2 of the Chamber Summons; grounds 18 of the affidavit, both filed by the Learned Advocates for the applicant.

¹¹ Civil Application No. 5/2005, at Dar Es salaam, Lubuva JA, Nsekela JA, and Msoffe JA.

¹² Civil appeal no 64 of 2003 at Dar Es Salaam, Nsekela JA, Mroso JA, Lubuva JA, delivered on 01/12/2003

applicable..... an applicant must state the specific provision of the law under which he needs the wants to move the Court to exercise its jurisdiction.¹³

Another CAT decision to be taken into consideration is the case of ***Chama cha Walimu Tanzania versus The Attorney General¹⁴***. This case originated from this Court and I find it worthier to refer to it. The CAT in this case stressed the gravity of the error in omitting either to cite the enabling provision or citing a wrong one and quoted its own decision in the case of ***China Henan International Cooperation Group Vs. Salvand K. A. Rwegasira***, Civil Application No. 22 of 2005 that:-

.....here the omission in citing the proper provision of the rule relating to a reference and worse still the error in citing a wrong and inapplicable rule in support of the application is not in our view, a technicality falling within the scope and purview of Article 107A(2)(e) of the Constitution. It is a matter which goes to the very root of the matter.....¹⁵

Having elaborated as I have just done above I find that have no any residual power to proceed with the application rather than striking the same out. I note from the records that this is the

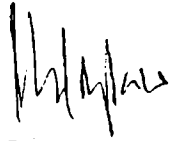
¹³ *Op.cit* note 12 at p 18

¹⁴ Civil Application number 151/2008, at Dar Es Salaam, Rutakangwa JA, Kimaro JA, and Luanda JA. Delivered on 13/11/2008.

¹⁵ *Ibid* at P18-19.

second time this Court striking out the applicant's application filed by the same Learned Counsel.¹⁶

It is so ordered.



I.S. Mipawa

JUDGE

31/07/2014

Appearance:-

1. Applicant: M/S Sehemba, Advocate holding briefs of Mr. Tairo,
Advocate for Applicant

2. Respondent: M/S Sehemba, Advocate - Present

Court: Judgment is read over and explained to the parties present as shown in the appearance above.



I.S. Mipawa

JUDGE

31/07/2014

¹⁶ The 1st application for revision registered as revision no.172/2012 was struck out on 03/09/2013 before Hon. Aboud J. due to defective jurat of attestation.