

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

AT KIGOMA

(APPELLATE JURISDICTION)

MISC. LABOUR APPLICATION NO. 2 OF 2022

(Arising from Labour Dispute CMA/KG/DISP/44/2012)

TANZANIA RAILWAY CORPORATION (TRC)..... APPLICANT

VERSUS

ABDALLA MABENGA AND 39 OTHERS..... RESPONDENT

RULING

26/8/2022 & 20/9/2022

L.M. Mlacha,J

The applicants, Tanzania Railways Corporation (TRC) filed an application against the respondents, Abdallah Mabenga, Hamis Rashid, masumbuko William, Gabriel Kalinda, Shabani S. Nyami, Thobias Mahumba, Moshi Ahmad, Hamis Ngumyi, Samson B. Jackson, Juma Ayubu, Francis Kifutumo, Joseph L. Mmasi, Xavier Marko, Fanuel Lugonzibwa, N.S. Masanja, Tano H. Badida, C.V. Kapama, Dauson M. Chigunje, Obed Njoregwa, Gilbert Kabamba, Salehe Mbegu, Athuman S. Omary, Melad Mathias Kwanama, Boaz Nkenyagu, Chispin Nyangu, Sikiliza Jeremia, Jerry Ambokile, Mashaka Lusanda, Gabriel Kusaya, Seleman Bamia, Juma

Manoti, Patrick Nyakeke, Rasmin Isaria, Lusimiko Jeremia, David Kisaka, Godlisen E. J. Mallamia, Madaraka Mabuga, Inocent Tumbu, Hassan Salum and Mbaraka Mohamed seeking the following:

a) That this Honorable Court be pleased to extend time within which Applicant can lodge Application of extension of Decree in Revision No. 510 of 2019 between Tanzania Railways Limited Vs Sudi Mtambulo and 56 Others delivered by Mruke, J in High Court Labour Division at Dar es salaam to the respondents in this Application on the ground that:

- i. The labour Dispute CMA/KG/DISP/44/2012 between respondent and Applicant which led to the award by the Commission for Mediation and Arbitration at Kigoma is more likely or has a similar situation to that of Revision No. 510 of 2019 between Tanzania Railways Ltd Vs Sudi Mtambulo and 56 others High Court Labour Division at Dar es salaam already determined by High Court Labour Division.

(b) That the Applicant is seeking for Application for extension of time to lodge Application of extension of Decree in Revision No. 510 of 2019 between Tanzania Railways Limited vs Sudi Mtambulo and 56 others delivered by Mruka, J in High Court Labour Division to the Respondent on the grounds of illegality of the decision in Labour Dispute No.

CMA/KG/DISP/44/2012 in the Commission for Mediation and Arbitration on the following grounds of illegality:

- a. The decision by Arbitrator in LABOUR Dispute No. CMA/KG/DISP/44/2012 was delivered basing on the Voluntary Agreement which was not approved by the Board of Tanzania Railway Limited.
- b. The decision by Arbitrator in Labour Dispute No. CMA/KG/DISP/44/2012 was derived basing on the Voluntary Agreement which had already expired for about three years.
- c. The decision by Arbitrator in Labour Dispute No. CMA/KG/DISP/44/2012 was derived basing on the Voluntary Agreement which was entered in disregard of circumstances which warrant for agreement to be entered.
- d. The decision by Arbitrator in Labour Dispute No. CMA/KG/DISP/44/2012 was derived basing on the Voluntary Agreement which was not registered as required by the law.

(c) That this Honorable Court be pleased to extend time within which the Applicant can lodge Application for extension of time to apply for revision

of decision by Honorable Chikoyo, DR in execution No. 04 of 2015 on the ground of illegality as follows:

- i. That the decision of Hon Deputy Registrar contains serious illegality and the same has the effect of attaching and sale the Government property contrary to the law of this land governing execution against Government properties under the Government Proceedings Act.
- ii. That the Government stands to suffer irreparably loss if the order by Honorable Chikoyo, DR in No. 04 of 2015 remains valid unless the Court intervenes by granting the present application so as to cure the said illegalities.

