

TANZANIA / JUDGMENT

JOACHIM JOLIGA V

COURT
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IN THE HIGH COURT OF TANZANIA LABOUR DIVISION AT DAR ES SALAAM REVIEW
APPLICATION NO. 6319 OF 2024 (Arising from the judgment of this court (B. E. K. Mganga, J)
dated 27/2/2024 in Revision Application No. 27455 of 2023). JOACHIM
JOLIGA..... APPLICANT VERSUS DURBAN HOTEL LTD & CONCORRD
HOTEL LTD..... RESPONDENT

RULING

Date of Last Order: 03/05/2024 Date of Ruling: 17/05/2024 B. E. K. Mganga, J. Facts of this Review application are that, on 2nd November 2023, Hon. Makanyaga, A.A, Arbitrator, struck out the dispute that was filed by the applicant on ground that the same was initially withdrawn by the applicant without leave to refile. Applicant was aggrieved by the CMA ruling that struck out the dispute he filed against the respondent as a result he filed revision application No. 27455 of 2023 before this court. On 27th February 2024 this court(B.E.K. Mganga, J) delivered its exparte judgment confirming CMA ruling that since the dispute was 1 withdrawn on 15th May 2023 by the applicant, there was no dispute between the parties that was pending at CMA to be arbitrated by the parties. This court therefore confirm the ruling of the arbitrator and dismiss the said revision application that was filed by the applicant. On 22nd March 2024, applicant filed this application for Review containing two grounds namely that:-

1. That, the there is a manifest error on the face of the judgment and the decree of the court when ordered dismissal of Revision application No. 27455 of 2024 based on a letter dated 15th May 2023 which resulted into miscarriage of justice.
2. That, there is a manifest error on the face of the judgment and the decree of the court on Revision application No. 27455 of 2023 which differ with its previous order on Revision application No. 94 of 2023 on account to deprive applicant an opportunity to be heard. When the application was called on for hearing, applicant appeared in person while respondent was represented by Denis Mwamkwala, the Personal Representative. Arguing in support of the 1st ground, applicant submitted that, the judgment of this court dated 27th February 2024 by Hon. B. E. K. Mganga, J, dismissed Revision Application No. 27455 of 2023 based on the letter that he wrote to CMA on 15th May 2013. He went on that, after going through the said judgment, he noted that the personal representative who was representing him in the said revision, did not 2 properly address the court leading the court to dismiss the said

revision application. When probed by the court, applicant concede that, the fact that the representative did not submit to his expectation cannot be a ground for review. Applicant submitted further that, the court dismissed his revision application based on his letter wherein he used the word “shauri “. He went on that, “Shauri” can be miscellaneous application or main dispute. He argued that, this court in its impugned judgment interpreted ”shauri” as main dispute. He maintained that, he did not withdraw the main dispute rather, he withdrew miscellaneous application. Arguing the 2nd ground, applicant submitted that, he was denied right to be heard at CMA. In his submissions, applicant conceded that denial of the right to be heard is an issue to discussed at appeal or revision stage and not in review. Applicant submitted further that, in the impugned judgment, this court quoted only part of the letter and not the whole letter and that, that amounted to an error on face of the record. Applicant went on to submit that, the dispute at CMA was heard by two different arbitrators at different times namely, Lucia Chacha, Arbitrator, who disqualified herself after his (applicant’s) prayer as a result, the dispute was heard by Hon. Makanyaga, arbitrator. He clarified that he 3 filed revision application before this court against the decision of Hon. Makanyaga, arbitrator. With those submissions, applicant prayed that the application be allowed and judgment that was delivered by this court on 27th February 2024 be set aside. Resisting this application for review, Denis Mwamkwala, personal representative of the applicant submitted that, in terms of Rule 27(2)(b) of the Labour Court Rules, GN. No. 106 of 2007, this court can review its decision if there is discovery of new evidence, of which it is not the case in the application at hand. He submitted further that, the complaint by the applicant seems to be grounds of appeal and that, this court cannot sit as an appellate court on its own decision. He added that, submissions that the court misconstrued the word “shauri” is a matter of interpretation not subject to review, but it is an issue to argued on appeal. He further submitted that, issues raised by the applicant were supposed to be raised on appeal and not review. He concluded that, there is no error on the face of the record in the impugned decision of this court and prayed the application be dismissed for want of merit. In rejoinder submissions, applicant briefly submitted that, this is a court of record not bound by legal technicalities. 4 I have considered submissions of the parties in this application and find that applicant did not meet the conditions set out by the Court of Appeal for the matter to qualify to be reviewable. Conditions for review were set out in the case of Chandrakant Joshubhai Patel vs Republic (Criminal Application 8 of 2002) [2003] TZCA 37 (29 April 2003), Joel Silomba vs Republic (Criminal Application 5 of 2012)

