

TANZANIA / JUDGMENT

Bukop

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THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (BUKOKA SUB-REGISTRY) AT BUKOKA LABOUR REVISION NO. 02 OF 2023 {Arising from Labour Dispute No. CMA/ KAG/28, 29,30, 31/2022 of the Commission for Mediation and Arbitration at Bukoba) BUKOP LTD..... APPLICANT VERSUS WILSON KAHANGWA 1st RESPONDENT JOSEPH FREDRICK 2nd RESPONDENT MULSWALD KAHANGWA 3rd RESPONDENT PRAXEDA JEREMIAH 4TH RESPONDENT

RULING

23/09/2024 & 24/10/2024 KIWONDE, J. The applicant, Bukop Ltd filed the present application by chamber summons supported by an affidavit of Beatrice Joseph, the Human Resources Officer, seeking for revision of the award of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/KAG/28, 29, 30 and 31/2022 delivered on 03/03/2023 in favor of the respondents. The application is made under section 91(1) (A), 92 (b) & (c) of the Employment and Labour Relation Act Cap 366 R.E 2019, and rule 24(1), i

- (2) (a) (b) (c) (d) (e) (f) and 24(3) (a) (b) & (c) of the Labour Courts Rules, G.N 106 of 2007. In the notice of application, the applicant sought revision of the ruling (sic) of the CMA to see the legality or otherwise of the following matters:
- i) Whether the collective agreement can be executed as a decree of the court for want of being lodged and registered a copy thereof with labour commissioner, ii) Whether the Commission has jurisdiction to arbitrate on the collective agreement where the record do not show that the parties to the agreement had agreed to be arbitrated, iii) Whether part of the claimed gratuities was not time barred, iv) Whether the doctrine of estoppel can be applied against the statutory requirement. On due service on the respondents, they filed a joint counter affidavit refuting some facts deposed by the applicant and the matter became ripe for hearing. During hearing of this application, the applicant was represented by Mr. Alli Chamani learned counsel, while the respondents were represented by Mr. Moses Mvuoni learned advocate. 2 In support of the application Mr. Alli Chamani submitted that in collective agreement, the Commission for Mediation and Arbitration has jurisdiction only to mediate the parties and if mediation fails, the party can refer the matter to the labour court for decisions under section 74 of the Employment and Labour Relations Act and the case of James Kapyata versus MCC Limited, Revision No. 198 of 2019, (High Court of Tanzania).

According to him the CMA has no jurisdiction to arbitrate on the collective agreement and it can do so if the parties agreed to go for arbitration. As to the second ground for revision, the counsel argued that section 71

- (7) of the Employment and Labour Relations Act, it is mandatory that parties have to lodge the copy of the collective agreement and register it before the Labour Commissioner for it to be executable as a decree of the court. According to him the registered copy becomes authentic for execution. But in this matter, he said, there is no evidence that it was the complied with. Regarding the issue of limitation period, the learned counsel submitted that under paragraph 5(3) of the Collective Agreement, it is shown that the money would be paid each year when the contract ends. But since 2015, the respondents did not claim for the last four months' salary. 3 According to him, regulation 10 (2) of the Labour Institutions (Mediation and Arbitration) Regulations, the law provides that if the dispute does not relate to termination of employment, then it has to be lodged within 60 days. He argued that their claims were time barred. Concerning the application of the doctrine of estoppel, the learned counsel submitted that this was wrongly applied since it was used against statutory provisions. He submitted that the statutory provisions provide for 60 days for a person to claim on their rights. In support of this, he cited the case *Director of Public Prosecutions V. Marwa Mwita and others* [1980] T. L. R 306. As to the issue of locus standi cf *Elizabeth Kimwaga*, the TUICO Secretary to represent the respondents at the CMA, the learned counsel that only trade unions could pick advocates of their choice. He said in the present matter, the said Elizabeth had no locus standi to represent the respondents before the CMA. He referred to the case of *Ndaro Bwire Songora versus Mwinuko Secondary School*, Lab. Rev. 94 of 2016, (HC). The counsel prayed this application be allowed. In reply, Mr. Moses Mvuoni, advocate for the respondents submitted that under section 71(1) to (6) of the Employment and Labour Relations Act, the agreement becomes valid once it is signed by the parties and it can 4 be executed as decree of the court. He was of the view that failure to register it before the Labour Commissioner does not bar execution. He further submitted that under section 71 (7) of the Act, the law does not put it mandatory requirement that the said collective agreement must be registered. Apart from that, on the time limitation to lodge the claims, the learned counsel submitted that the claims are for the gratuities and the law requires it to be lodged within 60 days and time starts to accrue from when the claimants were removed from work. The counsel argued that in the present matter, time started to run from when the employer refused to pay gratuity, that is, from 30/04/2022 and that is when the cause of action arose. According to him, this matter was referred to CMA on 30/05/2022, within 30 days from when the cause of action arose. Thus, the dispute was filed well within time. Besides that, on the doctrine of estoppel, the learned counsel submitted that under paragraphs 3.3 and 5.3 of the agreement, it was agreed that the same would continue to be valid even if the time expires. Therefore, the doctrine of estoppel was lawfully applied and that the employer used to pay the gratuity from 2012 to 2015. 5 As to the representation of the respondents at the CMA by Elizabeth Kimwaga, the learned counsel submitted that they are at liberty to choose any person to represent them. Submitting on the

