

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**ARUSHA SUB-REGISTRY**

**(LABOUR DIVISION)**

**AT ARUSHA**

**APPLICATION FOR REVISION NO. 50 OF 2023**

(Original Dispute No. CMA/ARS/69/23)

**ALLY A. MASOUD.....1<sup>ST</sup> APPLICANT**

**JAMES J. SAMWEL.....2<sup>ND</sup> APPLICANT**

**NELSON P. MALLYA.....3<sup>RD</sup> APPLICANT**

**KENNED L. KIMARO.....4<sup>TH</sup> APPLICANT**

**VERSUS**

**CROWN PAINTS TANZANIA LTD.....RESPONDENT**

**JUDGMENT**

20<sup>th</sup> and 21<sup>st</sup> March 2024

**MWASEBA, J.**

The applicants herein have filed this application seeking the revision of the ruling delivered by the Arbitrator (Hon. Mwembuga) following the preliminary objection raised by the respondent herein that the applicants were not employees at the respondent's company. The application has been preferred under **Sections 91 (1) (a) (b) and (2)**



**(a) (b) and (c), and Section 94 (1) (b) (i) of the Employment and Labour Relations Act, Cap 366 R.E 2019, Rule 24 (1) (2) (a) (b) (c) (d) (e) (f) and (3) (a) (b) (c) and (d) and 28 (1) (a) (c) (d) and (e ) of the Labour Court Rules, GN No. 106 of 2007.** Their application has been accompanied by an affidavit deposed by Mr Herode Bilyamtwe, the personal representative of the applicants.

The brief facts that triggered the filing of the application at hand, as gleaned from the record, is that the applicants herein sued the respondent at the CMA for unfair labour practice. At the earliest stage, the respondent raised a preliminary objection that the CMA has no jurisdiction to determine the dispute among the parties as there was no employer/ employee relationship between them. The Hon. Arbitrator, after hearing the parties on the raised preliminary objection, sustained it and dismissed the applicant's application for want of jurisdiction. Aggrieved, the applicants have placed this application before this court seeking revision of the said decision.

Before this court, the applicant enjoyed the legal service of Mr Herode Bilyamtwe, Personal representative while the respondent was represented by Ms. Vanesa Nyanga learned counsel.



When the matter was called for hearing on the 20<sup>th</sup> day of March 2024, Ms Nyanga, from the outset, conceded to the application and submitted before the court that the preliminary objection, which was filed at the CMA, was not on a pure point of law. It required evidence to prove it. She further averred that it was wrong for the arbitrator to determine the matter prematurely for the reason that there was no employer/employee relationship between the parties. In that case, she conceded with this application and prayed that the matter be returned to CMA for continuation of mediation.

On his side, Mr Bilyamtwe maintained that the preliminary objection raised was not purely a point of law as it needed evidence before the CMA. So, he concurred with Ms Nyanga and prayed that the matter be remitted back to the CMA for continuation at the mediation stage.

Having heard the consensus submissions of the parties herein and going through the record, the pertinent issue that calls for my determination is whether it was correct for the hon Arbitrator to dispose of the application based on the raised preliminary objection.

I have gone through the record; the respondent raised a preliminary objection on the point that: "This *Commission* has no





*jurisdiction to entertain this matter as there is no employer/ employee relationship".* Principally, objection to the jurisdiction of a court or adjudicative body is a threshold question that ought to be raised and taken up at the earliest opportunity to serve time and costs and avoid an eventual nullity of the proceedings if the objection is sustained. See the case of **Tanzania Revenue Authority v. Tango Transport Company Ltd**, Civil Appeal No. 84 of 2009 (CAT) (unreported).

In the case at hand, the respondent raised an objection that the Commission had no jurisdiction to entertain the matter on the allegation that there was no employer/ employee relationship between the parties. In ascertaining this fact, one must prove whether there was such a relationship. **Section 61 of the Labour Institution Act**, Cap 300 R.E 2019, stipulates that:

*"For the purposes of a labour law, a person who works for, or renders services to, any other person is presumed, **until the contrary is proved**, to be an employee, regardless of the form of the contract..." (Emphasis is mine)*

Guided by the above provision, it is obvious that whether the applicants were employees or not is not a point of law but rather a fact that needs proof.



It is settled that the preliminary objection must be on the point of law and not the facts, which need evidence to prove its existence. See the case of **Mukisa Biscuits Manufacturing Co. LTD v. West End Distributors LTD**, (1969) EA 696. In the case at hand the preliminary objection raised by the respondent at the CMA, as pointed out earlier and well stated by the respondent's counsel and the applicant's Personal Representative, is not based on a point of law but a matter of facts. Thus, the hon Arbitrator determined this matter prematurely by sustaining the Preliminary objection, which is not a pure point of law.

From the above discussion, the revision has merit. The ruling of the trial Commission is quashed and set aside. The matter is hereby remitted to the Commission for continuation of mediation as prayed by the parties. There is no order as to costs as this is a labour matter.

Order accordingly,

**DATED at ARUSHA this 21<sup>st</sup> March 2024**



  
**N. R. MWASEBA**

**JUDGE**