

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TABORA SUB-REGISTRY
AT TABORA**

LABOUR REVISION NO. 03 OF 2023

*(Originating from the Commission for Mediation and Arbitration in Labour Dispute
No. CMA DISP/TAB/MED/39, 40, 41, 42, 43, 44, 45 and 46 of 2018)*

PIUS ALEX MSAKI 1ST APPLICANT
EMMANUEL CHRISTOPHER 2ND APPLICANT
AKWILINI MREMA 3RD APPLICANT
STEVE MZAVA 4TH APPLICANT

VERSUS

TANZANIA ELECTRIC SUPPLY COMPANY LIMITED RESPONDENT

RULING

*Date of Last Order: 20/02/2024
Date of Judgment: 16/04/2024*

KADILU, J.

Before the Commission for Mediation and Arbitration of Tabora (CMA), the applicants tried to move this Court to revise the proceedings, decision, and order of the CMA in DISP/TAB/MED/39, 39, 40, 41, 42, 43, 44, 45 and 46 of 2018 whose decision was delivered by the CMA for Tabora on 10th July 2018. The application was brought by chamber summons under Rule 28 (1), (c), (d), (e) of the Labour Court Rules, 2007 (GN No. 106/2007) read together with section 91 (1), (b) and 91 (2) (a), (b), (c) of the Employment and Labour Relations Act, [Cap. 366 R.E. 2019]. It is supported by an affidavit of Mr. Samwel Lucas Ndaga learned Advocate for the applicants.

Conversely, the respondent resisted the application through a counter affidavit sworn by Mr. Norbert Bedder, the learned Advocate. The background leading to the dispute reveals that the applicants and 4 others (not party to this matter) were employed by the respondent on specified

term contracts. They were recruited to work as special task employees in the emergency and artisan departments of the respondent. The contracts were renewable monthly.

In 2018, the contracts were terminated for lack of necessary qualifications to work in the public service in any category of employment. Aggrieved by the move, they lodged complaints against the respondent in the CMA alleging unlawful termination of employment. Records of the CMA indicate that the dispute was resolved by mediation and a settlement agreement was registered. However, the applicants contend that there was no settlement reached but on 10/7/2018, one of their colleagues, Juma Baraka Lwele signed a purported settlement agreement on behalf of all the applicants without authorization.

The purported agreement was considered by the CMA as having resolved the dispute between the parties amicably and the applicants' claims arising from the employment were extinguished. Dissatisfied, they filed the instant application in this court praying it to revise the proceedings and decision of the CMA because there was an illegality that directly goes to the rights of the parties. The hearing of the present application was by way of written submissions by which both parties filed their submissions as per the scheduling order of this Court.

Mr. Samwel L. Ndanga, learned advocate for the applicants filed a submission in support of the application whereas Mr. Gureni N. Mapande, learned State Attorney fended for the respondent.

I have examined the record and considered the contending written submissions made for and against the application. Where necessary, the

same will be referred to in the course of addressing the central issues in the matter. Mr. Samwel Ndanga submitted that paragraph 7 of the applicants' affidavit discloses the illegality committed by the CMA. The records show that the applicants lodged 8 applications which were consolidated by the CMA into one as already shown. In the applications, the applicants claimed gratuities for 8 years, payment of leave for 8 years and 6 months, salary deductions for 21 months, and substance allowances for 8 years.

Mr. Ndanga added that for the applicants who worked for 3 or 4 years, their gratuities were TZS. 500,000/= each and those who worked between 6 and 10 years deserve TZS. 1,000,000/=each. It was the contention by Mr. Ndanga that the purported settlement agreement was supposed to be signed by the parties or their duly authorized representative, but the same was signed by the Mediator (Hon. Asnat F. Msaki), the respondent's representative, Mary Maganga, and one Juma Baraka Lwale. Mr. Ndanga argued that none of the applicants herein signed and endorsed the alleged settlement agreement in a personal capacity or represented by other applicants.

On the other hand, Mr. Gureni N. Mapande submitted that the applicants are attacking the settlement agreement by the CMA that it was illegal on the account that it contained the varied sum of money paid to the applicants. He further submitted that the proceedings at the CMA were not conclusive in the sense that they did not lead to the issuance of an award but the parties negotiated in more than one session and finally, they reached an agreement. On the issue of illegality, Mr. Gureni

submitted that the respondent cannot talk much about it since this court in Miscellaneous Labour Application No. 02 of 2022 ruled in favour of the applicants based on the alleged illegality in the settlement order of the CMA.

In the case of ***Simply Fresh Tanzania Ltd v Kevin Stander & 2 Others***, Commercial Case No. 34 of 2022, this court held that:

"Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith so far it relates to the suit."

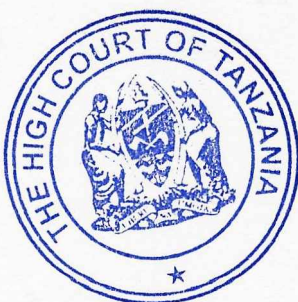
I have gone through the settlement agreement filed in CMA allegedly recorded on 10/07/2018. Order XXIII Rule 3 of the Civil Procedure Code [Cap 33 R. E. 2019]. The law is settled that before a settlement is entered and filed, the court must be satisfied that it is a lawful deed and it does, indeed, adjust the suit wholly or partially. If it does, the court will have only one duty to discharge, it shall record it, thereby passing a decree. The scope was concisely defined by Mulla, the Code of Civil Procedure Act of 1908 (14th Edition) on page 1828, as here below:


"The rule gives a mandate to the court to record a lawful adjustment or compromise and pass a decree in terms of such compromise or adjustment. Such a consent decree is not appealable ... When the agreement relates to the whole suit, the court on being invited by the parties, records the agreement and passes a decree in accordance with the agreement and the suit stops there."

From the above authorities, for the court to register a settlement deed and pass a decree, it should satisfy itself that the agreement between the parties that led to the settlement was lawful. In the instant application, the applicants have distanced themselves from having signed the alleged settlement agreement. I have scrutinized the impugned deed and satisfied myself that it does not bear the signature of any of the applicants herein. Since the deed of settlement which sought to settle the whole dispute was signed by the mediator, the respondent's representative, and a person not authorized by the applicants, and none of the applicants signed or endorsed the purported settlement agreement, I agree with the Advocate for the applicants that the settlement agreement was never blessed by the applicants to make it enforceable.

The signing of the deed by Juma Baraka Lwele representing the applicants without their consent, was illegal. Based on the illegality of the settlement agreement, the court hereby quashes and sets aside the CMA's proceedings and orders marking the dispute between the parties as resolved by mediation. The court further orders a trial of the dispute before the CMA for the parties to be heard on merit. Nevertheless, the parties are still at liberty if they so wish, to settle their dispute amicably in accordance with the law. As the dispute is a labour matter, each party shall bear its own costs.


It is so ordered.




KADILU, M.J.
JUDGE
16/04/2024.

The ruling delivered in chamber on the 16th Day of April, 2024 in the presence of Mr. Samwel Ndanga, Advocate for the applicants, and Mr. Gureni Mapande and Mr. Norbert Beda, State Attorneys for the respondent.




KADILU, M.J.,
JUDGE
16/04/2024.