

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT MWANZA

LABOUR REVISION No.62 OF 2019

(Arising from Application No. CMA/MWZ/NYAM/2019 of CMA-MWANZA)

EQUITY BANK (T) LTD.....APPLICANT

VERSUS

ABUHUSSEIN .J. MVUNGI.....RESPONDENT

RULING

19th March, & 8th May, 2020.

TIGANGA, J.

This ruling is in respect of the preliminary objections raised by the respondent's counsel Mr. Majogoro against the application for revision of the ruling of the Commission for Mediation and Arbitration (CMA) filed before this court by the applicant. The points of preliminary objection are to the effect that;

- i) That the application is bad in law as it contravenes Rule 50 of the Labour Court Rules GN. 106 of 2007.

- ii) That the application is incurably defective for contravening the mandatory provisions of Rule 24(3) (c) and (d) of the Labour Court Rules.
- iii) That the application is incurably defective for lack of statutory notice of representation.

By the leave of the court, the application was argued by written submissions. The applicants were represented by learned counsel Mr. Sifael whereas the respondent had the service of learned counsel Mr. Alhaji Majogoro.

In his submission, the counsel for the respondent, before submitting on the merit, dropped the third point of objection and continued with the remaining two. Arguing in respect of the first limb of objection, he submitted that, this application is bad in law for contravening rule 50 of the Labour Court Rules; which states that

"no appeal, review or revision shall lie on interlocutory incidental decisions or orders unless such decision has the effects of finally determining the dispute".

He stated further that the CMA's decision on condonation is an interlocutory order since it has not determined the matter to its finality.

He cited the cases of **Tanzania Electric Company Ltd vs Scolastica Mfilinge**, Civil Appeal No. 69/2016, **The Board of Trustee of the PSPF vs Jalia Mayanja and Another**, Revision No. 248 of 2017, and **Cami Apparel vs Balozi Msuya and 231 Others**, Revision No. 213 of 2010. He concluded by stating that, this application is incompetent before this court as it challenges the interlocutory order which cannot be revised as per the above mentioned governing rule.

Submitting in respect of the second limb of preliminary objection on the issue of the application being incurably defective for contravening Rule 24 (3) (c) and (d) of the Labour Court Rules, the counsel argued that, the affidavit of the applicant does not set out the legal issues that arise from the material facts as well as reliefs sought and thus violating the mandatory provisions of the above mentioned rule which provides that;

"The application shall be supported by an affidavit which shall clearly and concisely set out (a) a statement of legal issues that rise from material facts and (d) reliefs sought".

He then concluded by praying that this application be dismissed so that the main suit be arbitrated by the CMA.

In his reply, the learned counsel for the applicant submitted in respect of the first limb of preliminary objection that this application is not against an interlocutory decision because the application for condonation is an independent suit which does not exist depending on another suit. It is not a miscellaneous application. He further submitted that he believes that, this court has inherent powers to review a decision if it feels that there are sufficient reasons such as illegality. To back up his submission, he referred this court to the provisions of section 94(1) (b) and (f) of the Employment and Labour Relations Act No.6 of 2004, sections 51 and 52 of the Labour Institutions Act No.7 of 2004 as well as Rule 28(1) (e) and 55(1) and (2) of the Labour Court Rules GN No.106.

He then concluded that the above being the position of the law, then this court can review the decision on condonation so he prayed that the review be considered by virtue of the inherent powers of this court.

In his rejoinder, the counsel for the respondent reiterated his submission in chief and stated that the decision of the CMA is interlocutory and the same is not subject to revision or appeal. Rejoining on the submission that application for condonation is a separate suit, the counsel argued that, that is a total misconception of the law, because as

condonation was granted, it became interlocutory order and the main suit is permitted to continue.

He submitted further that, the application for condonation is not a separate suit, as it cannot be termed to be complete if not filed with CMA form 1. He concluded by stating that, the CMA decision is an interlocutory decision and therefore not subjected to any revision or appeal as it did not finally determine the matter before the CMA.

Going through the submissions from both parties to this application, together with the raised points of preliminary objection, the main point for determination, in my opinion, is whether the CMA decision on application for condonation is interlocutory and thus cannot be revised.

