

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
AT MOROGORO**

**MISC LABOUR APPLICATION. 5 OF 2022**

**[ORIGINATING FROM CMA/MOR/05/2020 MOROGORO]**

**DIDACE MAGESA TANGAT ..... APPLICANT**

**VERSUS**

**YAP MERKEZ INSAAT VE SANAYI**

**ANONIMSIRKET..... RESPONDENT**

**RULING**

20<sup>th</sup> – 27<sup>th</sup> of September, 2022

**HASSAN, J.**

Against the application for extension of time filed by the applicant Didace Magesa Tangatya, the respondent through advocate Ms. Seikunda Lyimo has paraded two grounds of preliminary objection to be determined by the court as follow:

- 1. That the applicant's application is hopelessly incompetent for contravening provisions of Rule 24 (2) c, d, e and f and section 41(a)*

*and (b) of the Labour Court Rules, G.N 106 of 2007, and section 56 (c) of the Labour Institution Act, [CAP 300 R.E 300].*

*2. That, that the applicant's application is untenable as it ousters the jurisdiction of this honorable court through the principle of Functus officio.*

The background of the matter is that, the applicant lodged an application to the court for extension of time on 30<sup>th</sup> June, 2022, praying for order of the court to lodge an application for revision out of time pursuant to the decision of the Commission for Mediation and Arbitration (CMA) in the Labour Dispute **NO. CMA/MOR/05/2020** delivered on 26<sup>th</sup> July, 2021 which was not admirable in his part.

Before filing instant application, the applicant had earlier on filed an application for revision in the High Court (application No. 15 of 2021) against the decision of the Commission for Mediation and Arbitration (CMA) in the Labour Dispute **NO. CMA/MOR/05/2020** delivered on 26<sup>th</sup> July, 2021. The said application was dismissed by the court for being time barred following preliminary objection raised by respondent.

Still feel aggrieved by the outcome of CMA in the Labour Dispute **NO. CMA/MOR/05/2020** (*supra*), the applicant fronted his application to this court seeking an order for extension of time through application No. 05 OF 2022 which is the subject of this preliminary objections.

Going on the above, the pertinent question that falls for consideration and decision, is whether or not after dismissal of application 15 of 2021 in the Labour Court for being time barred, a party is still free to go back to the same court and institute an application for extension of time.

Arguing in support of preliminary objection, the learned advocate for respondent kick starts by submitting the second point of preliminary objection. In that, she contended that the applicant's application is untenable as it ousters the jurisdiction of this honorable court through the principle of *Functus officio*. Ms. Seikunda Lyimo argued that, this court cannot entertain the application in hand, since it has no jurisdiction. She further succumbed that, the applicant had initially filed for revision in the High Court Labour Division with Application No. 15/2021, the same was dismissed for being time barred in the ruling delivered on 31<sup>st</sup> March, 2022. Now, the applicant herein cannot back pedal with fresh application to seek order for extension of time in the same court since the matter has been decided. She stressed



that by doing so, the court will be acting *functus officio*. To strengthen her argument, the learned advocate engaged this court to the case of **East African Development Bank Vs Blueline Enterprises Limited**, Civil appeal No. 101 of 2009 CAT Dar es Salaam – (Unreported), and the case of **Kinondoni Manicipal Council Vs Malik Juma Kinderemo**, Misc. land application No. 36 of 2017 – (unreported) where in both occasions, the court maintained the same view.

On the other part, Mr. Didace vehemently disputed the submission of the respondent's advocate by arguing that, this court has full mandate to hear and finally determined the current application. He admitted that the application No. 15/2021 which was delivered on 31<sup>st</sup> March, 2022 comes into its finality before the High Court Labour Division, where Chaba, J had dismissed the same for being time barred. However, his contention is that, there is still a leeway to apply for extension of time in this court. Mr. Didace reinforced his argument by submitting further that, even the Labour Court had the same view that applicant can lodge application for extension of time. To inspire his argument, he directed the court at page 8, and 9 of the ruling (application No. 15 of 2021), where the learned judge held that:

*"As rightly submitted by the respondent's counsel, since the applicant is time barred, the only remedy available to him is to lodge an application seeking for an extension of time to file revision and give account for each day of delay".*

Though he did not comment to the case laws put forward by the advocate for respondent, Mr. Didace stressed further that, the matter should be heard and finally determined as it has taken very long time since it was instituted in 2019.

In her short rejoinder, Ms. Seikunda reiterated her earlier view that this Court lacks mandate to hear and determine the matter on hand, hence this application should be dismissed with cost.

To analyze this ground, I find it necessary to draw authority from the judgment of **East African Development Bank** (*supra*), as it was referred by learned advocate Seikunda in her submission. In this appeal, the court of Appeal of Tanzania adopted the principle developed in **Olam Uganda Limited Suing Through its Attorney United Youth Shipping Company Limited Vs Harbours Authority, civil appeal No. 57 of 2002 (unreported)**, where it was held that, a question once adjudicated upon

cannot be again brought in question except by a bill of review in the same court, or by appeal to the higher court.

In the upshot, taking authority from **Olam** case (*supra*), I concur with the submission of the learned advocate Seikunda that this court lacks authority to entertain this application, hence the issue of time has already been decided in the similar Court in Labour Dispute No. 15 of 2021, delivered on 31<sup>st</sup> March, 2022. In saying so, I am aware of the argument fronted by Mr. Didace, that even Chaba, J in his ruling (*supra*) denoted that, since the applicant is time barred, the only remedy available to him is to lodge an application seeking for an extension of time to file revision and give account for each day of delay.

In my opinion, this contention cannot hold water in the matter at hand due to the following two reasons. **first**, as a matter of principle, this court is not bound by the decision of the Hight Court. And **second**, the language used by honorable Judge is an *Obiter dictum*, which does not create principle to bind the court.

All said and done, guided by the principle upstretched in the case of **Olam** (*supra*), I find the argument raised by respondent's advocate meritorious. It



follows, that once an order for dismissal is made as a result of time limitation, it is not open for the aggrieved party to go back to the same court to institute a fresh application for extension of time. As rightly cemented in the case of **East African** (*supra*), that the only relief accessible for pained party is to seek review before the same court or to lodge an appeal or revision before the higher court. The reason for this is simple. That is, as far as the court is concerned, if the issue of time limitation has been determined, this court is *res judicata*.

More so, considering the outcome of the second ground of preliminary objection hereinabove referred, I see no reason to proceed with determination and decision of the first ground of objection. The second ground of preliminary objection alone has adequately disposed the application in hand.

In the consequences, I hold this application devoid of merit and hereby dismissed with cost.

It is so ordered.

Dated at Morogoro this 26<sup>th</sup> day of September, 2022.

**S. H. HASSAN**

**JUDGE**  
**26/09/2022.**

Right of appeal explained to the parties.

**S. H. HASSAN**  
**JUDGE**  
**26/09/2022**

The ruling delivered this 27<sup>th</sup> day of September, 2022 in the presence of Mr. Didace M. Tangatya, the applicant present in person and Mr. Finias Kiwigwa, learned counsel appear on behalf of Seikunda Lyimo the learned counsel for respondent.



A handwritten signature in blue ink, appearing to read "S. H. Hassan", is written over the judge's name and date.

**S. H. HASSAN**  
**JUDGE**  
**26/09/2022**