issue of jurisdiction of the CMA to arbitrate the parties, the learned counsel submitted that the CMA had jurisdiction to determine this dispute. He said that the claim before the tribunal was all about the gratuity which when mediation failed, the applicant was notified that the matter has to go for arbitration and they agreed the matter to be arbitrated. The counsel argued that this application lacks merits and the respondents are entitled to be paid the gratuities. In rejoinder submissions, Mr. Alli Chamani reiterated what was said in the submissions in-chief. From the CMA records and the oral submissions from both parties, the issue for determination is whether this application is meritorious. In the present application the applicant raised four (4) matters which requires the determination of this court. He challenges execution of the collective agreement if it can be executed without first registering it with the Labour Commissioner; the jurisdiction of the CMA to arbitrate the 6 parties, time limit to file this matter before CMA and the legality of representation of the respondents by Ms. Elizabeth Kimwaga before the CMA. I opt to begin with the second item for it touches the jurisdiction of the Commission for Mediation and Arbitration. If this succeeds, it will determine the entire matter. It is not in dispute that the dispute between the parties concerns the implementation of the collective agreement. Where under section 74 (a) (b) of the Employment and Labour Relation Act of 2004, when a dispute arises in relation to application, interpretation or implementation of the collective agreement, it has to be referred to the Commission for mediation. If mediation fails, any party has to refer the matter to the Labour Court for decision unless the parties agree otherwise. Therefore, arbitration can be conducted only if the parties agree otherwise. In the present matter, the Commission for Mediation and Arbitration conducted arbitration after mediation failed without the agreement by the parties. In the proceedings dated 24.06.2022, where the Commission recorded as follows and I quote: 7 "Tume: Mgogoro failed, iwapo mwajiri atakpwa na ofa yoyote at any stage anaruhusiwa kusettle. Arbitration itanza kusikilizwa tarehe 08.07.2022 saa 3:00 asubuhi hati ya wito itolewe." From the above quoted proceeding, the record is clear that after mediation failed the parties were not asked if they are ready to proceed with arbitration and there was no agreement to that effect. This shows that the Commission decided to proceed with the arbitration without agreement of the parties to the dispute which is contrary to the law. Therefore, it is apparent that the Commission proceeded with the arbitration of the dispute concerning collective agreement without jurisdiction. This ground for revision suffices to dispose of the entire application, so, there is no need of going on expounding on the rest of the grounds. For that matter, the application for revision finds merits and it is hereby allowed. The arbitration proceedings in labour dispute No. CMA/KAG/28,29,30,31/2022 before the Commission for Mediation and Arbitration are hereby revised and nullified and its award is set aside. The 8 parties to the dispute may proceed to pursue their rights according to the law. This being a labour dispute, I make no order as to cost. Dated at Bukoba this 24th October 2024. F. H. KI NDE JUDGE 24.10.2024 Court: Ruling is delivered in chamber in the presence of Mr. Alli Chamani counsel for the applicant, Mr. Moses Mvuoni for the respondents and Grace Mutoka (RMA) this 24th October 2024 and the right to appeal is explained. Hti . JUDGE J 24.10.2024 9

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