(d) Any other reliefs that the Honorable Court may deem fit and just to grant.

The respondents on being served filed a counter affidavit and a notice of preliminary objection with five points which read as under:

1. The Applicant's application was prepared in contravention of the mandatory requirements of Rules 46(1)(2) and (3) of the Labour Court Rules, G.N No. 106/2007 for not having index of pagination.

2. That Applicant's application is bad in law for lack of notice of representation contrary to the mandatory provisions of Rule 43 (1) (a) and (b) of the Labour Court Rules G.N. 106/2007.
3. The Applicant's application is bad in law for it being prepared in contravention with the mandatory provisions of Rule 24 (2) (3) (c) (4) (a) of the Labour Court Rules G.N. 106 of 2007.
4. The Applicant's application bad in law for being Omnibus lumping two distinct orders in one application that is seeking for extension of time to file revision challenging the award of the Commission and extension of time to challenge orders of execution.
5. The Applicant's application is bad in law for presenting an application for extension of time to challenge the order for execution in a wrong forum and before applying for lifting of the order before Deputy Registrar.

The 2nd and 5th grounds were dropped in the course of submissions leaving the 1st, 3rd and 4th grounds. Hearing was done by written submissions and parties filed their submissions in time.

It was the submission of Mr. Sadiki Aliko for the respondents on ground one that the application was prepared and filed contrary to the mandatory

provisions of Rules 46(1) (2) and (3) of the Labour Court Rules, GN 106/2007 for failure to attach the index of pagination. Counsel submitted that the index of pagination was important given the background of the case which originates from Labour dispute No. CMA/KG/DISP/44/2012 which was decided on 18/3/2013 followed by a lot of proceedings before the Labour court zonal center at Kigoma and the High Court Labour Division DSM where the applicant and the Attorney General were involved.

In ground 3 counsel submitted that the application is bad in law for being prepared in contravention of the mandatory provisions of Rules 24 (2) (3) (c) (4) (a) of the Labour court Rules. Counsel submitted that the affidavit of Pamela Swai is nowhere written names, description and address of parties. Neither does it has any statement of legal issues. These are mandatorily required by the Law making the affidavit defective. He referred the court to **Reli Assets Holding Complany v. Japhet Cosmir** (2015) LCCD 59 on this aspect.

In ground 4 counsel submitted that the application is bad in law for being omnibus for seeking two distinct orders in one application; seeking extension of time to file revision against the decision of CMA and extension of time to challenge execution orders of the Deputy Registrar. Counsel had

the view that the two prayers are distinct and ought to have been the subject of two distinct applications. He had the view that the application contains two distinct applications which are unrelated. Counsel went to say that they are aware of the position of the law that some prayers can be combined in one application as doing so may reduce multiplicity of suits in court but hastened to say that the recourse can be taken where the prayers are interrelated something which is not the case here. He said that the two prayers are different, one is under the powers of a judge of this court and the other is under the powers of the deputy registrar. He referred the court to **Ali Chamani v. Karagwe District Council and another**, Civil Application No 411/4 of 2017 page 6 where an application was found to be omnibus for containing two distinct prayers, **Makere Robert Kabegi v. Ifakara Health Institute** [2015] LCCD 54 where an application was found to be omnibus for containing three distinct t prayers and **Tanesco v. Mariamu Mtoro Khalfan** (2011 – 2012) LCCD 1 where an application which had two distinct applications was rejected. Based on the foregoing, counsel argued the court to dismiss the application.

