

TANZANIA / JUDGMENT

continental reliable clearing t co ltd vs robert musa mndeme 2024 tzhcld 22 28 february 2024

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28 February 2024

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IN THE HIGH COURT OF TANZANIA LABOUR DIVISION AT DAR ES SALAAM REVISION
APPLICATION NO. 27230 OF 2023 (Arising from an Award issued on 23/10/2023 by Hon.
Mikidadi, A, Arbitrator in Labour dispute NO. CMA/DSM/TMK/183/2022/144/2022 at Temeke)
CONTINENTAL RELIABLE CLEARING (T) CO. LTD APPLICANT VERSUS ROBERT
MUSA MNDEME..... RESPONDENT

RULING

Date of last Order: 22/2/2024 Date of Ruling: 28/2/2024 B. E. K. Mganga, J. Applicant and the respondent had employment relationship. It happened that applicant terminated employment contract of the respondent as a result, the latter filed the dispute before the Commission for Mediation and Arbitration(CMA). On 23rd October 2023, Hon. Mikidadi, A, Arbitrator issued an award that applicant constructively terminated employment of the respondent and award respondent be paid TZS 4, 425,000/=. Applicant was aggrieved with the said award hence she filed this application for revision. Respondent opposed this application by filing both the Notice of opposition and the counter 1 affidavit. In addition to that, respondent filed the notice of preliminary objection that the application is incompetent because, prior to filing this application, applicant did not file at CMA, the notice to seek revision(CMA F10). When this application was called on for hearing of the preliminary objection, Mr. Jimmy Mnkeni from CHAWAMATA, a Trade Union, appeared and argued for and on behalf of the respondent while Mr. Mngumi Samadani, Advocate appeared and argued for and on behalf of the applicant. Arguing in support of the preliminary objection, Mr. Mnkeni submitted that, the application is incompetent for want of notice to seek Revision. He submitted that, Regulation No. 34(1) of the Labour Institutions(General) Regulations, GN. 47 of 2017 requires the aggrieved party to file a notice to seek revision (CMA F10) prior to filing revision. He added that, Applicant did not file the said notice. To support his submissions the said notice is mandatory, and that applicant was supposed to file the said notice, he cited the case of Shabani Sigera & Others vs. Vihaikerry- Hyseas Trading Ltd, Revision No. 140 of

2022. With those submissions, Mr. Mnkeni prayed this application be struck out. 2 On his part, Mr. Mngumi Samadani, learned counsel for the applicant, submitted that, this is not a preliminary objection because the allegation that applicant did not file the notice to seek revision is a matter of evidence. When probed by the court as to whether the said notice was attached to this application, he readily conceded that applicant did not attach it. After being allowed to peruse the CMA record, he submitted that applicant did not file at CMA the notice to seek revision. Counsel for the applicant argued that, absence of the notice to seek revision is not fatal. He argued further that, the said notice can be filed before this court at the time of hearing of this application. He prayed the court to apply the overriding principles so that the court can deal with substantive justice instead of technicalities. He therefore, prayed the preliminary objection be overruled and allow parties to argue the main application. In rejoinder, Mr. Mnkeni from CHAWAMATA, for the respondent, reiterated his submissions that the application is incompetent. It is undisputed by the parties that, prior to filing this application, applicant did not file at CMA the Notice to seek revision(CMA F10). I agree with submissions made on behalf of the respondent that the said notice is mandatory and must be filed at CMA before applicant filing an 3 application for revision before this court. That is the position of this court in various decided case laws. See for example the case of Anthony Massoy vs China Dasheng Bank Limited (Revision No. 51 of 2023) [2023] TZHCLD 1313 (8 June 2023), Anthony John Kazembe vs Inter Testing Services (EA) Pty Ltd (Revs Appl No. 391 of 2021) [2022] TZHCLD 45 (25 February 2022), Arafat Benjamin Mbilikila vs NMB Bank Plc (Revision No. 438 of 2020) [2021] TZHCLD 411 (13 September 2021) to mention but a few. Absence of the said notice makes the application for revision incompetent. It was submitted by counsel for the applicant that applicant be allowed to file the said notice before this court and allow the parties to proceed with hearing and further that the court should ignore the said notice as it is a matter of technicalities and should invoke overriding objective principles. With due respect to counsel for the applicant, the said notice cannot be filed in this application because it was supposed to be filed at CMA prior to filing this application. This court has held in the above cited cases that, the notice to seek revision(CMA F10) must be filed at CMA and not before this court before expiry of 42 days available for the applicant to file revision. The said 42 days has elapsed. It is my further view that requirement of filing the notice to seek revision is not a 4 matter of technicalities. It is a matter of law. Therefore, the prayer that this court should invoke the overriding objective principles cannot be accepted. The overriding objective principles cannot be invoked to circumvent mandatory provisions of the law. My conclusion is fortified with what was held by the Court of Appeal in the case of Martin D. Kumalija & Others vs Iron and Steel Ltd (Civil Application 70 of
- 2018) [2019] TZCA 542 (27 February 2019), Jacob Bushiri vs Mwanza City Council & Others (Civil Appeal 36 of 2019) [2021] TZCA 300 (14 July 2021) and SGS Societe Generale De Surveillance SA and Another v. VIP Engineering & Marketing Limited and Another, Civil Appeal No. 14 of 2017 (unreported). In Kumalija's case, (supra), the Court of Appeal held:- "...While this principle is a vehicle for attainment of substantive justice, it will not help a party to

circumvent the mandatory rules of the Court. We are loath to accept Mr.Seka's prayer because doing so would bless the respondent's inaction and render superfluous the rules of the Court that the respondent thrashed so brazenly". In VIP's case, (supra), the Court of Appeal held that:- "...We also find that the overriding objective principle cannot apply in the circumstances of this case since its introduction in the written Laws (Miscellaneous Amendments) (No. 3) Act, 2017 (Act No. 8 of 2017) was not meant to enable parties to circumvent the mandatory rules of the Court or turn blind to the mandatory provisions of the procedural law which go to the foundation of the case." 5 For the foregoing, I will not invoke the overriding objective principle in this application. Since applicant did not file at CMA the notice to seek revision prior to filing this application, I find that the application is incompetent and struck it out. Dated at Dar es Salaam on this 28th February 2024. B. E. K. Mganga JUDGE Ruling delivered on 28th February 2024 in chambers in the presence of Hemed Nassoro, advocate, holding brief of Mngumi Samadani, advocate for the Applicant and Jimmy Mnkeni, from CHAWAMATA, a Trade Union, for the Respondent. B. E. K. Mganga JUDGE 6

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