

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

LABOUR APPLICATION FOR REVISION NO. 28209 OF 2023

*(Arising from the decision and Award of the Commission for Mediation and Arbitration of Mtwara at
Mtwara in Labour dispute No. CMA/MTW/52/2023)*

ABDALLAH YAHAYA MDIRA.....APPLICANT

VERSUS

DANGOTE CEMENT LTD TANZANIARESPONDENT

RULING

21st March & 17th April, 2024.

DING'OHI, J.

Under **section 91 (1) (a) & (b), (2) (a), (b) & (c), and section 94 (1) (b) (i) of Employment and Labour Relations Act CAP 366 of 2019, and Rule 24 (1), (2) (a), (b), (c), (d), (e) & (f) and (3) (a), (b), (c) & (d) read together with Rule 28 (1) (a), (b), (c), (d), & (e) and Rule 55 (1), (2) of the Labour Court Rules G.N. 106 of 2007** the Applicant, **ABDALLAH YAHAYA MDIRA** made the instant application against the Respondent, **DANGOTE CEMENT LTD TANZANIA**, for the orders that this Honourable Court be pleased to call for and examine the proceedings and the subsequent award of the Commission in Labour dispute No.

CMA/MTW/52/2023 dated 17th day of November 2023 for appropriateness of the decision and the award issued therein;

a) Upon setting aside and revising the said proceedings this Honourable Court be pleased to make orders as follows:-

- i) That, this Honourable Court be pleased to call for and examine the proceedings and the subsequent award of the Commission for Mediation and Arbitration at MTWARA in labour dispute No. CMA/MTW/52/2023 dated 17th day of November, 2023 for appropriateness of the said decision and the award issued therein.
- ii) That, this honorable Court after Revising the Commission for Mediation and Arbitration erred in law in facts by disregarding facts which it would have been considered would have rendered a fair rational decision for both parties.
- iii) That, this honorable Court be pleased to issue an order setting aside and quashing the impugned arbitrator award which has been improperly and illegally procured and;
- iv) That, this honorable Court be pleased to clarify on the payment of the Applicant's CMAF1 i.e. all his employment rights

remuneration and other payments from the date of unfair termination to the date of the final payments of the award or judgment debt.

- v) Any other relief which the Honorable Court may deem fit and just to grant.

On 21/3/2024 when this matter came for mention, Mr. **Stephen Lakey**, the learned counsel for the Respondent, raised a concern by way of objection that after going through the application, he found out that this application was not properly before this court. He prayed that he be allowed to make submissions on the only issue of whether this application is properly before the court.

The Applicant was represented by Mr. **Michael Deograthias Mgombozi**, the Personal Representative.

I am alive with the position of law that, once a preliminary objection is raised, it is to be determined first before the substantive case is heard and determined on merit. See; **Deonisia Onesmo Muyoga & Others vs Emmanuel Jumanne Luhahula** (Civil Appeal No. 219 of 2020) [2023] TZCA 124.

When allowed to commence a kick, Mr. Lekey argued that by reading the Applicant's Application, Notice of application chamber summons, notice of representation, and Notice of Schedule of list of Documents you will realize that at the court caption, the applicant purports that the instant revision is from the decision in Labour Dispute No. CMA/MTW/52/2023.

He submitted that, when you go through the prayers in the Notice of Application and chamber summons, the applicant prays for orders that this court be pleased to call for and examine the proceedings and subsequent award in respect of the Labour Dispute No. CMA/MTW/52/2023. According to Mr Lekey, as that is not enough, under paragraph 20 of the affidavit, the Applicant challenges the CMA award in Labour Dispute No. CMA/MTW/52/2023 which never existed between parties herein. He added that when this court calls for that dispute case file number certainly there would either be no such proceedings or that it will not be a case involving parties herein. The court will only be in the position to call for and examine proceedings in the Labour Dispute No. CMA/MTW/52/2023, citing the case of **Eckson Mtafya vs Michael Mtafya** (Probate Appeal No.6 of 2020) [2020] TZHC 3604

In furtherance, the learned advocate submitted that case numbers will enable the court to differentiate between two different cases involving the same parties, and cannot be identified by the names of the parties alone. To bolster his position, Mr Lekey referred to the case of **Robotia Mwinuka vs Kikundi Cha Kinda (Nancy Sanga)** (Civil Reference 1 of 2020) [2020] TZHC 1912 which held the position that the wrong citation of a case number renders the application incompetent before the court.

Responding to the above submissions, Mr. Mgombozi has submitted a lot. However, for the purposes herein, I will paraphrase his submissions without losing his intended meaning.

He submitted that, on the face of the respondent's submissions, the applicant has found nothing but an academic paper of a law student which has nothing to do with this application. That, after receiving a letter of termination the Applicant commenced the Labour dispute at the CMA subject to this revision application. As to the objection raised by the counsel for the respondent, the Legal Representative of the Applicant submitted that this court should invoke the overriding principles to allow this application to proceed to the merit. He cited several cases such as **Charles Bode vs The Republic**, Criminal Appeal No. 46 of 2016 to support his arguments.

