

TANZANIA / JUDGMENT

hassan juma mtungi vs north mara gold mine 2023 tzhc 22419 8 november 2023

COURT
TZHCDECIDED
8 November 2023

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THE UNITED REPUBLIC OF TANZANIA (JUDICIARY) THE HIGH COURT - LABOUR DIVISION (MUSOMA SUB REGISTRY) AT MUSOMA LABOUR REVISION No. 12 OF 2023 (Arising from the Commission for Mediation and Arbitration for Mara at Musoma in Labour Dispute No. CMA/MUS/172/2021) HASSAN JUMA MTUNGI..... APPLICANT Versus NORTH MARA GOLD MINE LIMITED..... RESPONDENT

RULING

23.10.2023 & 08.11.2023 Mtulya, J.: Mr. Hassan Juma Mtungi (the applicant) was aggrieved by the award of the Commission for Mediation and Arbitration for Mara at Musoma (the Commission) in Labour Dispute No. CMA/MUS/172/2021 (the dispute) hence approached this court praying for revision of the award. According to the applicant, there are errors material to the merit of the dispute which had caused injustice to the parties and prayed this court to revise and set aside the award issued by the Commission. However, the applicant had declined to support the revision with clear and concise names, descriptions and address of the parties and statement of legal issues that arise from the material facts as required by Rule 24 (3) (a) & (c) of the Labour Court Rules, 2007, GN. No. 106 of 2007 (the Rules). The fault was spotted by Mr. Imani Mfuru, learned counsel for North Mara Gold Mine (the respondent) and on 24th August 2023, he preferred a notice of preliminary objection resisting the competence of the revision. The objection was scheduled for hearing on 23rd October

2023. On this day, the applicant had requested his personal representative, Mr. Ogola Elly Aman to argue the point of law. In his brief submission in support of the point, Mr. Mfuru stated that the applicant had faulted the provision of Rule 24 (3)

(a) & (c) of the Rules and precedent in Nyachia R. Warucha v. The New Forest Company, Labour Revision No. 8 of 2019, by declining necessary materials in his affidavit in support of the revision. According to Mr. Mfuru, the revision may be struck out for want of clear and concise names, descriptions and address of the parties and statement of legal issues, which arise from material facts of the dispute. In the opinion of Mr. Mfuru, the provision in Rule 24 (3) (a) &

- (b) of Rules was enacted by use of the word shall, which shows a compulsory nature of the enactment as per section 53 (2) of the Interpretation of Laws Act [Cap. 1 R.E. 2019] (the Interpretation Act). In such circumstances of mandatory procedural law, Mr. Mfuru submitted that the principle of overriding objective cannot be invited and applied to rescue the application as it was rightly resolved at page 8 and 10 of the ruling in the precedent of *Nyachia R. Warucha v. The New Forest Company* (supra). Responding to the submission, Mr. Aman submitted that the objection has no merit for two reasons, //z first, the application for labour revision contains notice of application, affidavit and chamber summons which reading in totality displays the required materials; and second, this court may decline technicalities produced by Mr. Mfuru in favor of the overriding objective principle enacted in section 3A&B and 95 of the Civil Procedure Code [Cap. 33 R.E. 2022] (the Code) and article 107A (2) (e) of the Constitution of the United Republic of Tanzania [Cap. 2 R.E. 2002] (the Constitution). In support of his submission with precedents, Mr. Aman cited precedents in *Stephano Maria Tabu v. Isaya Doya*, 2018 (HC- Tabora) and *Said Shabani v. Republic*, Criminal Appeal No. 17 of 2011 contending that technicalities of the law and delay of justice must be suppressed in our courts in favor of the substantive justice without delay. Rejoining the submission, Mr. Mfuru stated that the fault goes to the root of the revision as Rule 24 (a) & (c) of the Rules was enacted in mandatory terms hence the affidavit in support of the 3 revision must contain the indicated information clearly and concisely. In the opinion of Mr. Mfuru, it is not a court's duty to scrutiny the materials registered in the revision in search of the concise and clear names, descriptions, address and statement of legal issues. Regarding the application of overriding objective principle, Mr. Mfuru submitted that the matter has been resolved in the precedent of this court in *Nyachia R. Warucha v. The New Forest Company* (supra) and was approved by the precedent of the Court of Appeal in *Mondorosi Village Council & Two Other v. Tanzania Breweries Limited & Four Others*, Civil Appeal No. 66 of 2017. I have had an opportunity to peruse the enactment in Rule 24
- (3) (a) (b) & (c) of the Rules and precedents in *Nyachia R. Warucha v. The New Forest Company* (supra). The enactment reads that: The application shall be supported by an affidavit, which shall clearly and concisely set out:
- (a) the names, description and addresses of the parties;
 - (b) a statement of the material facts in a chronological order, on which the application is based;
 - (c) a statement of the legal issues that arise from the material facts; 4 This court in the precedent of *Nyachia R- Warucha v< The New Forest Company* (supra) had resolved, at page 8 of the ruling, that: The rule is coached in mandatory form due to the word shall, which according to section 53 (2) of the Interpretation of Laws Act [Cap. 1 R.E 2019], where in a written law the word shall is used in conferring a function, such word shall be interpreted to mean that the function so conferred must be performed. (Emphasis supplied). Concerning the principle of overriding objective, the precedent at page 9 and 10 of the ruling had resolved that: This principle is not new...the elements of overriding objective principle has been there even before the enactment of the law...articles 13(6)(a) and 107A (2)

