

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

**[LABOUR DIVISION]**

**AT ARUSHA**

**APPLICATION NO. 38 OF 2022**

(Arising from Employment Dispute No. CMA/ARS/ARB/187/2015)

**THE DIRECTOR ARUSHA CITY COUNCIL..... APPLICANT**

**VERSUS**

**BEATRICE MOHAMED MOSHI..... RESPONDENT**

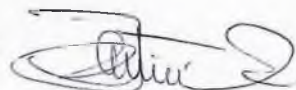
**RULING**

09<sup>th</sup> August, 2022

**TIGANGA, J.**

In this application, the applicant moved this court by way of chamber summons supported by an affidavit taken by Dr. Onesmo Mandike who introduced himself as the Principal Officer of the applicant. The order sought was for extension of time to apply for revision from the decision of the CMA in the above referred to matter.

When the application was served to the respondent, she through the service of Mr. Sheck Mfinanga, Advocate opposed the application. Together with the notice of engagement of the Advocate, notice of opposition and the counter affidavit, he also filed four points of preliminary objection as follows:



- (1) That, this application for extension of time is incurable and untenable in law for being brought under the wrong provision of the laws.
- (2) That, the application for extension of time is incompetent for offending mandatory provision of Rule 24(1) and (2) of the Labour Court Rules G.N 106 of 2007.
- (3) That, the application is made in abuse of the court process as it intends to circumvent the order of this court delivered in Misc. Application No. 46 of 2016 by Hon. Mzuna, J. on 15/08/2019. In the alternative, the entire application is frivolous and vexatious and is made in abuse of the court process.
- (4) That the affidavit in support of the application is fatally defective for containing hearsay in paragraphs 4, 5 and 6. Hence, the counsel for the respondent shall pray for the court to expunge the said paragraphs.

When the preliminary objection was called for hearing, the applicant in the representation of Mr. Mkama Msalama, learned State Attorney, who was in the company of Mr. Deus Kweka, the Applicant's Legal Officer addressed the court that, upon a glance of the raised preliminary objection, they found the 2<sup>nd</sup> point of preliminary objection to be merited.

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Therefore, they conceded it, and asked the court to struck it out with the leave to refile, so that they can comply with the provision of rule 24(1) and (2) of the Labour Court Rules, 2007, GN. No. 106 of 2007.

On reply, Mr. Sheck Mfinanga, learned counsel who appeared representing the respondent, did not have any objection with the concession, but prayed that since the respondent, his client, had engaged the Advocate and paid him, then the order striking out the application be with costs.

In his view, the application at hand is vexatious and frivolous as the application of this nature was once been filed and struck out by Hon. Mzuna, J, who gave the applicants leave to rectify and file it within seven days. However, they did not do so. Instead, they filed a fresh application for extension of time without notice of application. He submitted that, since the applicant was represented and the application was filed by the learned State Attorney, then the filing of the same is nothing but an abuse of the court process and there is enough evidence that, it was filed maliciously with the intention of delaying justice. On that footing, he asked the respondent to be given costs.

In rejoinder, Mr. Msalama, reminded the court that, the application at hand emanates from the Labour Dispute in which courts should not

award costs because under rule 3 of the Labour Courts Rules, 2007, GN. No. 106 of 2007, this court is of equity. He prayed the matter to be struck out without costs because, even rule 51 of the Rules cited above provides for no costs.

As readily conceded by the learned State Attorney, the filing labour disputes before Labour Court is governed by rule 24(1) (2), of the Rules that, the application for revision must be filed via among other documents, a Notice of Application in Form No. 4 provided in the schedule to the Rules. The said Notice is mandatory without which, no application can be said to have been filed. This means, failure to file it renders the application incompetent as conceded by the counsel for the applicant the consequence of which, the same should be struck out as I hereby do.

Now having struck out the application, the next issue for determination is the prayers for the costs as presented by Mr. Shek Mfinanga, learned counsel.

I entirely agree by the counsel for the applicant that under rule 3 of the Rules, the Labour court is the court of record, law, equity and mediation. I also agree with him that under Rule 51 of the same Rules provides that;

A handwritten signature in dark ink, appearing to be 'Shek Mfinanga', written in a cursive style.

*"51(1) No costs, fees or interest whether commercial or court fees or interest whatsoever, shall be payable before the court in respect of the proceedings under the provision of the Act.*

*(2). Notwithstanding subrule (1) where any proceedings appear to the court to be frivolous or vexations, the Court may in its discretion order the party imitating such proceeding to pay general or specific costs incurred or to pay fees or interest as the court deem fit and in case of default of payment in specific time set by the court, the said party shall be liable to distress on his assets and properties, failure in satisfaction of which he shall be liable to imprisonment for a period not exceeding six months.*

*Provided that, such general or specific costs, fees or interest may be imposed upon occasion of the trial without any action or proceedings for recovery."*

From the provision, the general rule is that, costs should not be granted in labour cases except, where it has been established to the court that, the proceeding are either vexations or frivolous.

Now, in the matter before me it has been alleged that, the matter is not only vexatious or frivolous, but also maliciously filed. I entirely agree that costs in labour cases are granted when it is established that the case is vexations or frivolous. However, I feel it important to add that also where it has been proved that the matter before the court was



actuated by malice it may be a ground for awarding costs. Not only that, but also I would add that, even where the party is not diligent in his case that, may attract costs. Having said so, in my considered view, the exception should encompass the two later situations which are malicious and indiligence on the party filing the application or moving the motion in court.

Now, in the matter at hand, the issue is whether this application falls within those four exception. For the matter to be vexatious and frivolous, it is a matter of evidence surrounding the case. In this case, there is no evidence presented to prove vexatious and frivolousness, therefore I find it not falling within the category enunciated above.

Regarding as to whether it is malicious, I should point out here that, malice is a state of mind which can be realized by the outward manifestation by the conduct of the person holding the malice. In this case there is no material availed to the court to prove the malice of the application. Therefore, the matter does not fall under that exception too.

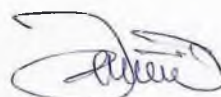
The last is diligence, diligence is a state where a person takes necessary caution in every step he/she takes not to injure the other or cause damage or loss. It may be defined or termed to be careful and

persistent work or effort. In law, a lawyer is taken to be diligent once he moves that motion on time by following all steps, and by observing all the procedures. This means, for a lawyer who files a case or move a motion in court without adhering to the mandatory procedure is taken and correctly so considered to be not diligent.

In this case, the law is clear regarding what documents should be filed in moving the court in labour cases. The said law is a mandatory one which means, failure to observe it renders the application to fall. In the circumstance the person who fails to comply with the procedure deserve no any other better status than lack of diligence. In the circumstances, a person injured by that omission should as a matter of right be entitled to costs.

That said, it is my considered view that, in this matter costs are awardable. Given the nature of the matter I order costs to be paid to the respondent on the following areas namely;

- (i) Documents drawing costs
- (ii) Court attendance
- (iii) Accommodation, if she is coming out of Arusha city, and;
- (iv) Other incidental costs except instruction fees.



It is accordingly ordered.

**DATED** at **ARUSHA**, this 09<sup>th</sup> day of September, 2022.



**J. C. TIGANGA**

**JUDGE.**