

TANZANIA / JUDGMENT

CIVIL APPEAL NO 340 OF 2021 DODSAL HYDROCARBONS AND POWER TANZANIA LIMITED VS JAMES PETER

COURT
TANZLIIDECIDED
1 January 2021

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM rCORAM: SEHEL. J.A.. KIHWELO. J.A And MDEMU, CIVIL APPEAL NO. 340 OF 2021 DODSAL HYDROCARBONS AND POWER (TANZANIA) PVT LIMITED APPELLANT VERSUS JAMES PETER..... RESPONDENT (Appeal from the ruling of the High Court of Tanzania, Labour Division, at Dar es Salaam) (Maruma, 3.^ dated the 5th day of July, 2021 in Revision Application No. 10 of 2020 JUDGMENT OF THE COURT 6th August & September, 2024 MDEMU. J.A.: This appeal emanates from the decision of the High Court of Tanzania, Labour Division at Dar es Salaam which quashed, set aside and ultimately directed the Commission for Mediation and Arbitration (the CMA or the Commission) to redetermine the labour dispute on merits. The CMA had earlier on sustained a preliminary objection by the appellant and thereby dismissing the labour dispute before it for being time barred. I The background of the appeal before us is traced way back in the year

2013. It is that, the respondent, who was a Senior Project Director of the appellant on a two-year fixed term contract, was charged with various disciplinary charges. Before the disciplinary committee could determine those disciplinary charges, the respondent resigned and rushed to the CMA alleging forced resignation and or constructive termination. The CMA decided in his favour and thus, it ordered a compensation of thirty-six (36) months remuneration. This award aggrieved the appellant It thus challenged it in the High Court through Revision Application No. 477 of 2015. At the hearing of that application, the counsel for the respondent prayed that hearing of the application for revision be halted pending the application before the CMA for correction of the award with regard to the citation of the parties at the CMA. The counsel for the appellant strongly opposed the prayer contending that, the issue of wrong citation of the parties was among the matters complained of in the application for revision. He added that, the corrections intended to be made were not merely a slip of a pen but were fundamental going to the root of the case. Having heard the submission, the learned High Court Judge found that the irregularities complained of did not fall on the category of clerical errors arising from any accident slip or omission. They go to the root 2 of the application for revision, thus, making the

application incompetent before the High Court. Accordingly, the High Court Judge quashed the CMA proceedings and did set aside the resultant award. She further directed the CMA to determine the said labour dispute *denovo* before another arbitrator. This was on 4th March, 2016. It is in the record of appeal that, on 15th October, 2019 the respondent filed a fresh labour dispute to the CMA on the same complaints regarding unfair constructive termination. On his part, the appellant came up with a preliminary objection that the referral was time barred. The CMA sustained that objection. It thus dismissed the said referral. The respondent then moved the High Court on revision which, in the end, decided in his favour by directing the CMA to redetermine the labour dispute substantively before another arbitrator. This is what aggrieved the appellant thus moved the Court to determine the following points of grievances:

1. Having found that the letter AMS in responding letter AM4 was the source of the problem of interpretation by the Commission and the applicant, the learned High Court Judge erred in finding the application has merit and set aside the ruling delivered on 13th December, 2019 and ordered the matter to proceed to the 3 determination on substantive issues while the same is time barred.
 2. The learned High Court Judge erred in the interpretation of the ruling of Nyerere J. and arrived at the wrong conclusion of setting aside the ruling dated 13th December, 2019 and ordered the matter to the determination on substantive issues.
 3. The learned High Court Judge erred in law in holding that the Commission wrongly entertained the preliminary objection raised since it was contrary to the ruling of 4th March, 2016. The appeal was before us for hearing on 6th August, 2024. The appellant company had the services of Mr. Odhiambo Kobas, learned advocate whereas the respondent was ably represented by Mr. Shepo Magirari, also learned advocate. In arguing the appeal, Mr. Kobas argued all the three grounds of appeal as one, that is, the High Court erred in holding that the labour dispute filed at the CMA was within time. His argument was in twofold, first, that the Labour dispute which was filed by the respondent on 15th October, 2019 intending to challenge the alleged unfair termination of the respondent, which was on 5th June, 2013 violated rule 10 (1) of the Labour Institutions (Mediation and Arbitration) Rules, 2007, GN. No. 64 of 2007. The latter, according to Mr. Kobasi, requires such disputes to be lodged within thirty
- (30) days. He referred us to the High Court case of Robert Jeremiah Marandu (Administrator of the Estate of Seprina Makimoso) v. Samwel Mkindi Lyimo@ Mkindi S. Lyimo, Land Appeal No. 82 of 2021 (unreported) arguing that, the route taken by the CMA to dismiss the newly filed labour dispute for being time barred was on the right track. Second, the said labour dispute was filed in contravention of the order of the High Court (Nyerere J.) which directed the rehearing of labour dispute with Ref. No. CMA/DSM/ILA/R. 465/13/460. According to Mr. Kobas, it was wrong therefore for the respondent to commence a fresh labour dispute in the circumstances. In his argument, the order of the High Court, which as of today has not been complied, was to have the dispute determined *de novo* before another arbitrator and

