

**IN THE HIGH COURT OF TANZANIA**  
**LABOUR DIVISION**  
**AT DAR ES SALAAM**

**REVISION APPLICATION NO. 23 OF 2023**

*(Arising from an Award issued on 12/12/2022 by Hon. Mbeni, M.S, Arbitrator in Labour dispute No.  
CMA/DSM/ILA/359/2022/203/2022 at Ilala)*

**LEMINGTON LEWA KATANA ..... APPLICANT**

**VERSUS**

**LEOPARD TOURS LIMITED ..... RESPONDENT**

**JUDGMENT**

*Date of last Order: 09/03/2023  
Date of Judgment: 27/4/2023*

**B. E. K. Mganga, J.**

Facts of this application are that, on 9<sup>th</sup> May 2016 respondent employed the applicant and his duty station was at Mwalimu Julius Nyerere International Airport. It is said that, on 15<sup>th</sup> May 2022, respondent served applicant with a letter showing that by mutual agreement, the parties have terminated employment relationship. On 23<sup>rd</sup> June 2022, respondent confirmed termination of employment of the applicant.

Applicant was aggrieved with termination of his employment, as a result, on 4<sup>th</sup> July 2022 he filed Labour dispute No. CMA/DSM/ILA/359/2022/203/2022 before the Commission for Mediation

and Arbitration henceforth CMA at Ilala. In the Referral Form(CMA F1), applicant indicated that the dispute arose on 15<sup>th</sup> June 2022 and that he was claiming to be reinstated or be compensated according to law. On fairness of procedure, he indicated that he was neither accorded fair hearing nor given reasons for termination. On substantive issue or reason for termination, applicant indicated that the unsigned termination letter shows that the parties agreed to terminate employment which is not true.

On 1<sup>st</sup> August 2022, applicant filed amended CMA F1 showing that he was claiming to be paid TZS 14,092,307/=. In the said amended CMA F1, applicant indicated that respondent had no valid reason for termination and further that she failed to comply with Labour Laws. In the said amended CMA F1, applicant indicated further that the dispute arose on 17<sup>th</sup> May 2022.

On 12<sup>th</sup> December 2022, Hon. Mbena, M.S, Arbitrator having heard evidence and submissions of the parties issued an award that, based on the amended CMA F1, the dispute was filed out of time hence CMA had no jurisdiction. The Arbitrator went on that termination was fair both substantively and procedurally because applicant refused to be transpired to his new duty station in Arusha. Based on the foregoing, the arbitrator dismissed the dispute filed by the applicant.

Applicant was aggrieved by the said award, as a result, he filed this revision application. In the affidavit in support of the Notice of Application, applicant raised four (4) grounds namely:-

- 1. That the arbitrator erred to hold that the dispute was filed out of time.*
- 2. That the contradicted herself in holding that she had no jurisdiction because the dispute was time barred but proceeded to determine the dispute on merit.*
- 3. That the arbitrator erred in law and fact in holding that amendment of CMA F1 did not make the dispute to be within time.*
- 4. The arbitrator erred in law and fact in holding that termination was fair while respondent failed to prove fairness of termination.*

In opposing the application, respondent filed the counter affidavit of Lilian Robert Mtaju her principal officer.

When the application was called on for hearing, Mr. Edward Simkoko, from TASIWU, a Trade Union, appeared and argued for and on behalf of the applicant while Mr. Innocent Warioba, the Human Resource Officer, appeared and argued for and on behalf of the respondent.

Submitting in support of the 1<sup>st</sup> ground of the application on behalf of the applicant, Mr. Simkoko argued that the arbitrator erred in law and fact in holding that the dispute was filed out of time because attendance Register, minutes of the disciplinary hearing and appeal by the applicant (Exhibit D5 collectively) shows that on 16<sup>th</sup> June 2022 there was disciplinary hearing against applicant. He went on that; on 16<sup>th</sup> June 2022

the disciplinary hearing gave out its decision of terminating employment of the applicant. He argued further that, On 23<sup>rd</sup> June 2022, respondent confirmed the decision of the disciplinary hearing and that applicant filed the dispute at CMA on 04<sup>th</sup> July 2022. He added that, on 01<sup>st</sup> August 2022, applicant prayed to amend CMA F1 and that amendment covered only the date of termination. Simkoko submitted that initially, applicant indicated that date of termination was on 15<sup>th</sup> June 2022 but amended that date to show that he was terminated on 22<sup>nd</sup> June 2022. He concluded that, from the date of, termination i.e., 15<sup>th</sup> June 2022 to the date of filing i.e., 4<sup>th</sup> July 2022 it is not more than 30 days. He maintained that the dispute was filed within time.

