

TANZANIA / JUDGMENT

milke nyamubi 4 others vs greater mahale ecosystem research conservation gmerc 2023 tzhc 21158 22 september 2023

COURT
TZHCDECIDED
22 September 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA SUMBAWANGA DISTRICT REGISTRY (LABOUR DIVISION) AT SUMBAWANGA MISC. LABOUR APPLICATION NO. 01 QF 2023 (From the original decision No. CMA/KTV/TGN/11/2022 of the Commission for Mediation and Arbitration delivered by Hon. Mwalongo Arbitrator on the 8th December, 2022), MILKE NYAMUBI..... ^ APPLICANT HELENA GODFREY; 2nd APPLICANT MASH AKA KALUTWA 3rd APPLICANT MLELA JUMA..... 4th APPLICANT BARUANI J. FERUZI..... 5th APPLICANT VERSUS GREATER MAHALE ECOSYSTEM RESEARCH AND CONSERVATION (GMERC)RESPONDENT, >■:'•r•.'■.)'(<'■ v., . 22/06/2023 & 22/09/2023

RULING

MWENfMPAZi; J: The applicants in this application Were employees of the Respondent herein employed at various times as cooks and date collectors under fixed term of contract. On the 8th January, 2022 their employment was terminated. It was in their opinion that the termination was unfair thus they sought ways to challenge the same and find a redress. i On the 22nd September, 2022 they filed a referral of a dispute to the Commission for Mediation and Arbitration at CMA Katavi through CMA F1 and CMA F2. The latter form was for an application for condonation of a late referral of a dispute to the Commission. In the notice of application for condonation and the joint affidavit accompanying thCnptice, the applicants have stated that the delay to file a referral was due to the fact that they had correspondence with the employer and financial constraints.as a result not being paid terminal benefits after termination. ;As it Would be expected the respondent strongly opposed the application. Upon;hearing, the honourable arbitrator dismissed the application. The applicants were aggrieved and filed this application for revision? ?' It is unfortunate that the applicants in the citation of the enabling provisions of law have cited as follows. In the notice of application; the applicants have cited Rule 24(1) (2) (a) (b)

- (c) (d) (e) and (f) and Rule (3) (a) (b) (c) (d) and Rule 28(1) (b) (d) (e) (2) and Rule 55 of the Labour Court Rules, GN No. 106 of 2007 and any other enabling provisions of the law. 2 In the chamber summons Rule 24(1) (2) (a) (b) (c) (d) (e) and (f) and Rule
- (3) (a) (b) (c) (d) and Rule 28(1) (b) (d) (e) and (2) of the Labour Court Rules, GN No. 106 of 2007 and any other enabling provisions of the law. There is an omission of provisions of laws which empowers the Court to exercise its powers as would be specified in the application. Basically the citation of the proper enabling law gives the grounds[^]or revision of the CMA award. The applicant must show the grounds by specifying the law (section 91(2) W; of Employment and Labour Relation Act, [Cap 113]) to justify revision, ass
- j'''£ : ' Those not specified are further clarified by the provisions of Rule 28 of the Labour Court Rules. Failure to cite the crucial sections makes the grounds of revision to hang (Refer. Herman Moses Vs. Oryx Company Ltd, Labour Division Dar es Salaam Revision No. 267 of 2013, 11/08/14, Mipawa, J) % "ft In the case of Sophia Nicas Mtumbuka Vs. M/S Tanzania Printing Services Ltd, Labour Division Dar es Salaam Revision No. 155 of 2013, 19/08/14 Mipawa, J held that: 3 "it is worth to stress here that proper citation of the enabling provisions of the law makes the other party and the Court as well to know what is before them and reasoned reply and decision. It acts as a guidance to the parties in the case and the Court can easily notice what is before it and out of that it will be a misdirection, malpractice and a wrong decision thereto". In the cited case the honourable judge also observed that "it is now a rule and trite law that non-citation or wrong citation of the enabling provisions of the law makes the application to be improperly before the Court". ■* '■: K;"Y.,p' I must confess at this juncture that the enabling provisions of law in this application were overlooked when preparing for hearing and during hearing, only to be attentively read during the composition of the judgment. Since, the Court has been improperly moved as noted herein above with the cited authorities, I can't do anything further on the substantive merit of the application. I will therefore proceed to strike out the application. However, in consideration of the interest of justice, I give liberty to the applicant and 4 leave for them to file a proper application within 45 days from the date of this decision, taking into consideration of their scattered location of residence. It is ordered accordingly. A, Dated and signed this 22nd September, 2023. WW. "SB.. Jb A. wF T.M. MWENEMPAZI JUDGE Ruling delivered via video conference whereby personal representative of the applicants Meki Humbo was absent and the counsel for the respondents Sekela Amulike Advocate was at Mpanda - Katavi. 5

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