

TANZANIA / JUDGMENT

lake trans limited vs pius mero 29 others 2023 tzhcld 1353 18 july 2023

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18 July 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA LABOUR DIVISION AT PAR ES
SALAAM REVISION NO. 33 OF 2023 (From the decision of the Commission for Mediation and
Arbitration at Ilala in Labour Dispute No. REF: CMA/DSM/ILA/541/21/14/22, Msina, H.H.:
Arbitrator, Dated 22nd December, 2022) LAKE TRANS LIMITED
APPLICANT VERSUS PIUS MERO 1st RESPONDENT
FADHILI JUMA KARIM 2nd RESPONDENT EMMANUEL E. NGAI
IZA 3rd RESPONDENT ALLI HAMAD HAMDUN
I. 4th RESPONDENT ELIASASALUM JUMA
5th RESPONDENT SHABANI RAMADHANI CHEMCHHEM 6th RESPONDENT ABBAS
SAID KIBWANA 7th RESPONDENT MOHAMED SALUM SEIF
F 8th RESPONDENT MOHAMED MAHMOUD SHABAN
9th RESPONDENT KHALIFA SALUM HAMAD 10th RESPONDENT
EGBERT MUGOHA 11th RESPONDENT ARAFAT MWAN
JALA 12th RESPONDENT STANLEY ALEXANDER MUSH
I. 13th RESPONDENT SALUM SELEMANI 14th
RESPONDENT HEMED BAKARI 15th RESPONDENT ZUBERI
REMI MSOFI 16th RESPONDENT RAMADHAN ABDALLAH NYANG
G I. 17th RESPONDENT SEIF HAMISI NYONGONYEKE 18th
RESPONDENT HAMZA MUSTAFA YALEGE 19th RESPONDENT LEONCE
PETER GALLA 20th RESPONDENT MUHIDINI SHAH
A 21st RESPONDENT MALANDA AUGUSTINO CHIGO
LO 22nd RESPONDENT MBARAKA ISSA DEGE 23rd
RESPONDENT THEODOS EMMANUEL MISORI 24th RESPONDENT
EMMANUEL ELINISA MBOYA 25th RESPONDENT JUMA SHABANI MAZIK
U 26th RESPONDENT EMMANUEL ISSAC DAN
I. 27th RESPONDENT BONIFACE MWAKAJILA 28th
RESPONDENT HAMADI MUGASHA 29th RESPONDENT MAULID J
UMA 30th RESPONDENT

JUDGEMENT

26th June - 18th July, 2023 OPIYO. J The applicant prayed for this Court to call the proceedings and thereafter to revise, quash and set aside the award of the Commission for Mediation and Arbitration (CMA) in a Labour Dispute No. CMA/DSM/ILA/541/21/14/22 by Msina, H.H. (Arbitrator) dated 22nd December, 2022. 2 Background to the matter is that respondents were employed by the applicant under the permanent contract as drivers at different times. Respondents having claim of unfair termination, they filed for a Labour Dispute at CMA. The matter was heard and the award was in their favour. Being aggrieved, the applicant filed for Revision Application having No. 561 of 2019. As a matter of procedure, the call for records was issued for CMA Kibaha to bring the records. So, that the court could properly hear and determine the matter. There was nowhere to find the CMA file the High court's efforts proved futile. The order was then given to remit back the file to the CMA for reconstruction of records of Labour Dispute No. CMA/PWANI/KBH/627/2017 and if that proved impossible, then rehearing was inevitably be embarked on by retaining the same Labour Dispute number. The matter was reheard as Labour Dispute No. CMA/DSM/ILA/541/21/14/22 and the award was again in favour of the respondents. Being dissatisfied, the applicant opted for this Revision Application. This application is supported by the applicant's affidavit sworn by Macrina Chale, Principal Officer of the applicant having grounds for revision as

- a) Whether or not CMA Ila la had jurisdiction to hear and deliver the impugned award.
- b) Whether or not Pius Mero (PW 1) legally qualified to represent the rest of the respondent.
- c) Whether or not PW 1 evidence was reliable while he had testified during hearing that he does not remember the dates his co-complainants were employed and does not remember all his co-complainants.
- d) Whether or not it was proper for the Commission for Mediation and Arbitration to entertain the dispute and deliver an award contrary to the directives and an order of this court.
- e) Whether or not it was proper for the Commission and Mediation to deliver an award granting compensation for unfair termination ignoring the parties' evidences that the respondents were not terminated.
- f) Whether or not there was evidence leading to the arbitrator's conclusion that the respondents were unfairly terminated.
- g) Whether or not the CMA award on compensation for unfair termination was properly arrived given the evidences tendered by both parties.
- h) Whether or not it was proper for the Hon. Arbitrator to grant compensation relying on evidences contained in the respondent's final submission, an act which denied the applicant's right to be heard. ■ 4 The hearing was by way of written submission. Both parties were represented. Mr. Heriolotu Boniface was for the applicant and Mr. Pasience

