

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
(LABOUR DIVISION)**

AT SHINYANGA

LABOUR REVISION APPLICATION NO. 7 OF 2021

JOSEPH MGALISHA BULABUZA.....APPLICANT

VERSUS

PANGEA MINERALS LIMITED.....RESPONDENT

RULING

MKWIZU, J

In this application, Applicant seeks for an extension of time to file revision proceedings against the CMA which was once deliberated and decided upon by this court after being complained of by the respondent. The facts gathered from the records are that: Applicant's employment with the respondent was terminated on 15th August 2018 on incapacity ground. A Labour Dispute No. CMA/ SHY/KHM/264/2018 was successfully filed by the applicant at the Commission for Mediation and Arbitration Shinyanga followed by an award for *inter alia* thirty (30) months salaries as compensation for unfair termination at the tune of Tsh. 55, 528, 744/=, subsistence allowance to the tune of 18, 900, 952.73 from 21/8/2018 to the date of the award plus all terminal benefits itemized in the termination letter.

Discontented, Respondent filed an application for revision before this court registered as Labour Revision No 7 of 2020 and after an interparty hearing, the CMA award was confirmed, and the revision was dismissed for lacking in merit. This was on 28/8/2020. Contented by the High court

decision, the applicant on 9/9/2020 filed an application for execution of the confirmed award through Execution application No 48 of 2020. On the other hand, Respondent resorted into filing an appeal to the Court of Appeal challenging the same decision.

During the pendency of the above matters, on 6/5/2021, applicant came with this application seeking for extension of time to file revision in this court again, against the CMA award in Labour Dispute No. CMA/SHY/KHM/264/2018 stating in paragraph 8 of his supporting affidavit that "I ***am still interested to pursue the course of justice***". In his both Notice of Application and Chamber summons, applicant says:

"That the Honourable Court may be pleased to extend time to filed Revision in respect of the Labour Dispute No. CMA/SHY/KHM/264/2018 by the Commission for Mediation and Arbitration at Shinyanga."

His application was grounded on illegality as deposed in his 9th paragraph of the affidavit. The application was opposed. It was the respondent counsel's averment that this court is functus official as far as the CMA award is concerned.

By the order of the court, the application was disposed of by way of written submissions. I thank both parties for their detailed written submissions which will assist the court in arriving at its decision.

It is, as submitted by the respondent counsel, a settled law that once a court renders a decision regarding the issues conclusively, it becomes functus officio. According to this principle, the person who is vested with

decision making powers may only exercise that power only once over the same matter. Meaning that once a decision is made, it is final. The remedies available is only appeal, revision, or review. Articulating on the rule, the Court in **Bibi Kisoko Medard vs Minister for Lands Housing and Urban Development and another** (1983) TLR 250 held

" in a matter of judicial proceedings once a decision has been reached and made known to the parties, the adjudicating tribunal thereby becomes functus officio"

As rightly deposed by the parties, this application intends to open and bring into this court for the second time, revision application against the CMA award in CMA/ SHY/KHM/264/2018 which this court has dealt with and conclusively determined. It is true that what is now before the court is an application for extension of time and on that basis, one may conclude that this is a separate and distinct matter from the one which this court in Labour Revision No. 7 of 2020 determined. However, a thoughtful consideration of the matter reveal that the gist of this application is to bring for interpretation and determination before this court, the CMA award which this court has already interpreted.

To determine this application would, in my view amount to opening the closed doors for a second Revision against the same Award contrary to the doctrine of Functus officio which targets at controlling proceedings and call for the finality to litigation and to interject the enforcement proceedings of this court's decision dated 28/8/2020 already in place.

I am confidently not prepared to enter the scam that the applicant is inviting the court to step into. Having conclusively and validly determined respective parties' rights and obligations arising from labour Dispute No SHY/KHM/264/2018 via Labour revision No 7 of 2020, this court is not clothed with jurisdiction over any matter between the same parties arising out of the same award. I am on this supported by the decision of the Court of Appeal in **Mohamed Enterprises (T) Ltd V S.Masoud Mohamed Nasser**, Civil Application No. 33 of 2012(Unreported) where it was observed that ;

*" Once a judgement and decree are issued by a Court, judges (or magistrates) of that Court become "functus officio" in so far as that matter is concerned **should a new fact arise, which should have been brought to the attention of the Court during trial, ...**" (Bold is mine)*

And the disturbing question is, why did the applicant who was all along in court remained silent from 31/12/2019 when the CMA handed down its decision, 2020 when the Respondent filed Revision to its finality, just to become cognizant of his infringed right on 6/5/2021, nine (9) months after he had filed execution proceedings on 9/9/2020 enforcing this court's decision on the same matter. The obvious is, this application is an abuse of courts process as submitted by the respondent's counsel, a *forum-shopping* claim calculated to solicit superfluous benefit through court processes. This is not tolerable. I am persuaded by the decision of **Graham Rioba Sagwe & 2 others v Fina Bank Limited & 5 others** [2017] eKLR cited to me by the respondent's counsel where it was held that:

"The situation that may give rise to **an abuse of court process are indeed in exhaustive**, it involves situations where the process of court has not been or resorted "to fairly, properly, honestly to the detriment of the other party. However, abuse of court process in addition to the above arises in the following situations: -

(a) Instituting a multiplicity of actions on the same subject matter, against the same opponent, on the same issues or multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action.

(b) Instituting different actions between the same parties simultaneously in different court even though on different grounds.

(c) N/A.

(d) N/A.

(e) N/A

(f) Where a party has adopted the system of forum-shopping in the enforcement of a conceived right.

(g) Where an appellant files an application at the trial court in respect of a matter which is already subject of an earlier application by the respondent at the Court of Appeal.

(h) Where two actions are commenced, the second asking for a relief which may have been obtained in the first. An abuse may also involve some bias, malice, or desire to misuse or

pervert the course of justice or judicial process to the irritation or annoyance of an opponent.” (Emphasis added)

This is what the applicant did, this application is designed to file a fresh ground of revision in respect of a matter which was subject of an earlier application by the same parties, and which is still pending at the Court of Appeal for determination. It should be note here that party’s ***interest to pursue the course of justice*** is not an open-ended process. It has its limits as expressed above. Since the revision between the parties relating to the same CMA award has been determined by this court, this court is functus officio, thus, the determination of this application will serve no purpose as the intended application will not, at the end of the day be attended.

Consequently, the application is struck out with costs. Order accordingly

DATED at Shinyanga this 11th day of April 2022.



E. Y. MKWIZU

JUDGE

11/04/2022