[2013] TZCA 332 (14 June 2013) and East African Development Bank vs Blueline Enterprises Limited (Civil Application 47 of 2010)

[2011] TZCA 53 (6 September 2011) to mention just a few. In Chandrakant Joshubhai Patel’s case (supra) the Court of Appeal held inter-alia that:- “ We would say in the light of the authorities at hand, that an error which will ground a review, whether it be one of fact or law, will be an error over which there should be no dispute and which results in a judgment which ought to be corrected as a matter of justice... An error on the face of the

record must be such as can be seen by one who runs and reads, that is, an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions... A mere error of law is not a ground for review under this rule. That a decision is erroneous in law is no ground for ordering review... It can be said of an error that is apparent on the face of the record when it is obvious and self evident and does not require an elaborate argument to be established...” 5 In East African Development Bank’s case (supra), the Court of Appeal held inter-alia that:- “It is, we think apparent that there is a conflict of opinion as to what amounts to an error manifest on the face of the record, and it is important to be clear of this lest disguised appeals pass off for applications for review. We say so for the well known reason that no judgment can attain perfection but the most that courts aspire to is substantial justice. There will be errors of sorts here and there, inadequacies of this or that kind, and generally no judgment can be, beyond criticism. Yet while an appeal may be attempted on the pretext of any error, not every error will justify a review.” In East African Development Bank’s case (supra), the court of Appeal further quoted its earlier holding in the case of Peter Ng’homango vs Gerson M.K Mwangwa and Another (Civil Application 33 of 2002) [2007] TZCA 162 (27 July 2007) that:- “It is no gainsaying that no judgment, however elaborate it may be can satisfy each of the parties involved to the full extent. There may be errors or inadequacies here and there in the judgment. But these errors would only justify a review of the Court’s judgment if it is shown that the errors are obvious and patent.” In East African Development Bank’s case (supra, the Court of Appeal also quoted the decision of the High court of Uganda in the case of Balinda v. Kangumu (1963) EA 557 that:- 6 “...that a point which may be a good ground of appeal may not be a good ground for review...” In East African Development Bank’s case (Supra) the Court of Appeal held further that, for the applicant to succeed, it must be shown that:- “(i) there is a manifest error on the face of the record in that the error is not a mere error of law, it has no dispute, it is clear, obvious, patent etc; the error is not one which can be established by a long drawn process of reasoning on which there may conceivably be two opinions; the error is a good ground for review and not for an appeal etc. (ii) the applicant was not given the opportunity to be heard.” In the application at hand, applicant seems not to be happy with the interpretation of the word “shauri” which in its judgment, this court interpreted it to mean the main dispute while applicant is of the view that, it may mean both Miscellaneous application and the dispute. That alone, is sufficient for this application to be dismissed because, there are two interpretations, or, it is a matter of argument that cannot be entertained in an application for review rather, it is a ground of appeal. Again, submissions by the applicant that his personal representative did not properly address the court which led to dismissal of his revision application, cannot, in my view a ground for review. I am of that view because, the said revision application was not dismissed due to poor 7 presentation of the applicant’s personal representative. Be as it may, whatever was presented by the said personal representative, was presented by the applicant who chose the said personal representative. In no way, applicant can now denounce the service of the said personal representative of his own choice. More so, the denial of right to be heard raised by

applicant in his submissions does not exist because he admitted that he was heard at CMA and before this court through his personal representative. As a matter of completeness, denial of right to be heard was not a ground that applicant raised in 27455 of 2023. In the 2nd ground of review, applicant indicated that the order in the impugned judgment in Revision application No. 27455 of 2023 differs with the order in Revision Application No. 94 of 2023. Unfortunately, in his submissions, he did not show the alleged difference. It is obvious that in Revision application No. 94 of 2023 this court, Hon. Mlyambina, J, allowed applicant to withdraw the said application hence the order is that the application was marked withdrawn. In Revision application No. 27455 of 2023, the application was dismissed for want of merit. From where I am standing, I don't see how that can be a justification for review. The least I can say is that, if applicant was aggrieved with dismissal order, he was supposed to appeal before the Court of Appeal and not to file this application for review. That said, I find that applicant has failed to meet the above tests for review. I therefore dismiss this application for want of merit. Dated in Dar es Salaam on this 17th May 2024. B. E. K. Mganga JUDGE Ruling delivered on this 17th May 2024 in chambers in the presence of Denis Mwamkwala, Personal Representative of the Respondent but in the absence of the Applicant. B. E. K. Mganga JUDGE 9

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