Mlowe appeared for the respondent. Mr. Boniface submitted that the initial Revision (Revision No 561/2019) was against the decision of CMA in "MGOGORO WA KIKAZI NA. CMA/ PWANI/KBH/ 627 /2017" delivered by Honourable Mkombozi. Z. B (Arbitrator. The Complaint was heard at CMA, Kibaha Pwani and the High Court in that revision was making orders to the CMA Kibaha to deliver the records until when it ordered the matter to be re-heard. However, the rehearing has been made at CMA, Ilala- the Commission which did not hear the complaint in the first instance. Also that, the high court decision was to the effect that, the original number of the dispute be retained. He argued that, it meant that the rehearing was to be made at Kibaha so that the case number could be retained to be the same, and therefore by taking the matter to another CMA (ie Ilala), there is no way the case number would bear the initials of PWANI/KBH while it was heard in Ilala. Therefore, it is very clear that the intention of the Court was for this matter to be re-heard at CMA Kibaha and not CMA Ilala, thus the CMA Ilala lacks jurisdiction to re-hear the matter. He continued that the ruling of had specific orders that the case number should be the same but on this matter the numbers are different, it changed from CMA/PWANI/KBH/627/2017 to CMA/DSM/ILA/541/21/14/22. It was also held that the matter be heard within six weeks of which the same was heard for over a year (from 15th November, 2021 to 22nd November, 2022). He added that no records shows that there was an application for extension of time and so for him the decision of the CMA is nullity ab initio. He then prayed for the CMA award to be set aside. Countering the above argument the above argument Mr. Mlowe submitted that the court did not order CMA Kibaha to entertain the matter, it just referred to CMA. He stated that the decision of which the applicant filed its revision No. 561 of 2019 was tendered at Kibaha but it was heard in Dar es Salaam, Ilala due to the fact that the presiding arbitrator in Kibaha transferred the case to it. For him the CMA Ilala had jurisdiction to determine the matter because it was the custodian of records and not Kibaha. He added that this case was never heard at Kibaha though the case number was retained the same at CMA Ilala. For him the applicant's submission that CMA Ilala has lacked jurisdiction does not stand and lack He continued to submit on the issue of retaining the same Dispute Numbered as ordered is a technical fault that cannot vitiate justice which is cured by overriding objective principle as provided under sections 3A (1) and (2) and 3B (1) of the Civil Procedure Code [CAP. 33 R.E. 2019]. On the issue of the matter taking more than the ordered time for its rehearing, he submitted that applicant made the hearing to be difficult for his non-appearance and failure to procure witness to come and defend the case. On the issue of not filling an application for extension of time, he submitted that CMA's spirit is to simplify procedures not like ordinary courts. He supported his point, by referring to the case of Kinondoni Municipal Council vs Rupia Said and 108 Others (supra) at page 7. Rejoining, Mr. Boniface had nothing new to add on he in essence reiterated what he submitted in chief. Having gone through proceedings and submissions of both parties, I find it necessary to firstly determine the jurisdictional issue raised before tuckering other issues raised. This is of whether CMA Ilala had jurisdiction to entertain the matter. The issue of jurisdiction has been stated in several cases. In the case of Tanzania Revenue Authority v Tango Transport Company Ltd, Civil Appeal No. 84 of 2009 as was referred in the case of Mwananchi Communications Limited &

Others v Joshua K. Kajula and 2 Others, Civ. Appl. No. 126/01 of 2016, CAT at Dar es Salaam at page 13 that: - "Jurisdiction is the bedrock on which court's authority and competence to entertain and decide matters rests." In the matter at hand, it is not disputed that the former application was heard at Kibaha with the Labour Dispute No. CMA/PWANI/KBH/627/2017. Also, it is not in dispute that the order of this court in the Revision No. 561 of 2019 was for the reconstructing or rehearing of the dispute by retaining the previous number. Also, parties are in agreement that the matter was reheard at CMA having Labour Dispute No. CMA/DSM/ILA/541/21/14/22. That makes it obvious that, same was contrary to what was ordered. For easy reference it was ordered that: - "Owing to that, I strike out this application with an order that at the CMA reconstruct the records of Labour Dispute No. CMA/PWANI/KBH/627/2017. The reconstruction shall, be conducted by either gathering notes (if parties are in possession of records) or else which I find to be the most appropriate way, the dispute be re-heard afresh; the number of the dispute shall be retained to the same number as I have quoted above." So long as it is undisputed that CMA was and is Kibaha is still in existence, there was no need of re-hearing the matter at CMA Ilala. Rule 22(1) of the Labour Institutions (Mediation and Arbitration) Rules, G.N. No. 64 of 2007 provides that: - "A dispute shall be mediated or arbitrated by the Commission at its office having responsibility for the area in which the cause of action arose, unless the Commission directs otherwise" As it has been provided under the CMA FI that the dispute arose at Kibaha

- Picha ya Ndege the matter was supposed to be heard there. Not only that the order of this court in the Revision No. 561 of 2019 directed for the matter to be heard where it was instituted by mentioning its dispute number. This proves that, CMA Ilala had no jurisdiction to hear and determine the matter. Rule 10(1) of the Labour Institutions and Code of Conduct for Mediators and Arbitrators Rules, G.N. No. 66 of 2007 states that mediators and arbitrators have to observe their jurisdiction first in order to entertain the matter, it provides that: - "Mediators and Arbitrators shall strive to observe their jurisdiction competency on jurisdictional issues as conferred upon by the Acts." In the case of Tanzania International Container Terminal Services Limited vs Ernest Kalage, Revision No. 634 of 2019, High Court at Dar es Salaam at page 7 that: - "In the circumstances of this case, it is also my considered view that, the CMA Ilala had no jurisdiction to entertain this matter because the cause of action arose within the territorial jurisdiction of CMA Tembeke." It is therefore my finding that, CMA Ilala had no jurisdiction to entertain this application. The hearing it conducted is thus a nullity. Its award and the entire proceedings are hereby nullified for CMA-Ilala want of jurisdiction. The file is remitted back to CMA Kibaha where the dispute arose for re-hearing as per this court order in Revision No 561/2019 dated 15/11/2021. The same shall be re-heard and concluded within six weeks from 25th July, 2023. As this is a labour application, I make no costs are ordered.

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Prepared on 14 October 2026 · Esheria