

**(IN THE DISTRICT REGISTRY)**

**AT MWANZA**

**LABOUR REVISION NO.91 OF 2020**

(Original from the Dispute No. CMA/MUS/281 of 2019, before Hon. Msuwakollo,  
S. Arbitrator dated 21<sup>st</sup> October, 2020)

**NORTH MARA GOLD MINE LIMITED ..... APPLICANT**

**VERSUS**

**MICHAEL MAGEGE ..... RESPONDENT**

**RULING**

*Date of Last Order: 10.06.2021*

*Date of Ruling: 11.06.2021*

**A.Z.MGEYEKWA, J**

The Applicant, North Mara Gold Mine Limited, lodged the instant application against Michael Magege, the respondent. The applicant wanted to move this court to call for the record and proceedings in Labour Dispute No. CMA/MUS/281/2019, revise and set aside the award issued by the Commission for Mediation and Arbitration for Mwanza dated 21<sup>st</sup> October, 2020. Dissatisfied, the applicant file the instant application before this court

complaining that the Arbitrator erred in ruling that the applicant had no fair reason for terminating the respondent, the Arbitrator did not consider an alternative job before terminating the respondent and the Arbitrator awarded the respondent 24 months salaries which is exorbitant and without justification. To mention a few.

When the matter came for hearing before me on 10<sup>th</sup> June, 2021, Mr. Malongo, learned Advocate represented the applicant while Mr. Godfrey, learned counsel assisted by Mr. Majebela, learned counsel represented the respondent..

Before the determination of the application before me on merit. On 10<sup>th</sup> March, 2021, this court *suo mottu* raised a point of law; whether the application was properly filed before this court. Parties were given time to prepare their submissions. After several adjournments on 10<sup>th</sup> June, 2021, both learned counsels were ready to make their submission.

It was Mr. Malongo, learned counsel for the applicant who started to kick the ball rolling. He submitted that the case was filed in Musoma and the hearing, as well as the arbitration process, was done in Mwanza, however, there was no any transfer order. Mr. Malongo went on to state that the matter was required to be determined in Musoma unless the Commission for

Mediation and Arbitration would have directed otherwise for that reason it was his view that the Commission for Mediation and Arbitration award and proceeding are a nullity. To support his submission he referred this court to Rule 22 of GN.64.

Insisting, he urged this court to strike out the award and proceedings because a judicial order to transfer the case was not issued. Mr. Malongo fortified his position by referring this court to the case of **Mushuti Food Supply Ltd & 2 Others**, Civil Appeal No. 79 of 2003, the Court of Appeal of Tanzania found that the Land Registry at Bukoba transferred a file to Dar es Salaam Registry without any court order. Thus, the Court of Appeal of Tanzania decided that the proceedings were improperly conducted since a transfer is required to be made after issuing a court order. He added that the Court of Appeal of Tanzania struck out the proceedings and judgment and remitted back the file to where it was lodged.

On the strength of the above, Mr. Malongo urged this court to be guided by the decision of the Court of Appeal of Tanzania in the case of **Mushuti** (supra), to nullify and strike out the proceedings of Mwanza and order the matter be determined in Musoma.

In respond, the learned counsel for the respondent was brief and straight to the point. He submitted that the proceedings do not reveal if the matter was determined in Mwanza or Musoma. Mr. Kiteja submitted that the issue whether the Arbitrators exchanged hands requires to be proved by evidence. Mr. Kiteja contended that the rules are silent whether an Arbitrator is not allowed to take over and determine the case. Insisting, he argued that this court to determine whether this court has jurisdiction to determine the instant application.

He went on to argue that the concern of Mr. Malongo was required to be raised at the Commission for Mediation and Arbitration, not before this court. He claimed that the title and reference number of a case reads together and the same determines the territorial jurisdiction of the court. He claimed that the respondent has written a letter to the Commission for Mediation and Arbitration requesting the Arbitrator to rectify the clerical error.

In conclusion, he stressed that this court has no jurisdiction to determine this matter which was lodged at Commission for Mediation and Arbitration for Musoma Registry.

In his brief rejoinder, Mr. Malongo reiterated his submission in chief. He added that the Commission for Mediation and Arbitration records shows that

the hearing was done at the Commission for Mediation and Arbitration for Mwanza and thus the order for the transfer must be in the file. Insisting, he argued that the arbitral award issued by the Commission for Mediation and Arbitration for Mwanza is a nullity. He lamented that as long as the award was issued in Mwanza thus this court has jurisdiction to determine the instant application. The learned counsel for the applicant complained that the fact that the rectification letter is filed at Commission for Mediation and Arbitration is irrelevant. Stressing, he stated that the award was issued on 21.01.2020 but the respondent did not rectify the award. He urged this court to nullify the Commission for Mediation and Arbitration awards.