nowhere in the High Court order the respondent was directed to file a fresh labour dispute. On his part, Mr. Magirari was very brief in resisting the appeal. Regarding compliance with the order of the High Court, his argument was that, parties cannot shoulder the blames on what happened because the High Court clearly directed the CMA to determine the labour dispute de novo before another arbitrator. In the learned counsel's argument, under the 5 premises, parties had no any legal obligation to perform in order to comply with that order of the High Court, Replying to the contentious newly filed labour dispute, the learned counsel argued that, it was filed in compliance with the advice of the CMA in a letter dated 25th July, 2019. According to the learned counsel, that letter was in response to the respondent's letter which reminded the CMA to appoint another arbitrator, of course, in pursuance of the High Court order to have the dispute arbitrated de novo. It is at this hour, according to Mr. Magirari, when the CMA directed the respondent to initiate a fresh labour referral preceding the appointment of a new arbitrator, which he did anyway. The learned counsel, on that account, shifted responsibility to the CMA for wrongly interpreting the order of the High Court which, in the end, stood to mislead the respondent. Nonetheless, it was his argument that, the respondent had to comply in order to commence fresh proceedings being the only remedy open to have the labour dispute redetermined. The learned counsel finally argued that, since the faulty in the interpretation of the High Court order was committed by the CMA, then the High Court rightly ordered the CMA to hear the matter afresh in order to protect rights of the litigants. He thus urged us to dismiss this appeal so as to pave way for the continuation of the arbitration proceedings as rightly ordered by the High Court. Mr. Kobas rejoined briefly that, the respondent's act of filing a fresh labour dispute was in contravention of the High Court order which directed the CMA to determine the matter de novo before another arbitrator. What the High Court (Maruma J.) did, according to Mr. Kobas, was to bless the CMA actions of entertaining a freshly filed dispute which was out of time, instead of complying with the High Court order (Nyerere J.) which directed the matter to be arbitrated afresh. Having heard from the parties and duly considered the entire record of appeal, we wish to state from the outset that, the High Court order (Nyerere J.) in Labour Revision No. 477 of 2015 which directed redetermination of Labour Dispute No. CMA/DSM/ILA/R. 465/13/460 by the CMA between the parties is yet to be complied with. There is consensus of the parties to this end. They are also in agreement, and we also find it so that, it was improper for the respondent to file a fresh dispute, misguided though, post to the order of the High Court directing the rehearing of the referral before a different arbitrator. Again, as the counsel for the parties argued, the CMA improperly interpreted the order of the learned High Court Judge that the respondent was directed to file fresh arbitral proceedings in compliance with that order. For ease of clarity, we wish to reproduce the relevant part of the High Court order as it appears at page 23 of the record of appeal as follows: "In the circumstance, I invoke the powers vested in this court under section 94 (3) (a) (ii) of the Employment and Labour Relations Act, No. 6 of 2004 and Rule 55 (2) of the Labour Court Rules, GN No. 106 of 2007 to quash and set aside the CMA award and proceedings and I hereby refer the complaint to the Commission to commence afresh out of time before a different arbitrator with competent jurisdiction." This order of