Responding to submissions made on 1<sup>st</sup> ground, Mr. Warioba the Human Resources officer of the respondent submitted that the dispute was filed out of time on 04<sup>th</sup> July 2022. He submitted further that, on 01<sup>st</sup> August 2022 while at mediation stage, applicant prayed to amend CMA F1 including the date the dispute arose. He added that, in the amended CMA F1, applicant indicated that the dispute arose on 17<sup>th</sup> May 2022. He concluded that, counting from 17<sup>th</sup> May 2022 to 04<sup>th</sup> July 2022, applicant was out of time for 19 days.

Mr. Warioba submitted further that during hearing, applicant admitted while under cross examination that the dispute arose on 17<sup>th</sup> May 2022. He went on that, there was no application for condonation filed by the applicant because the dispute was time barred. He cited the case of ***Barclays Bank (T) Ltd v. Jacob Muro***, Civil Appeal No. 357 of 2019 CAT, ***Salim Said Mtomekela v. Mohamed Abdallah Mohamed***, Civil Appeal No. 149 of 2019, CAT and ***Ernest Sebastian Mbele v. Sebastian Sebastian Mbele & 2 Others***, Civil Appeal No. 66 of 2019 CAT, (all unreported) to support his submissions that parties are bound by their own pleadings and they are not allowed to depart therefrom.

I have examined the CMA record and considered submissions of the parties in this application. From what was submitted by the parties, for obvious reasons, in disposing this application, I will start with the jurisdictional issue. Before I discuss the merits of this ground, I find it prudent to point out that there is a litany of case laws both by this Court and the Court of Appeal that parties are bound by their own pleadings and that they are not allowed to depart from those pleadings. See the case of ***The Registered Trustees of Islamic Propagation Centre (Ipc) v. The Registered Trustees of Thaaqib Islamic Centre (Tic)***, Civil Appeal No. 2 of 2020, CAT (unreported), ***Yara Tanzania Limited V.***

**Ikuwo General Enterprises Ltd**, Civil Appeal No. 309 of 2019, CAT(unreported), **Ernest Sebastian Mbele vs Sebastian Sebastian Mbele & Others** (Civil Appeal 66 of 2019) [2021] TZCA 168, **Salim Said Mtomekela vs Mohamed Abdallah Mohamed** (Civil Appeal 149 of 2019) [2023] TZCA 15, **Charles Richard Kombe T/a Building vs Evarani Mtungi & Others** (Civil Appeal 38 of 2012) [2017] TZCA 153 and **Barclays Bank T. Ltd vs Jacob Muro**, Civil Appeal No. 357 of 2019 [2020] TZCA 1875 to mention but a few. In the **IPC's case**, supra, the Court of Appeal held that: -

*"As the parties are adversaries, it is left to each one of them to formulate his case in his own way, subject to the basic rules of pleadings... For the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties".*

In **Yara Tanzania Limited case** (supra) the Court of Appeal quoted its earlier decision in **Barclays Bank T. Ltd vs Jacob Muro**, Civil Appeal No. 357 of 2019 [2020] TZCA 1875 that:-

*"We feel compelled, at this point, to restate the time-honored principle of law that parties are bound by their own pleadings and that any evidence produced*

*by any of the parties which does not support the pleaded facts or is at variance with the pleaded facts must be ignored- See **James Funke Ngwagilo v. Attorney General** [2004]T.L.R. 161. See also **Lawrence Surumbu Tara v. Hon.Attorney General and 2 Others**, Civil Appeal No.56 of 2012; and **Charles Richard Kombe t/a Building v. Evarani Mtungi and 3 Others**, Civil Appeal No. 38 of 2012 (both unreported)".*

