

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

AT MUSOMA

REVISION APPLICATION NO. 13 OF 2021

*(Arising from arbitral award of the Commission for Mediation and Arbitration at
Musoma in Labour Dispute No. CMA/MUS/208/2020)*

ALEX SITUMBURA PLAINTIFF

VERSUS

MOHAMED NAWAYI..... RESPONDENT

JUDGMENT

13th December and 21st December, 2021

F.H.MAHIMBALI, J.:

The applicant has instituted this case before this court seeking this Honourable court be pleased to call the records, revise and set aside the Arbitration Award in labour dispute No. CMA/MUS/208/2020 and to determine the matter in the manner it considers appropriate.

However, before this matter was heard, the respondent raised four preliminary objections to the effect that, firstly the application is incurably defective for non- compliance with the requirement to file a notice of intention to seek revision, secondly the application is bad in law for lack of representation, thirdly the application is bad in law for

non- descriptions of the parties in the affidavit and fourthly the application is frivolous and vexatious and he prayed this court to dismiss this application with costs.

It is trite law that a preliminary objection has to be determined first before the main suit. This was held in the case of **Thabit Ramadhan Maziku and another vs Amina Khamis Tyela and another**, Civil Appeal No. 98 of 2021 at page 4 where it also cited the case of **Bank of Tanzania Ltd V. Devran P. Valambia**, Civil Application No 15 of 2002 (CAT) (unreported) where the Court observed:

"The aim of a preliminary objection is to save the time of the court and of the parties by not going into the merits of the application because there is a point of law that will dispose of the matter summarily."

This matter was argued by way of written submissions and both parties filed their respective submissions as it was scheduled. The respondent abandoned the 3rd and the 4th preliminary objections and only argued the 1st and the 2nd preliminary objections.

Submitting in support of the 1st preliminary objection, the respondent stated that in labour matter an applicant cannot file an

application for revision without providing a notice of intention to seek revision as per Regulation 34(1) of the Employment and Labour Relations (General Regulations, 2017 GN 47 published on 24/02/2017). It was his submission that the said provision uses the word shall, hence it ought to be complied with. He further stated that non- compliance of the said provision renders the application before this court incompetent.

Regarding the second preliminary objection, he submitted that this application is defective as it lacked notice of representation as per section 56 (c) of the Labour Institution Act, No. 7 of 2004 and Rule 43(1) of the Labour Court Rules, GN No. 106 of 2007. It was his contention that the said notice was supposed to be filed together with the application. He further submitted that the notice of representation is mandatory and failure to file the notice of representation is fatal and renders the application incompetent. To cement his submission, he cited the case of **HAMZA OMARY ABEID V PRO MINING SERVICES**, LABOUR REVISION NO. 54 of 2019 my learned brother Tiganga J, insisted on filing the notice of representation.

Finally, he prayed this court to summarily dismiss the application with costs.

Responding, on the first preliminary objection, the applicant stated that failure to issue the notice of intention to seek revision is cured by the overriding objective and the preliminary objection should be ignored as it does not render the application incompetent under the eyes of the law. The court should regard the principle of the right to be heard as enshrined under Article 13 of the Constitution of the United Republic of Tanzania of 1977.

Regarding the second limb of preliminary objection, it was his submission that the preliminary objection is baseless basing on the reason that the applicant's application complied by writing the names and address of the advocate who drew and filed the present application. He prayed that this court to disregard this preliminary objection.

He finally prayed the respondent's preliminary objections to be overruled and the application to be determined on merits.

Having gone through the courts' records and the parties' submissions the ball is now on the court to determine if the preliminary objection is meritorious.

The first limb of preliminary objection is that there is no notice of intention to seek for revision award as per Regulation 34(1) of the

Employment and Labour Relations (General) Regulations, 2017. On the other hand, the applicant asked the court to apply the overriding objective. I have gone through the said regulation and it is mandatory that the notice of intention to seek revision should be there. I have also gone through the form that is used as the Notice of intention to seek for revision of award and it is my humble view that there has to be evidence to show whether the Notice was filed or not and this is because the form is filed at the CMA. Therefore, it is safe to state that it is not a preliminary objection as it is on facts and not a point of law.

Regarding the second limb of the preliminary objection, it was the respondent's submission that the application is incompetent as the applicant did not file a notice of representation as per section 56 (c) of the Labour Institution Act (supra) and Rule 43(1) of the Labour Court Rules, GN No. 106 of 2007. While the applicant submitted that this ground is baseless, the respondent insisted on its strict adherence. It is trite law that notice of representation is mandatory as per Rule 43(1) of the Labour Court Rules (supra) and it stipulates that ;

"A representative who acts on behalf of any party in any proceedings shall, by a written notice advise the Registrar and all other parties of the following particulars;

- (a) The name of the representative.***
(b) The postal address and place of employment or business and any available fax number e- mail and telephone number
"

From the above cited provision, it clear that it is a requirement of law that if any party in a labour matter chooses to be represented, then the representative agent has to comply with the above section. In the case at hand the applicant's application is drawn and filed by one advocate known as Advocate Paul Makangá. This means the applicant has a representative and he has to file notice of representation. Therefore, the applicant did not comply with the law and this renders the application incompetent.


The applicant has sought reliance to Overriding Objective principle as refuge to his omission. Since the coming into force of the provisions of overriding objective, their applicability has been tested in Court of Appeal in numerous occasions, such as in the case of **Njake Enterprises Ltd v. Blue Rock Ltd**, Civil Application No. 69 of 2017 (unreported). In yet another case **of Martin D. Kumaliya & 117 Others v. Iron and Steel Ltd**, Civil Application No. 70/18 of 2018 (unreported), where it was emphasized the need to apply the overriding

objective principle with reason and without offending clear provisions of the law.

That said and done, the preliminary objection is sustained as the omission offends clear provisions of the law. The same is struck out. Since this is a labour matter, I make no orders as to costs.

It is so ordered.

DATED at MUSOMA this 21st day of December, 2021.



F. H. Mahimbali
Judge
21/12/2021

Court: Judgment delivered this 21st day of December, 2021 in the presence of the applicant, Mr. Mhagama, advocate for the respondent and Mr. Gidion Mugo – RMA.

Right of appeal is explained.



F. H. Mahimbali

Judge

21/12/2021