the High Court was given interpretation by the CMA in its letter dated 25th July, 2019 with no reference number appearing at page 24 of the record of appeal, partly that: "....I have read the said decision of the Labour Court (which you attached) and found out that the court did not only refer the complaint to commence afresh before another arbitrator but also quashed and set aside both the award and proceedings of the Commission. My interpretation of the order of the Labour Court means the Commission remains with nothing in record as everything has been quashed and set aside. Such being the case, the Commission cannot assign another Arbitrator unless interested parties have initiated fresh referral and/or proceedings..."[emphasis ours] We read between the lines both the High Court order and the alleged interpretation of that order by the CMA as quoted above. We think the CMA missed the boat somehow in that interpretation. Our understanding of that High Court order is in threefold. One, the act of the learned High Court Judge to quash the proceedings and award of the CMA is what resulted to her directives regarding redetermination of the referral before another arbitrator. It is not therefore correct, as the CMA interpreted, that the said act meant nothing was left in the Commission for consideration. Two, the order was directed to the CMA and not the respondent. Our view under the premises is that, the CMA had no option but rather to comply with that order by appointing another arbitrator and further, summon the parties to recommence the arbitration proceedings. The CMA thus abdicated its responsibility and therefore it was improper for it to direct the respondent to commence a fresh referral. Given the premises, our view is that, where a superior court directs the rehearing of the matter by the subordinate court, it is the obligation of the directed subordinate court in the order to summon the parties in pursuance of compliance of that order. Three, there is nowhere in the order of the learned High Court Judge where parties were directed to file a fresh referral, being a condition prerequisite to the appointment of another arbitrator. Having settled that, our stance is that, the respondent therefore cannot be blamed for reminding the Commission to appoint another arbitrator but rather it is the Commission which is to shoulder such blames following its improper interpretation of the order of the learned High Court Judge. Again, as we demonstrated above, it was in the course of reminding the Commission to appoint another arbitrator when the respondent was directed to file a fresh referral. In that stance, the respondent, in return, may not be positioned to stand the alleged blames. Reverting to the impugned decision of the High Court, the main complaint of the appellant in the three grounds of appeal hinges on the act of the learned High Court Judge to order the CMA to rehear the referral on merits while the same was out of time. If we understood Mr. Kobas well, both in his oral submission and also as coached in the grounds of appeal, the learned High Court Judge directed the CMA to redetermine the referral on merits while the said referral was initiated out of time. We wish to make it clear from the outset that, having found that the CMA wrongly entertained the preliminary objection, the learned High Court Judge would have quashed the proceedings and proceed to strike out the revision. We think she would have ended here because what was before her was incompetent. For clarity, let the record of appeal speak by itself as follows as at page 229 of the record of appeal regarding that position of the learned High Court Judge: "Further to the above findings, this court is

satisfied that the commission was wrong to entertain the preliminary objection raised, since it was contrary to the ruling of 4th March 2016". That notwithstanding, the learned High Court Judge's findings that the order by Nyerere J. could not have given rise to the filing of a fresh labour dispute is loud and clear. As she correctly observed at page 227 of the record of appeal, it was the interpretation rendered by the CMA which gave rise to the newly labour dispute filed by the respondent. Our view therefore is that, the filing of a fresh labour dispute by the respondent was not the outcome of the ruling (Nyerere J.) dated 4th March, 2016 nor was it in compliance with that ruling thereof but rather, it was a fruit of the advice rendered by the CMA to the respondent. The latter, as we fore observed, reminded the CMA regarding compliance of the order of the High Court to appoint another arbitrator. In the final analysis, since the revision before Maruma 1 was incompetent because, as said, it arose from an incompetent labour referral, this appeal too suffers the same incompetence for arising from an incompetent application for revision. We therefore proceed to nullify and quash the proceedings of the CMA and set aside the resultant award. We further nullify the proceedings of the High Court (Maruma J.), quash the decision and set aside the subsequent order thereto. At the end, we strike out the appeal with direction that the CMA to redetermine the Labour Dispute No. CMA/DSM/ILA/R.465/13/460 as ordered by Nyerere J. in Revision No. 477 of 2015. We make no order as to costs. DATED at DAR ES SALAAM this 23rd day of September, 2024. B. M. A. SEHEL JUSTICE OF APPEAL P. F. KIHWELO JUSTICE OF APPEAL G. J. MDEMUSI JUSTICE OF APPEAL Judgment delivered this 27th day of September, 2024 in the presence of Mr. Odhiambo Kobas, learned counsel of the Appellant and Mr. Shepo Magirari, learned counsel for the Respondent is hereby certified as a true R. W. CHAUNGU DEPUTY REGISTRAR COURT OF APPEAL 12

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/318689/source_file/de51b0a1d0c6b1b6/CIVIL_APPEAL_NO_340_OF_2021_DODSAL_HYDROCARBONS_AND_POWER_TANZANIA_LIMITED_VS_JAMES_PETER.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/dodsall-hydrocarbons-and-power-tanzania-pvt-limited-v-james-peter-constructivetermination-tanzlii-2021--6a3ea52a3b1caa9129823692

Prepared on 14 October 2026 · Esheria