

TANZANIA / JUDGMENT

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6 March 2024

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IN THE HIGH COURT OF TANZANIA LABOUR DIVISION AT DAR ES SALAAM REVISION
APPLICATION NO. 27667 OF 2023 (Arising from an Award issued on 24/11/2023 by Hon. L.C.
Chacha, Arbitrator in Labour Dispute No. CMA/DSM/KIN/91/2022/35/2022 at Kinondoni) ESMail
YAHYA FUTAINI APPLICANT VERSUS ORGANIA CO. LTD
..... RESPONDENT

RULING

Date of last Order: 22/02/2024 Date of Ruling: 06/03/2024 B. E. K. Mganga, J. Applicant and the respondent had employment relationship. It happened that their relationship turned into sour which resulted into termination of the employment contract of the applicant. Aggrieved, with termination of his employment, applicant filed Labour dispute No. CMA/DSM/KIN/91/2022/35/2022 before the Commission for Mediation and Arbitration(CMA). On 17th November 2023, having heard evidence of the parties, Hon. Chacha, L.C., arbitrator, suo moto, raised the issue of limitation of time and asked the parties to make submissions thereon. 1 On 24th November 2023, issued an award that the dispute was time barred and dismissed it. Dissatisfied with the said award, applicant filed this Revision Application. Respondent opposed the application by filing the counter affidavit affirmed by Mohamed Shekigenda Ngwilizi, her Human Resources Manager. Before the application was heard on merit, Mr. Jackson Mgonja advocate, for the respondent raised a preliminary objection that applicant did not file the Notice to Seek Revision (CMA F10) prior to filing this application. It was submitted by counsel for the respondent that, the said notice is provided under Regulation 34(1) of the Employment and Labour Relations (General Regulation) G.N. No. 47 of 2017 and that, it is mandatory to be filed. To support his submissions, learned counsel referred the court to the case of Antony Massoy vs China Dasheng Bank Limited, Revision No. 51 of 2023, HC (unreported). Counsel for the respondent submitted further that the application is incompetent for want of the said notice to seek Revision and prayed this application be struck out. On his part, M Mr. Abel Mabula, Personal Representative of the applicant, conceded that applicant did not file at CMA the Notice to Seek Revision(CMA F10) prior to filing this application. He was quick to submit 2 that, the said notice is not mandatory and cannot make this application to be incompetent. He argued that failure to file the said notice is not fatal because the said notice is only intended to notify the court that a

revision has been filed before the High Court. The personal representative of the applicant prayed the court to dismiss the preliminary objection on ground that it is a mere technicality. In rejoinder, Mr. Mgonja, learned counsel for the respondent maintained that the said notice is mandatory. I have considered submissions of the parties and find that it is undisputed that, prior to filing this application, applicant did not file at CMA, the Notice to seek Revision(CMA F10). It was submitted on behalf of the applicant that the said notice is not mandatory and prayed the court to dismiss this application on ground that the preliminary raised by the respondent is a mere technicality. With due respect to the personal representative of the applicant, the issue raised by the respondent is not a mere technicality. Requirement to file the notice to seek Revision is mandatory as it was held by this case in numerous cases including the case of Access Bank Tanzania Limited vs Dixon Bohela (Labour Revision No. 85 of 2023) [2023] TZHCLD 1314 (7 June 2023), Jackson Mungure & 18 Others and Paulo Silvin Salaho & 9 Others vs Tanganyika Wilderness Camps Ltd (Revision Application 62 of 2021) 3

[2022] TZHC 10258 (23 June 2022), Communita's Dis Egidio a Cap vs Francis Kenan (Labour Revision 13 of 2020) [2021] TZHC 9156 (11 November 2021), Anthony John Kazembe vs Intertesting Services (ea) Pty Ltd (Revs Appl No. 391 of 2021) [2022] TZHCLD 45 (25 February 2022) and Anthony Massoy vs China Dasheng Bank Limited (Revision No. 51 of 2023) [2023] TZHCLD 1313 (8 June 2023) to mention but a few. In Massoy's case(supra), this court held inter alia that:- "...Thus, since the present application was initiated without filing the notice of intention to seek revision it renders the application incomplete. ... As, aforesaid, the notice is filed pursuant to mandatory requirement of the law. Therefore, violation of the same contravenes the law." From the foregoing, since applicant did not file the Notice to Seek Revision(CMA F10) that is mandatory, I find that this application is incompetent. I therefore sustain the preliminary objection and struck out this application for being incompetent. Dated in Dar es Salaam on this 6th March 2024. B. E. K. Mganga JUDGE Ruling delivered on this 6th March 2024 in chambers in the presence of Esmail Yahya Futaini, the Applicant and Abel Mabula, the Personal 4 Representative of the Applicant on one side and David Kasanga, Advocate for the Respondent. B. E. K. Mganga JUDGE 5

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