

TANZANIA / JUDGMENT

sylvester s mboje vs crdb bank plc 2023 tzhcld 1301 2 june 2023

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2 June 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA LABOUR DIVISION AT PAR-ES-SALAAM LABOUR REVIEW NO. 06 OF 2023 BETWEEN SYLVESTERS.

MBOJE..... APPLICANT VERSUS CRDB BANK

PLC RESPONDENT

RULING

Date of last Order: 16/ 05/2023 Date of Ruling: 02/ 06/2023 MLYAMBINA, J. The Applicant is seeking for the Court to review the Judgement of Honourable S.R. Dingohi in the Application for Execution No. 511 of 2022 held on 30th March, 2023. On 16th May, 2023 before hearing of the application, this Court suo moto required parties to submit on the appropriateness of the application. The Court aimed to impatiently interpret procedural requirement of Rule 26(1) and 27 (7) and (8) of the Labour Court Rules, 2007 GN No. 106 of 2007. Ms. Verena Clarence for the Applicant conceded that according to Rule 27(7) and (8) of the Labour Court Rules (supra), the application is not proper before the Court. This must have been in a mixer with Rule 26 of the Labour Court Rules (supra), which requires an application to be brought by way of chamber summons supported by an affidavit. She continued that by the fact that Rule 27 (7) and (8) of the Labour Court Rules (supra), requires a review before the Court to be brought by memorandum of review. In her view this application is not proper before the Court by being brought by way of chamber summons supported with an affidavit and so she requested to withdraw the application with leave to refile within seven days. In reply, Mr. Alex Mianga for the Respondent submitted that much as there was laxity and negligence on part of the Applicant that resulted in bringing the application before the Court in contravention of Rule 27(7) &

(8) of the Labour Court Rules (supra), the withdraw of the application be subject to the law of limitation. If the Court decides to strike out the application, let it be struck out with no leave to refile. In rejoinder Ms. Verena Clemence reiterated her submission in chief. I must state at the outset that the issue at hand has been covered in the Labour Review No. 7 of 2023 involving Sylvester S. Mboje and CRDB Bank PLC, High Court of Tanzania Labour Division at Dar es Salaam (unreported). As conceded by Ms. Verena Clemence in this application, Rule 26 (1) (supra) deals with the review of the decision made by a person or body whose decision is reviewable by the Court and not the decision of the Court itself. For that reason,

the procedure applicable is to file a chamber application of review supported by an affidavit to that responsible person or body. After filing the notice under Rule 27 (1) (supra) the party seeking review files the chamber application under Rule 26 (1) (supra). The contents of the chamber application and the procedure to be followed are outlined in Rule 26 (2) through Rule 26 (11) (supra). Rule 27 (2) (supra) provides for review of judgements, decree or order of this Court for which the procedure to be followed is outlined in Rule 27 (4) to Rule 27 (9) of the Labour Court Rules (supra). The application at hand follows under the category of review of the decision of this Court. The proper procedure is to file Memorandum of Review together with a Notice of Review. It was wrong for the Applicant to file this application by way of chamber summons supported with affidavit. In the upshot, the application is struck out for being incompetent. No order as to costs. 3 Ruling delivered and dated 2nd June, 2023 in the presence of the Applicant and Learned Counsel Roman Masumbuko for the Applicant and Alex Mianga for the Respondent. YJ. MLYAMBINA JUDGE 02/ 06/2023 4

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/sylvester-s-mboje-v-crdb-bank-plc-reviewprocedure-tanzlii-2023

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