

**IN THE HIGH COURT OF TANZANIA
MWANZA DISTRICT REGISTRY**

AT MWANZA

LABOUR REVISION No. 78 OF 2019

(Originating from Labour Dispute No. CMA/MZ/NYAM/161/2018)

LEONARD FAUSTINEAPPLICANT

VERSUS

MAKUFULI MOTORS LIMITEDRESPONDENT

RULING

26th November & 12th February, 2021.

TIGANGA, J.

This Ruling intends to decide a Preliminary point of objection raised by the counsel for the respondent intending to challenge the tenability of the application filed by the applicant which in essence seeks for this court to grant three distinct substantive orders as follows;

- i. That this honourable court be pleased to allow the applicant to file an application for revision out of time.
- ii. This honourable court be pleased to call for record, revise and set aside the whole award by the CMA Hon. Mwebuga, Arbitrator in Labour Dispute No. CMA/MZ/NYAM/158 - 34 of 2018.



- iii. This honourable Court be pleased to determine the dispute in the manner it considers appropriate,

The application is preferred under section 91 (1) (b) 91(2) (b) and 94 (1) (b)(1) of the Employment and Labour Relation Act, No. 6 of 2004 as amended, read together with section 51 of the Labour Institution Act No. 7 of 2004 and Rule 24 (1), 24 (2) (a) (b) (c) (d) (e) (f), 24 (3) (a) (b) (c), (d) 28 (1) (c) (d) (e) (f), 24 (3) (a) (h) (c), (d) 28 (1) (c) (d) (e) 55 (1) (2) and 56 (1) (3) of the Labour Court Rules GN No.106 of 2007. The prayers and their respective enabling provision are indicated in the notice of application and the chambers summons which has also been supported by the affidavit sworn and filed by the applicant.

The same was opposed by the Notice of opposition and counter affidavit sworn by Mr. Godwin Kabago, counsel for the respondent. Together with these two opposing documents, Mr. Kabago filed, a notice of Preliminary Objection containing one point that;

"The application is incompetent for containing omnibus prayers."

As a matter of practice, the preliminary objection was heard first before the hearing of the main application. At the hearing of the



preliminary objection which was conducted orally, Mr. Kabago for the respondent moved the court to find that the application at hand contains omnibus prayers thus, it is incompetent before this court. He submitted that the application filed combined two distinct applications governed by different laws, with different time frame of filing and different grounds to consider in allowing or refusing them.

Starting with the governing law, he submitted that the application for extension of time are governed by rule 56 (1) & (3) of the Labour Court Rules GN. No. 106 of 2007, while the law which governs revision in labour case is section 91 (1) and (2) of the Employment and Labour Relations Act read together with Rule 28 of the Labour Court Rules GN. No. 106/2007.

Regarding the aspect of time frame, he submitted that the extension of time has no time frame, but revision has time frame of six weeks from the date the applicant was served with the CMA award.

On the aspect of the ground to consider in extension of time a person must show sufficient reasons for delay or good cause, but the grounds for revision are either a mis-conduct on the part of the Arbitrator, the improper

procurement of the CMA award, illegality, irregularities or material errors which causes injustice to the applicant.

In his opinion considering all the narrated above, it goes without saying, that in the matter at hand, these are two distinct applications, which in law it is not proper to file them in the same application.

He referred me to the decision of my senior brother Hon. Ismail, J in **Rutunda Masole vs Makufuli Motors Limited**, Misc. Labour Application No. 79 of 2019.

He submitted that he is aware of the decision of the Court of Appeal which allows omnibus application but those are allowed subject to the following conditions;

- a) That the prayers should not be totally different,
- b) They should not be under different laws,
- c) They should not have different time frame, and
- d) The ground to consider in granting or refusing the applications should not be different.

He prayed the Preliminary Objection to be upheld. Mr. Edward John Advocate for the applicant submitted that the objection has no merit. He

submitted that the prayers which are complained off are for extension of time and revision. He submitted that these two prayers, applications relates and are under the jurisdiction of this court. According to him, this kind of application are under the authority of the case of **MIC Tanzania Ltd vs Minister for Labour & Youth Development & Attorney General**, Civil Appeal No. 103/2004 at page 2, the Court of Appeal directed that the court should encourage this procedures because it saves time and resources and minimises the multiplicity of cases.

He submitted that as there is no law which bars such practice, for that reasons this kind of procedure be encouraged. He further reminded this court, that where there is the decision of the Court of Appeal, the High Court has to follow the decision of the Court of Appeal.

He submitted that all laws used are labour laws, and the matters are labour disputes, the law allows filing condonation together with complaint when the complainant finds himself late. He asked the court to find the objection to have no merit and asked for the court to invite an overriding objection principle to decide the matter.

In rejoinder, Mr. Kabago, insisted that these are different applications and they do not relate. He insisted that the applicant was supposed to file an application for extension of time and then revision after the former has been granted. While he is in agreement that there is no law which prohibits omnibus prayers, but for it to be so filed it must meet the conditions stipulated in the decision of **Rutunda Masole vrs Makufuli Motors Ltd** (supra). He prayed the Preliminary Objection to be upheld without costs.