Mr. Mgombozi contended further that as the identified defects are just minor and normal in writing and not harmful, this application should not be removed on the minor defects, taking into consideration that the impugned award was tainted with material irregularity, and thus the applicant is denied the right to work and the right to be heard. He supported his position with the case of **Namwina Abdallah Mohamed & Others Vs Cement Distributors (E.A) Ltd**, Misc. Labour Application No. 640 of 2018, together with the provisions of Rule 55 (2) and 29 (9) of the Labour Court Rules, GN 106 of 2007. Mr. Mgombozi contended that as the defects are minor omissions that have not accessioned any injustice, the court should allow the parties to correct the errors or defects on the records. Mr. Mgombozi is of the view that the respondent's contention is devoid of merit. He prayed that the objection be rejected out of hand, and the court should proceed to order that the applicant's application for revision be heard on merit.

I am of the view that this is not the matter that should detain me longer. As pointed herein above, the relevant issue is whether this application is properly before the Court.

After careful perusal of the records accompanying the instant application for revision, there is no way I can disagree with Mr. Lekey, for the respondent

that the applicant has made this application challenging the CMA award originated from Labour Dispute No. CMA/MTW/52/2023. The record is more than clear that the said Labour dispute matter was previously withdrawn at the preliminary stage at the request of the applicant on 19/03/2023. For ease of reference, let the proceedings of that date speak for itself;

"19/03/2023

AKIDI

Mbele ya Mh. Mwabeza – Msuluhishi

Mlalamikaji – Abdalah Mdira

Mwakilishi – Michael Mgombozi – Afisa wa mlalamikaji toka TUPSE

Mlalamikiwa – Dangote Cement Ltd Tanzania

Mwakilishi wa mlalamikiwa – Wakili Clara Koshuma

TUME: Shauri limekuja kwa ajili ya usuluhishi kwa mara ya kwanza.

Pande mbili zimeelezwa maana ya usuluhishi.

Clara: -Mlalamikaji alifungua shauri mbele ya Tume 20/12/2022 akidai ufafanuzi kuhusu masharti ya ajira ila tarehe 13/02/2023 tena alifungua mgogoro wa kuachishwa kazi.

-Mh. Naomba waseme mgogoro hii yote miwili tunaskilliza au tunafanyaje

Mgombozi: - Mh tunaomba kuondoa mgogoro wa kwanza kwa kuwa umeshakua overtaken by event kwani mlalamikaji ameshaondolewa kazini hakuna haja ya kujadili kilicholetwa katika CMA F1 ya kwanza.

TUME: Kwa kuzingatia maombi ya upande wa mlalamikaji, mgogoro no. CMA/MTW/52/2022 unaondolewa na kubakia na mgogoro no. CMA/MTW/11/2023 wenye viini vya mgogoro vya

*kuachishwa kazi, kuvunjwa kwa mkataba wa kazi na madai mengine as per
CMA, F1 ya tarehe 13/12/2023*

SAINI

MSULUHISHI

09/03/2023"

From the above records, it is clear to me that the Labour Dispute No. CMA/MTW/52/2023 had been withdrawn by the CMA on the application of the Applicant who was represented by the same Legal representative as in this matter. I am aware also that Mr Mgombozi has prayed that if I find that there was an error in naming and attaching the decision of the CMA sought to be revised, I should invoke the overriding objective principle provided for under section 3A (1) and (2) of the AJA to ensure that this application is heard and decided on merit. The principle encourages courts to consider substantive justice as opposed to legal and procedural technicalities. I have respectively considered the submissions by Mr. Mgombozi. However, it is now settled that the principle cannot be applied blindly against the mandatory provisions of the procedural law which goes to the very root of the case; See **District Executive Director Kilwa District Council vs Bogeta Engineering Limited**, Civil Appeal No. 37 of 2017, C/A. In this case, for example, the wrong citation of the case number intended to be revised does not end in the chamber summons only but goes to all other

case documents forming part of the application. Those documents are the notice of application, Notice of representation and the chamber summons. It is not irrelevant to add here that, the defects went even in the affidavit accompanying the revision application. The applicant, under paragraph 20 of his affidavit, has referred to the CMA Labour Dispute number intended to be revised, in this application, as hereunder;

*"That, for the purpose of this application for revision, for arbitration proceedings and award issued by Hon. Kweka, A.J. (Arbitrator) in the Commission for Mediation and Arbitration on No. **CMA/MTW/52/2023** dated 17th day of November, 2023 2023 are attached herewith. (Annexed hereto and marked as annexure "P14 is a copy of the said Arbitration's proceedings and its award dated 17th day of November, 2023 which leave of the Court is craved to refer to its as part this Affidavit)"*

It follows therefore that as the defect went even in the key paragraphs of the affidavit accompanying this application, the same is not curable. I would be in a different view if the wrong citation of the labour dispute number ended up in other accompanying documents or other paragraphs in the affidavit which, if expunged, can not affect the purpose of the application.

In the final result, I will agree with Mr. Lekey for the Respondent that this application is fatally defective. It deserves to be struck out as I hereby do.

As this is a Labour dispute matter, there will be no order as to costs.

It is so ordered.

Dated at MTWARA this 17th day of April 2024




S. R. DING'OHI

JUDGE

17/04/2024

COURT: Ruling delivered on this 17th day of April 2024 in the presence of Mr Stephen Lekey Advocate for the Respondent, and Mr Michael Mgombozi applicant's Personal Representative.




S. R. DING'OHI

JUDGE

17/04/2024