

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION APPLICATION NO. 28190 OF 2023

EXIM BANK (TANZANIA).....APPLICANT

VERSUS

EDWIN ISSDORY SETEBE..... RESPONDENT

RULING

Date of last order & Ruling: 23/2/2024

B.E.K. Mganga, J.

Applicant filed this application seeking the court to revise the Award issued on 8th December 2023 by Hon. Mbeyale, R, Arbitrator, in Labour dispute No.CMA/DSM/ILA/232/2022/182/2022 before the Commission for Mediation and Arbitration(CMA) at Ilala. When this application was called on for hearing today, Mr. Daniel Yona, Advocate for the applicant, prayed to withdraw it with leave to refile. Learned counsel submitted that he has noted that the notice of application is defective and that, there is no notice to seek revision(CMA F10).

On his part, Mr.Thomas Brash, Advocate, for the respondent, submitted that, the Notice of Application is defective because it was signed by the representative of the applicant and not an officer of the

applicant. He added that, Applicant did not file at CMA, the notice to seek revision prior to filing this application. He went on that the said notice was supposed to be filed at CMA before expiry of 42 days and that the said 42 days has expired. He therefore objected the prayer by counsel for the applicant to withdraw this application with leave to refile. He argued that, the application is incompetent therefore it cannot be withdrawn because it does not exist. He submitted that, leave to refile is only available where the matter before the court is competent, but, for some reasons other than defectiveness, it can be withdrawn and be refiled. He submitted further that, since the notice of application is defective and applicant did not file at CMA the Notice to Seek Revision, the prayer to withdraw this application with leave to refile cannot be practicable. Learned counsel for the respondent concluded his submissions praying that the proper remedy is to strike out this application.

I have heard submissions of the parties in this application. It is undisputed that the Notice of Application is defective. It is also undisputed fact by the parties that, prior to filing this application, applicant did not file at CMA, the Notice to Seek Revision(CMA F10) as required by the law. The only issue in disagreement between the parties is the remedy available. While counsel for the applicant prayed to

withdraw this application with leave to refile, counsel for the respondent prayed the application be struck out on ground that the application is not properly before this court. I entirely agree with submissions by counsel for the respondent that there is no application to be withdrawn because, One, in terms of Rule 24(1) of the Labour Court Rules, GN. No. 106 of 2007, the application before this court is by Notice. Rule 24(2) of GN. No. 106 of 2007(supra) provides clearly that the notice must be signed by the party bringing the application. In the application at hand, the notice was signed by the representative of the applicant. In my view, the said Notice was supposed to be signed by an officer of the applicant and not the representative. Since the Notice of Application was signed by the representative of the applicant, then, the said Notice was defective making the whole application incompetent. Two, Applicant did not file at CMA the Notice to Seek Revision. This is worse because, the application was filed in violation of the law. Applicant was supposed to file the said notice at CMA before 42 days available for a party to file an application for Revision. The said 42 days has already expired. In short, legally speaking, there is no application for revision before this court. Since there is no such application, it cannot be withdrawn. Again, the prayer of refiling cannot be accepted because at this time, applicant has

not complied with. The requirement of filing at CMA the Notice to seek Revision.

Since the application is incompetent before this court, it is liable to be struck out and not to be withdrawn. Only a competent application can be withdrawn.

For the foregoing, I hereby strike out this application for being incompetent.

Dated at Dar es Salaam on this 23rd February 2024.



B. E. K. Mganga
JUDGE

Ruling delivered on 23rd February 2024 in chambers in the presence of Daniel Yona, Advocate for the applicant and Thomas Brash, Advocate, for the respondent.



B. E. K. Mganga
JUDGE