Mr. Allan Shija opposed the submission based on the provisions of the Constitution of the United Republic of Tanzania. He submitted that much of

what has been submitted by Mr. Sadiki Aliko are defeated by the provisions of the constitution. He referred the court to article 107 A (2) (e) where there is a requirement to dispense justice without being tied to technicalities, article 107 B where the courts are directed to dispense justice with due regard to the provisions of the constitution and Laws of the Land and article 64 (5) where there is a provision giving the constitution an upper hand where there is a provision providing contrary to it. Counsel had no problem with the provisions of rule 46 (1), 24 (2) (3) (a) (c) and (4) (a) of Labour Court rules but argued that all these are mere technicalities which should be disregarded on the strength of what is provided under the constitution. He referred the court to article 108 (2) and the case of **Acro Helicopter (T) Ltd v. F. N. Jansen** [1990] TLR 142 and said that there is need to determine the matter on merits for the interest of justice.

On the issue of the application being bad for being omnibus, carrying two prayers which ought to have been the subject of two distinct applications, he said that the two prayers are related because they are founded on the same cause of action, they constitute the same parties, they are rooted from the same gist, i.e applications for extension of time from the same

cause of action and they are instituted in the same court. Referring to the case of **Geita Gold Mining Limited v. Samwel Japhet**, High Labour Revision No. 81 of 2019 he said that failure to include the index of pagination does not go to the root of the application and therefore not fatal. He argued the court to disregard the omission. He proceeded to say that the cases cited by the applicant on this point are distinguishable because they don't match with the situation on the ground. Relying in the case of **Jamal s. Mkumba and Abdalah Issa Namangu v. AG**, Civil Application No. 240/01 of 2019 he argued the court to disregard the preliminary objection in the interest of justice. He argued the court to dismiss the preliminary objection.

I think I should start by a discussion of the constitution. The issue is whether the rules should be disregarded because they are mere technicalities which have been barred by the constitution. With respect, I think Mr. Allan is missing the point. I have no problem with the proposition that the constitution is the general law of the Land and all laws are subject to it. Any law which is against the constitution becomes unconstitutional and inoperative to the extent of the non-compliance. That is the position the jurisprudence of this country and the commonwealth at large. I have

no problem with it. My problem is on whether the applicant in this case can get protection under the constitution on his failure to comply with the cited legal provisions on the ground of being mere technicalities. I think it is not correct so to say. The laws and the rules were meant to complement the constitution and compliance of them is not a technicality but a constitutional requirement. Further, if there is any law or rule made under any law which is unconstitutional is not branded as being a technicality and disregarded but has to be challenged in the proper forum by filing a petition to challenge it. A statute or rule made under any law cannot be challenged in any other forum other than on a petition.

It follows therefore that, so long as it is not disputed that the applicant did not comply with the requirements for filing a notice of representation as required by the rules, the application is rendered incompetent and cannot be left to stand. See **Ramadhan Mgaza Msana v. Olotu Traders (HC)**. Revision Application No.86 of 2019, by **B.K. Phillip, J.** and **Alex Situmbura v. Mohamed Nawayi**, (HC), Revision Application No. 13 of 2021, by **F.H. Mahimbali, J.** Further, the absence of pagination has the same effect.

On the issue of omnibus of the application, I agree fully with Mr. Sadiki Aliko that the application is omnibus because the two prayers are distinct and capable of having two distinct applications. See **First Assurance Co. Ltd v. Aron Kaseke Mwasonzwe and another**, (HC), Civil Revision No. 1 of 2020, by **Karayemaha, J. and Albert M. Chabruma & 2 others v. China Railway Seventh Group Co. LTD.** (HC). Labour Revision No. 9 of 2020, by **Nkwabi, J.** Extension of time to file a revision against the decision of the CMA cannot be said to be on the same footing with an application for extension of time with which to challenge an execution proceeding of the Deputy registrar. I think Mr. Aliko was correct for calling the two prayers distinct and capable of having two distinct applications.

For what has been said above, the application is found to be improperly before the court and struck out. It is ordered so




L.M. Mlacha

Judge

20/9/2022

Court: Ruling delivered. Right of Appeal Explained.




L.M. Mlacha

Judge

20/9/2022

ORIGINAL