As rightly submitted by the counsel for the respondent, under rule 50 of the Labour Court Rules, GN. No. 106 of 2007, it is provided that;

"No appeal, review or revision shall lie on an interlocutory or incidental decision or orders, unless such decision has the effects of finally determining the dispute."

It can be gathered from the above quoted provision of the law that to be termed as an *"interlocutory decision"* it means that the said decision does not finally determine the dispute and thus cannot be appealed

against, revised or reviewed. However, if the said interlocutory decision has the effect of finalizing the dispute, then it can be appealed against, revised or reviewed as the case may be.

The applicant in his submission has vocally, told the court that the decision he is challenging is not from the interlocutory proceedings as the application for condonation is the suit on its own. He cited the provision of section 94(1) (b) and (f) of the Employment and Labour Relations Act No.6 of 2004, sections 51 and 52 of the Labour Institutions Act No.7 of 2004 as well as Rule 28(1) (e) and 55(1) and (2) of the Labour Court Rules GN No.106. These provisions provide just for the jurisdiction of the court. They do not specifically provide for the powers of the court to deal with the applications of this nature. They can therefore not be taken to be specifically relevant in cases or applications of this nature.

Now coming back to the application before me, it is important to know what the interlocutory proceedings are. In the case of **MIC Tanzania Ltd and 3 Others vs Golden Globe International Service Ltd** Civil Application No.1/16 of 2017 CAT – DSM (unreported) where it was held that;

"...the proper test for determining whether or not an impugned order is preliminary or interlocutory is patently

discernible from the language of the provision, itself. That is to say the test is whether or not the order desired to be revised had the effect of finally determining the suit."

In this application, the proceedings and the order in which the applicant seeks revision of the CMA decision was in respect of an application for condonation. Taking into consideration the above quoted rule, I find myself subscribing to the view or rather opinion of the counsel for the respondent that the CMA decision which is the subject of this application falls under the category of an "interlocutory decision". Why do I say so? I come to that conclusion because the impugned decision did not finalize the dispute between the parties, as there is still a suit pending before the CMA. The pendency of the suit before the CMA means that, the decision subject to this application did not finally and conclusively determine the dispute, thus not subject to revision by this court. The Court of Appeal of Tanzania in **Vodacom Tanzania Ltd Public Company vs Planetel Communications Limited**, Civil Application No.473 of 2016 (unreported) sustained a preliminary objection in an application for revision and in doing so had this to say;

"We are of the opinion that, the ruling and order sought to be revised is an interlocutory order....because in that order

nowhere it has been indicated that the suit has been finally determined”.

That said, I find merit in the first limb of preliminary objection and the same is sustained.

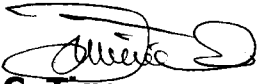
In the second ground of objection, the counsel claimed that, the affidavit of the applicant is incurably defective for it contravenes rule 24 (3) (c) and (d) of the Labour Court Rules (supra). He went further claiming that the same does not set out legal issues that arise from the material facts and the reliefs sought. Counsel for the applicant however did not make his submission regarding this ground. That notwithstanding, I do not share the same view because going through the said affidavit I have noticed that, it clearly stipulates the legal issues arising from the material facts. For instance the fact that the said application was filed way out of time and that the applicant was not satisfied with the reasons advanced by the respondent claiming that they were not justified. Also in paragraph six of the affidavit, the applicant stated the relief he is seeking which is that the decision be reversed. Having said so, I do not find merit in the second ground of objection thus, I dismiss it.

Having discussed and found as above, and having sustained the first ground of objection, I am forced to make an order, as I hereby do,

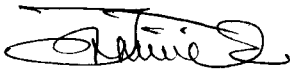
dismissing this application for revision, the reasons being that it has been filed prematurely. I make no order as to costs.

It is so ordered

DATED at MWANZA this 08th Day of May, 2020.


J. C. Tiganga
Judge
08/05/2020

Ruling delivered in open chambers, in the absence of the parties but with directive that they be notified of the results by the court clerk with immediate effect with teleconference but in the absence of the applicant.


J. C. Tiganga
Judge
08/05/2020

