

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

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

LABOUR REVISION No. 2 OF 2022

*(Arising from the Commission for Mediation and Arbitration for Mara at
Musoma (the Commission) in Labour Application No. 7 of 2017;
Originating from the Commission's Labour Dispute No.
CMA/MUS/158/2017)*

GAMBA GIBE MONDEA APPLICANT

Versus

BAMBOO ROCK DRILLING RESPONDENT

RULING

30.08.2022 & 30.08.2022

Mtulya, J.:

The **Commission for Mediation and Arbitration for Mara at Musoma (the Commission)** in **Labour Dispute No. 158 of 2017** (the dispute) had failed to resolve the dispute between Mr. Gamba Gibe Mondea (the applicant) and Bamboo Rock Drilling (the respondent) at mediation stage hence on 28th August 2017 issued a **Certificate of Non-settlement** to the parties.

On 17th November 2017, the dispute was dismissed by the arbitrator for want of prosecution. The applicant noticed the dismissal order on 2nd July 2021 out of statutory time of sixty (60) days as per **Item 21 Part III of the Schedule to the Law of Limitation Act** [Cap. 89 R.E. 2019] as interpreted into thirty

(30) days in the precedents of **Dr. Noordin Jella v. Mzumbe University**, Labour Revision No. 47 of 2008; **Magreth Njau v. Tanzania Cigarette Company**, Labour Revision No. 115 of 2016; and **MIC (T) Limited v. Onesmo Emily Kiyengo**, Labour Revision No. 31 of 2019.

Following the delay, the applicant had lodged **Labour Application No. 7 of 2017** (the application) at the Commission attached with three (3) reasons of delay, in terms of legal issues as displayed at the eleventh paragraph of the applicant's affidavit, in favour of the application for enlargement of time to lodge an application for restoration of the dispute. The reasons of delay, in brief, were: first, sickness; second, illegality; and finally, an issue on whether illegality forms part of sufficient reasons to grant extension of time to file application for restoration of labour disputes.

The Commission heard the application to the finality and on 7th December 2021 resolved only one (1) reason of the delay on sickness of the applicant, and declined the other two (2) cited reasons without any explanation or reasons of the decline. To confirm its stand, the Commission, at page 8 of the Ruling, stated that:

...there was no proof that the applicant was seriously sick and admitted at Muhimbili National Hospital to warrant the extension of time... the applicant's first prayer for extension of time is hereby rejected and dismissed for lack of sufficient reasons hence no need to deal with the second one.

The decision of the Commission aggrieved the applicant hence approached this court and filed **Labour Revision No. 2 of 2022** (the revision) praying this court to review the Ruling of the Commission dated 7th December 2021, quash the decision and set aside the dismissal order of the Commission delivered on 7th November 2017. However, on the seventeenth paragraph of his affidavit, the applicant raised an issue: *whether a point of illegality forms part of the sufficient grounds to allow extension of time to file the application for restoration of labour disputes.*

Today morning the parties were called to contest on the issue. However, they decided to invite learned minds of Mr. Bahati Kessy Yatabu and Mr. Wambura Kisika, learned counsels for the applicant and respondent respectively, to argue the revision. After registration of materials in favour and against the application, it was vivid that the materials and record of the Commission show that the raised issue was not determined to its finality at the

Commission hence the learned minds agreed that it would be proper to remit the record to the Commission to resolve the remaining issues before being brought in this court for determination.

Having noted the fault, this court perused the record of the application and consulted the precedent of the Court of Appeal of Tanzania (the Court) in **Swabaha Mohamed Shoshi v. Saburia Mohamed Shoshi**, Civil Appeal No. 98 of 2018, which in brief, at page 12 of the decision, stated that:

It is the settled position of the law that, a matter not decided by the [subordinate court in judicial hierarchy] cannot be decided by [higher court in judicial hierarchy].

In giving reasoning of the same, the Court stated at page 13 & 14 of the judgment that:

It is clear that the jurisdiction of [higher courts in judicial hierarchy] on appeals is to consider and examine matters that have been considered and decided upon by the [lower courts in judicial hierarchy].

That is the position of the law and this court is bound to follow the course, without any reservations whatsoever. With the available remedies under such circumstances, the dual minds have shown the proper course to follow and it is supported by this court and Court of Appeal (see: **Victor Nzagi v. Josephina Magwala**, Misc. Land Appeal Case No. 29 of 2022 and **Swabaha Mohamed Shoshi v. Saburia Mohamed Shoshi** (supra). The Court in the precedent of **Swabaha Mohamed Shoshi v. Saburia Mohamed Shoshi** (supra), at page 14 of the judgment, stated that:

In the premises, we are constructed to allow the appeal. Consequently quash the Ruling as set aside the order of the [court]. We order that the record be remitted to the [court] before the same judge for composition of a fresh decision on all matters submitted before him.

This stand of the Court had already received support in a bundle of precedents of its own (see: **Alnoor Sharif Jamal v. Bahadur Ebrahim Shamji**, Civil Appeal No. 25 of 2006 and **Celestine Maagi v. Tanzania Elimu Supplies (TES) & Another**, Civil Revision No. 2 of 2014), and a bunch of decisions of this court (see: **Agripa Fares Nyakutonya v. Baraka Phares Nyakutonya**, Civil Appeal No. 40 of 2021; **Hadija Athumani v.**

Viatory Ndege, (PC) Matrimonial Appeal Case No. 21 of 2022; and **Victor Nzagi v. Josephina Magwala** (supra).

In the present application, the record is vivid that the applicant had registered three (3) reasons of the delay in the Commission, but the Commission had resolved only one (1) reason of the delay without any further explanations or determination of the two (2) remaining reasons. This is obvious breach of the right to be heard as enacted in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and cited directives of the Court. The Ruling of the Commission must be quashed for want of proper application of the law and cited precedents of this court and the Court.

Having said so and considering the practice and guidance of our superior court in the precedent of **Swabaha Mohamed Shoshi v. Saburia Mohamed Shoshi** (supra), this court being inferior to the Court, shall follow the course without any reservations whatsoever. The available remedy as from the practice is to allow the application and remit the record to the Commission which decided the matter to determine all matters raised in the applicant's eleventh paragraph in the application.

This court would love to determine issues which have already been resolved by lower courts or tribunals or

commissions. I have, therefore, decided to follow the course of the Court and hereby allow the revision and quash the Ruling of the Commission on 7th December 2021, set aside any orders of the Commission in the application emanated from the Ruling. I further direct the Commission, under the same learned arbitrator to compose a fresh and proper Ruling that will comprise all the registered reasons in the application.

For interest of justice and noting this labour dispute has taken good five (5) years in the corridors of the Commission and this court, the consideration and determination of the issues must commence immediately and fresh Ruling be composed and delivered within three (3) months from the date of this Ruling, 30th August 2021. Noting this is a labour dispute and is remitted back to the Commission for consideration of fresh and proper Ruling, I have decided to order no costs. Each party shall bear its costs.

Ordered accordingly.



F.H. Mtulya

Judge

30.08.2022

This Ruling was delivered in chambers under the seal of this court in the presence of the applicant, Mr. Gamba Gibe Mondea and his learned counsel Mr. Bahati Kessy Yatabu and in the presence of the Respondent's Human Resources Officer, Mr. Cloves Pascal Karibushi and respondent's learned counsel Mr. Wambura Kisika.



F.H. Mtulya

Judge

30.08.2022