I have dispassionately considered the arguments of the parties' advocates and the respective pleadings. The pertinent issues for determination in this revision are *whether the application is properly before this court* or not.

The matter before this court is in regard to revision of the Commission for Mediation and Arbitration award, the issues started when this court raised *suo mottu* the issue whether this application is lodged in a proper registry. After hearing the submission of both parties. The applicant's Advocate has conceded that the dispute was lodged at the Commission for Mediation and

Arbitration for Musoma within Musoma Region and the proceedings were recorded while in Musoma. However, the hearing and award was issued by the Arbitrator at Mwanza. Mr. Malongo admitted that there was no any order to transfer the file from the Commission for Mediation and Arbitration for Musoma to the Commission for Mediation and Arbitration for Mwanza. From the outset, it is my respectful opinion that lack of transfer order does not empower this Court to determine the revision since it originates from the Commission for Mediation and Arbitration for Musoma, therefore the proper court to determine this application is the High Court of Musoma registry.

In determining the remedy for such omission, in have considered both learned counsels' submissions for and against this matter whereas the learned counsel for the respondent has submitted that they have requested the Commission for Mediation and Arbitration for Musoma to rectify the error and issue a correct award. I think at this juncture it is prudent to allow the Commission for Mediation and Arbitration for Musoma to deal with this matter before the same is tabled before this court.

I have also considered that Labour is a court of law and equity, it is considered just and timely disposal of the matter. In the case of **NBC LTD v Ahmad MKwepu** Misc. Labour Application No. 195 of 2013 High Court of Tanzania (Labour Division) Dar Es Salaam (unreported) held that:-

*"The spirit of the Labour Court has always been to expedite the matter before it without too much lingering on technicalities, regard being also the Labour Court is the Court of law and equity".*

The Court of Appeal of Tanzania in the cases of **Barclays Bank Tanzania Limited v Phylisiah Hussein Mcheni**, Civil Appeal No.19 of 2016 and **Felician Rutwaza v World Vision Tanzania**, Civil Appeal No. 213 of 2019 (unreported) discussed the issue of the Labour Division being a court of equity. In the case of **Barclays Bank Tanzania Limited**, the Court of Appeal of Tanzania held that:-

*"... the Labour Court shall be a court of equity whilst the latter empowers it to adopt any appointed procedure for any matter not provided for."*

I am aware that section 88 (4) of the Employment and Labour Relations Act, No. 6 of 2004, empowers the Commission for Mediation and Arbitration while entertaining labour matters to do away with legal technicalities so as to attain substantial justice. Therefore, in my respectful opinion, instead of nullifying the Labour Dispute No. CMA/MUS/281 of 2019, I find it prudent to allow the Arbitrator to rectify the said award. My findings are supported by Rule 30 of GN.64 of the Labour Institution Act, No.7 of 2004 which state that:-

*“ An Arbitrator may on his own accord correct an award in terms of section 90 of the Act, within the time period stipulated in sub rule (1) and shall re issue the correct award within a written explanation of the correction.”*

Applying the above authority, the Arbitrator is in a better position to make any necessary rectifications and issue a correct award as stated by the learned counsels for the respondents.

For the avoidance of doubt, the cases cited of **Mushuti** (supra) by Mr. Malongo, learned counsel for the applicant; The Court of Appeal of Tanzania decided to quash and set aside both proceedings since the matter was already been determined by the High Court, Dar es Salaam registry. While in the instant application this court has not determined the matter and the respondent has gone further by informing this court that they have requested the Arbitrator to make necessary rectification. Nevertheless, the formal was not a labour matter while this is a labour matter which is not much lingering on technicalities and I have considered the fact that the applicant will not be prejudiced because his right to file a revision is intact.

In the upshot, I remit the file to Commission for Mediation and Arbitration for Musoma, the Arbitrator to go through the award and make necessary



corrections to allow parties to take proper measures to challenge the Commission for Mediation and Arbitration award or otherwise. The application is hereby struck out without costs.

Order accordingly.

Dated at Mwanza this 11<sup>th</sup> June, 2021.



  
A.Z.MGEYEKWA

**JUDGE**

11.06.2021

Ruling delivered on this 11<sup>th</sup> June, 2021, in the presence of Mr. Malongo, learned counsel for the applicant, and Mr. Kiteja, learned counsel for the respondent.

  
A.Z.MGEYEKWA

**JUDGE**

11.06.2021