From these rival arguments by counsel, the pertinent question for determination is whether the application is omnibus and therefore incompetent before the court. Now, from the arguments, and the authorities providing for the situation at hand, there are two legal concepts which need to be addressed first. One is an "omnibus prayers" and two is an "omnibus applications" these issues in my opinion are two different concepts, but in this case, these concepts have been used interchangeably. My senior brother Hon. Mruma, J in **UDA Rapid Transit Public Limited Company and Shirika la Usafiri Dar es Salaam Limited vs DAR Rapid Transit Agency**, Misc. Commercial Application Cause No. 81 of 2018, had opportunity of dealing with these issues, and defined omnibus application as follows;



"Omnibus application entails two district applications which are made in one application".

Although the authority did not define the term omnibus prayers but from the definition above, it is instructive to find that the meaning of omnibus prayers means and entails combining more than one prayers in a single application.

As correctly submitted by Mr. Edward John, learned counsel that, in the case of **MIC Tanzania Limited vs Minister for Labour and Youth Development and Attorney General**, (supra), it is a principle of law that;

"unless there is a specific law barring the combination of more than one prayer in one chamber summons, the court should encourage this procedure rather than thwart it for fanciful reasons. We wish to emphasise, all the same that, each case must be decided on the basis of its own peculiar facts"

In the decision of **Mohamed Salimin vs Jumanne Omary Mapesa**, Civil Application No. 103/2014 – CAT, in which the applicant was seeking extension of time within which to make the application, and for further order that the applicant be allowed to prepare and lodge the record of the application, it was held *inter alia* that;



*"As it is, the application is omnibus for combining two or more unrelated applications. As this court has held for time(s) without numbers an **Omnibus application**, renders the application incompetent and is liable to be struck out"*

Further to that in the case of **Ali Chamani vs Karagwe District Council and Columbus Paul**, Civil Application No. 411/4 of 2017, in that application the applicant was seeking from the Court of Appeal three orders in the same applications.

One, extension of time for giving notice of appeal against the High Court decision, two, extension of time to file an application for leave to appeal to the Court of Appeal against the decision of the High Court, three, leave to appeal to the Court of Appeal.

A preliminary objection was taken that, it was bad in law for being omnibus; the same was sustained on the ground that combining two or more unrelated application is bad in law.

Having looked at what the above authorities provides, it is the stand of the law that, generally, the law does not bar combining one prayer in a single application, but bars combining unrelated applications in a single application. It is the stand of the law, that for the prayers to qualify to be

lamped in a single application it must pass the following tests as which have been clearly indicated by my brother Hon. Ismail, J, in **Rutunda Masole vs Makufuli Motor Ltd** (supra), at page 5 of the judgement where he held that;

"The condition precedent for applicability of this rule is that the application should not be diametrically opposed to each other, or preferred under different laws, complete with different timelines and distinct considerations in their determination".

Now the issue is whether the application at hand has passed the said test? Now passing through the prayers, in the chamber summons, I find the substantive prayers to be three as indicated above. First is an application for a court to enlarge time within which to file an applicant for revision to challenge the award by the arbitrator, second, is for the court to revise the CMA award, while the third, was for the court to go a head and determine the matter as it considers appropriate. Conceptually, while the second and third prayers are seemingly consequential to the grant of the first, as they depend on the outcome of the 1st prayer, they are also distinct in the sense that, they are sought under different sources of legal authorities, with distinct factors to consider in granting and or refusing

them, they are also governed by different time limit in preferring them, as properly submitted by the counsel for the respondent in his submission in chief.

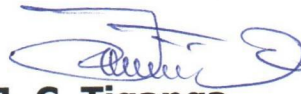
In fine, it is instructive to find that the three applications are so dissimilar, to be put just as the prayers in the same application, because two consequential to the first, as unless extension of time is sought and obtained, you cannot file revision and the court cannot have powers to proceed to determine the matter as it considers appropriate. Last but not least, although all are applications or prayers have been preferred under labour law regime, they are not under similar statutes and therefore cannot be said to be similar.

That said, I find the objection meritorious and well argued. I consequently sustain it and struck out the application for being omnibus and therefore bad in law. Since this is a labour matter I make no order as to costs.

It is accordingly ordered.

DATED at **MWANZA**, this 12th day of February 2021

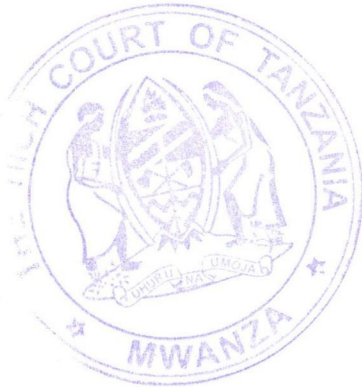




J. C. Tiganga

Judge

12/02/2021



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