It is clear from the CMA proceedings that, on 25<sup>th</sup> August 2022 when the parties appeared before Hon. Mbeni, Arbitrator, Mr. Innocent Warioba, the Human Resources Officer of the respondent raised a preliminary objection that applicant indicated two different dates in the CMA F1 and that based on the amended CMA F1, the dispute was time barred. The arbitrator issued an order that the preliminary objection will be determined after hearing evidence of the parties as to when the dispute arose. Based on that order, five issues were drafted namely (i) whether the dispute was filed within time, (ii) whether employment of the applicant was terminated, (iii) whether there were valid reasons for termination, (iv) whether procedures for termination were adhered to and (v) what relief(s) are the parties entitled to. It is also clear that in the award the arbitrator found that the dispute was filed out time. I entirely agree with the arbitrator that the dispute was time barred. As pointed hereinabove, initially, on 4<sup>th</sup> July 2022 applicant filed CMA F1 indicating that the dispute arose on 15<sup>th</sup> June 2022 and that he was claiming to be reinstated or be compensated

according to law. But, on 1<sup>st</sup> August 2022, he prayed to amend the CMA F1 and the prayer was granted. In the amended CMA F1, applicant indicated that he was praying to be paid TZS 14,092,307/= and that the dispute arose on 17<sup>th</sup> May 2022. After the said amendment, the dispute proceeded to hearing with the aforementioned issues drafted by the parties. I should point out that, after amendment of CMA F1 on 1<sup>st</sup> August 2022 showing that the dispute arose on 17<sup>th</sup> May 2022, the CMA F1 that was filed on 4<sup>th</sup> July 2022 showing that the dispute arose on 15<sup>th</sup> June 2022, ceased to be part of applicant's pleadings. Therefore, there was no longer CMA F1 showing that the dispute arose on 15<sup>th</sup> June 2022. My conclusion is fortified by what was held by the Court of Appeal in the case of [General Manager African Barrick Gold Mine Ltd vs Chacha Kiguha & Others](#) (Civil Appeal 50 of 2017) [2017] TZCA 211, [Airtel Tanzania Limited vs OSE Power Solutions Limited](#) (Civil Appeal 206 of 2017) [2021] TZCA 758, , [Pantaleo Teresphory vs Republic](#) (Criminal Appeal 515 of 2019) [2023] TZCA 47. In [Kiguha's case](#) (supra), the Court of Appeal quoted the case of [Warner vs. Sampson & Another](#) [1958] 1QB 297 that:-

*"...once pleadings are amended, that which stood before amendment is no longer material before the Court."*

In [Teresphory's case](#) (supra), the Court of Appeal held:-



*"... It is trite law that once a document is amended and another document lodged (amended document), the former is taken not to have ever existed or ceases to exist..."*

As pointed out hereinabove, after amendment of CMA F1 that was showing that the dispute arose on 15<sup>th</sup> June 2022, the only pleading that remained in the CMA F1 is the one showing that the dispute arose on 17<sup>th</sup> May 2022. The parties were therefore bound by the CMA F1 showing that the dispute arose on 17<sup>th</sup> May 2022, which is why, the respondent raised a preliminary objection that the dispute was time barred because it was filed at CMA on 4<sup>th</sup> July 2022. Counting from 17<sup>th</sup> May 2022, the date it was indicated in the amended CMA F1 as the date the dispute arose to 4<sup>th</sup> July 2022, the date the dispute was filed at CMA, it is more than 30 days provided for under Rule 10(1) of the Labour Institutions (Mediation and Arbitration) Rules, GN. No. 64 of 2007 within which to file a dispute relating to fairness of termination. That being the position, I concur with the findings of the arbitrator that the dispute was time barred and there was no application for condonation that was filed by the applicant and granted by the arbitrator.

It was submitted by Mr. Simkoko, from TASIWU, a Trade Union, for the applicant, that; after holding that the dispute was time barred and that

CMA had no jurisdiction to determine the dispute, the arbitrator erred in law and fact in proceeding to determine the dispute between the parties on merit. I entirely agree with those submissions. It is my view that, after holding that the dispute was time barred, the arbitrator was precluded to proceed to determine whether, termination was fair or not, because he had no jurisdiction. That said ,I allow the 2<sup>nd</sup> ground.

Since I have held hereinabove that the dispute was time barred, that alone has sufficiently disposed the whole application. I will therefore not consider the remaining grounds. That said and done, I hereby dismiss this application for want of merit.

Dated at Dar es Salaam on this 27<sup>th</sup> April 2023.



B. E. K. Mganga  
**JUDGE**

Judgment delivered on this 27<sup>th</sup> April 2023 in chambers in the presence of Lemington Lewa Katana, the Applicant and Magnus Dominicus, the Accountant of the Respondent.



B. E. K. Mganga  
**JUDGE**