THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MWANZA

AT MWANZA

LABOUR REVISION NO.26 OF 2022

(Originating from CMA/MZA/NYAM/195/2020/53/2020)

GODWIN RWEGOSHORA ..... APPLICANT

VERSUS

MANTRACT TANZANIA LTD ..... RESPONDENT

RULING

11th August & 25th November, 2022

ITEMBA, J.

This matter originates from the Commission for Mediation and Arbitration (CMA). The respondents have raised a preliminary objection stating that the revision application is incompetent for failure to comply with requirement of notice of intention to seek revision of award.

Arguing for the application, advocate Fraterina Munale submitted that Regulation 34 (1), the Employment and Labour Relations Act GN 47/2007 hereinafter Regulation 34 (1), provides a mandatory requirement for an applicant of the intended revision to file CMA Form no.10 which is a notice of intention to seek revision award and that the applicant herein was supposed to file the form and serve the respondent. He added that the omission is fatal and incurable therefore this application be struck out. He cited the cases of **Frank Msingia and 14 Others v Tanganyika**

Wilderness Camps Rev. No.49/2021 and **Rashid Ramadhani and 3 others v Litahi Food Caters** Rev 308/2021 which stated that a notice is a legal requirement.

In reply Mr. Rapahael Gilbert advocate, stated that the said preliminary objection is misleading and is based on insufficient information. He acknowledges that Regulation 34 (1) of GN 47/2007 provides a requirement for notice. He added that on 3rd March, 2022 the applicant filed a notice of intention to seek revision for award and the respondent was served with the same on 5th March. That the issue will be whether the applicant was supposed to attach the said notice in this revision application.

He argued that this type of application is governed by section 91 (1) a of the Employment and Labour Relation Act (ELRA) and that the said section does not require a notice to be attached. That he cannot go further and show proof of service because this is a Preliminary objection, which is based on law and not on evidence.

He distinguished the cited cases for having different facts because in both cases the dispute was in failure to file notice while in this case the notice was filed and it is in the records. He added that there had been

conflicting High Court decisions on the subject matter and he cited several cases to that effect.

He further argued that considering this is a labour dispute the court should apply the overriding objective and aim to serve substantive justice. He argued that the preliminary objection has no merit because the notice was filled and there is no legal requirement to serve the respondent.

In rejoinder the counsel for defendant insisted that they were not served with any notice of application, they ought to have been served. He did not refer any legal provision but explained that it is trite law that no party should be taken by surprise. He also argued that as the notice is mandatory it should have been attached in the application.

He agreed that there are conflicting decisions existing therefore, the most recent decision which is **Frank Msingia and 14 others v Tanganyika Wilderness Camp** Rev.49/2021, should prevail. He reiterated that notice under Regulation 34 (1) is similar to notice of appeal. Lastly, he stated that, overriding objective and substantive justice includes following procedures.

The issue to be determined is whether the application is incompetent for failure to file notice of intention to seek Revision for award.

Regulation 34 states as follows;

> *34 (1) The forms set out in the third schedule to these Regulations shall be used in all matters to which they refer*
>
> *(2) the forms made under the regulations may be modified, adopted or altered by the minister in expression to suit the purpose for which they were intended.*

This provision requires a person who intends to file an application for revision against the CMA award to initiate the said process by using a specific form provided that is CMA F.10. Through this form the CMA will prepare and forward the relevant records to the High court.

The applicant herein has made it clear that he filed the said form before CMA and served the respondent. However, he has not attached the said form stating that at this stage the court cannot deal with evidence. I think the applicant could still have attached the notice if any, in order to prove that the said notice actually exists especially in a situation where the CMA records are not yet availed to the High Court.

Nevertheless, I still agree with the applicant's submission that the notice under Regulation 34 (1) is not mandatory and cannot be equated

to the notice of appeal. There is no provision which says that CMA Form no.10 is mandatory and it institute a revision application.

Further, non-filing of the form is not a fatal irregularity because as rightly expounded by my brother Hon. Rwizile, Judge in **Tanzania Revenue Authority v Mulamuzi Byabusha**, the words "shall be used in all matters to which they refer" means each form shall be used for a specific intended purpose be it application for condonation or for revision or any other application.

The CMA Form no. 10 serves as an information to the CMA of an intention to file revision for purpose of expediting that revision application and whether it was filled or not does not make the application incompetent.

On the issue of service of the notice to the respondent, looking at Regulation 34 (1) I do not see such requirement. These being preliminary stages of filing a revision application, it suffices for the notice to be filed to the CMA for their further steps in preparing the necessary documents as mentioned hereinabove. The respondent is to be served with the notice of application under section 91 (1) of the Employment and Labour Relations Act. There is no doubt that the respondent was properly served with the notice of application under section 91(1)(2) of ELRA because he

has not disputed that and that is why he manage to appear before the court. That being the position, it means the respondent was not taken by surprise as he claims.

As rightly argued by the applicant's counsel, the section which move the court to hear revision application is 91(1) and (2) of the Employment and Labour Relations Act and non-compliance of this section will render the application incompetent and not non compliance of Regulation 34 (1) as claimed by the respondent's counsel.

For these reasons the preliminary objection raised holds no water and it is hereby overruled. This being a labour dispute there are no orders to costs.

It is so ordered

DATED at **MWANZA** this 25th day of November, 2022

L. J. ITEMBA

JUDGE

Ruling delivered in the presence of Mr. Marwa Samwel and Mr. Roman Masumbuko counsels for the applicant and respondent respectively, both appearing via audioconference.

L.J. ITEMBA
JUDGE
25.11.2022