

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
(LABOUR DIVISION)  
AT MBEYA  
LABOUR REVISION NO. 43 OF 2017**

*(Originate from Complaint No. CMA/MBY/206/2016)*

**TANROADS (MBEYA).....APPLICANT  
VERSUS  
WEBSTER LOMBA.....RESPONDENT**

**JUDGMENT**

***Date of last order:*** 29/01/2020

***Date of Judgment:*** 19/02/2020

**NDUNGURU, J.**

The applicant, Tanroads (Mbeya) has filed the present application before this Court, praying this Court to revise and set aside the Commission for Mediation and Arbitration (herein to be referred as CMA) ruling which dismissed the preliminary objection that the CMA had no jurisdiction to entertain the labour dispute involving the complainant who is an employee in the Executive Agency.

Aggrieved by that decision the applicant filed this application for revision by Notice of Application and Chamber summons under Rule 24 (1), (2) (a), (b), (c), (d), (e), (f) and (3) (a), (b), (c), (d) and 28 (1) (b),

(c), (d) and (e) of the Labour Court Rules, 2007 GN No. 106 of 2007 read together with Section 91 (1) (b), (2) (b) and (c), 94 (1) (b) (i) of the Employment and Labour Relation Act, No. 6 of 2004 as amended.

Having being dissatisfied by the decision of Honourable Arbitrator, the applicant filed this application under the following grounds:

1. That, the Arbitrator erred in fact and law in failing to properly define and interpreter as to who is a public servant in the public service of the United Republic of Tanzania.
2. That, the Arbitrator erred in fact and in law by entertaining the dispute whose dispute settlement mechanism is vested into the Public Service Commission according to the Public Service Laws currently in force and thus the said dispute was prematurely preferred before the CMA.
3. That, there is an error material to the merits of the said Ruling occasioning injustice on the part of the applicant.
4. And upon any other grounds that will be advanced by the counsel for applicant at the hearing day.

At the hearing of the application, Mr. Usaje Mwambene learned counsel for appeared the applicant whereas the respondent appeared in person (unrepresented). The application was argued by the way of the

written submission and parties correctly filed the same. I highly appreciate the timely filing of submissions by both parties.

Supporting his application, Mr. Mwambene submitted that the first, second and third grounds all together aim to disqualify the respondent from being a public servant. He went on to submit that the hon. Arbitrator grossly misdirected herself in that she failed to appreciate the relationship between the applicant and the respondent hence she was wrong to conclude that the respondent is not a public servant. He cited Section 3 of the Public Service Act, No. 8 of 2002 and Section 4 of the Interpretation of Laws Act (Cap 1 R.E. 2002) to support his submission.

He continued to submit that all affairs of the respondent regulated by the Executive Agency Act of 2002 and Public Service Act No. 8 of 2002 in the Public Service. The Arbitrator misdirected herself by holding that the said respondent was not a public servant.

Arguing the fourth ground of the revision, Mr. Mwambene contended that, the CMA has no jurisdiction to entertain a labour disputes involving public servant He added that, the Public Service Commission is a proper and responsible for handling disputes related to public servants. He went on to submit that, a public servant has no other options, than to fully utilize all the remedies available under the Public Service Act before exploring other avenues for dispute settlement.

He cited the case of **Benezer David Mwang'ombe Vs. The Board of Trustees of Marine Parks and Reserves Unit**, Misc. Application No. 380 of 2018, High Court of Tanzania at Dar-es-Salaam (unreported).

He continued to submit that, the Public Service Act is a specific law while the Employment and Labour Relation Act is a general law. Therefore the Public Service Act should prevail. To cement his argument, he referred this Court to the case of **Ejaj Ahmad Vs. State of Jharkhand and Binay Kumar, High Court of Jharkhand at Ranch C.M.P No.911 of 2007** and the case of **James Sendama Vs. Republic**, Criminal Appeal No. 279 'B' of 2013 Court of Appeal of Tanzania (both unreported). Finally, he thus prayed the Court to quash and set aside the CMA ruling.

In his reply, the respondent submitted that, he was not a public servant because he does not have a cheque number. He went on to submit that, the ruling made by the CMA was correct. He submitted further that, the case of **Benezer David Mwang'ombe Vs. the Board of Trustees of Marine Parks and Reserve Unit and Kuluthum Mansoor Vs. Katibu Mkuu Kiongozi Ofisi ya Rais (cited supra)** are irrelevant in this case. Finally, he prays the Court to dismiss the applicant's application for revision.

In rejoinder, Mr. Mwambene reiterate his submission in chief that, the CMA has no jurisdiction to entertain labour dispute between the applicant and the respondent because the respondent is a public servant. He cited the case of **Regional Manager TANROADS Lindi Vs. Ally Kitenge and 7 others, Labour Revision No. 1 of 2018, High Court of Tanzania at Mtwara** to support his contention. Finally, he reiterated his prayer that, the Court to quash and set aside the CMA ruling.

After passing through the records of the trial tribunal and written submissions made by the parties, this Court asked itself whether this application is proper before this Court or not.

At the outset I wish to point that, the ruling of the CMA which gave rise to this application did not finalize the matter rather the application had to proceed with the hearing; hence the present application is on an interlocutory one, hence this application contravenes Rule 50 of the Labour Court Rules GN. No. 106 of 2007. The rule provides:

*"No appeal, review or revision shall lie on Interlocutory or incidental decisions or Orders unless such decision has the effect of finally determining the disputes".*

The applicant ought to have made the present application as ground for revision (on jurisdiction issue) after the CMA had delivered the award on merit. This is a stance in the case of **Tanzania Fertilizers Company Ltd Vs. Ayoub Omari, Labour Revision No. 349 of 2015**, High Court of Tanzania (Labour division) at Dar es Salaam (unreported).

From the above observation, I hereby dismiss this application and it is further ordered that the labour dispute No. CMA/MBY/206/2016 at CMA at Mbeya which was pending awaiting for the determination of this application has to proceed at the stage it reached.

It is so ordered.



  
**D. B. NDUNGURU**  
**JUDGE**  
19/02/2020

**Date: 19/02/2020**

**Coram:** D. B. Ndunguru, J

**For the Applicant:** Mr. Usaje Mwambene – Advocate

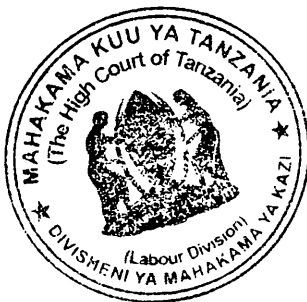
**Respondent:** Absent

**B/C:** M. Mihayo

**Mr. Usaje Mwambene – Advocate:**

The matter is for ruling, we are ready.

**Court:** Ruling delivered in the presence of Mr. Usaje Mwambene learned Advocate for the applicant and in the absence of the respondent.



  
**D. B. NDUNGURU**  
**JUDGE**  
19/02/2020