(e) of the Constitution and Ramadhan Nyoni v. M/S Haute & Company, Advocates [1996] TLR 71...the principle was not intended to violate mandatory procedural law...the application is bad in law for violating mandatory requirement of Rule 24(3)(a) (b)(c) of the Labour Court Rules, 2007, and the same is hereby overruled. In the present revision, it is vivid that the applicant had breached the mandatory procedural law enacted in Rule 24 (3) (a) & (c) of the Rules and directives of this court in the precedent of 5 Nyachia R. Warucha v. The New Forest Company (supra). I am aware of the enactment in section 3A (1) of the Code and its associated interpretation in the precedent of Yakobo Magoiga Gichele v. Peninah Yusuph, Civil Appeal No. 55 of 2017. However, the enactment cannot be invited and applied against mandatory procedural law. There is a bunch of decisions in support of the move in this court and Court of Appeal (see: Mandorosi Village Council & Two Other v. Tanzania Breweries Limited & Four Others (supra), Nyachia R. Warucha v. The New Forest Company (supra) and Njake Enterprises Limited v. Blue Rock Limited & Another, Civil Appeal No. 69 of 2017). The enactment in Rule 24 (3) (a) & (c) of the Rules is a mandatory procedural law and cannot be escaped for want of the principle of overriding objective. It is fortunate that similar issue was raised by the applicant in this court in the precedent of Nyachia R. Warucha v. The New Forest Company (supra). However, it was refused by this court. In the instant revision, this court will prefer certainty and predictability of decisions emanated from this court and Court of Appeal. In the circumstances of the present revision, the precedent in Nyachia R. Warucha v. The New Forest Company (supra) shall be cherished. In any case, the applicant has no right to choose labour enactments as he so wishes in filing revisions in this court. In the end, I strike out the present revision for want of proper application of the indicated laws in the Rules and precedents. I do so without costs as this is a labour dispute. Each party shall bear its costs. However, for interest of justice and considering this is a labour dispute, I am moved to grant the applicant fourteen (14) days leave to file fresh and proper application. This Ruling was delivered in Chambers under the Seal of this court in the presence of the applicant, Mr. Hassan Juma Mtungi and his Personal Representative, Mr. Ogola Elly Aman and in the presence of the respondent's learned counsel, Mr. Imani Mfuru. Judge 08.11.2023 7

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