

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA AT ARUSHA

LABOUR DIVISION

APPLICATION NO. 33 OF 2022

(C/f Labour Dispute No. CMA/ARS/ARS/118/2021)

MASHANGILIO ABITHON CHUSSY.....1ST APPLICANT

EDSON DISMAS MLOWE.....2ND APPLICANT

CHARLES BARNABAS MKONYI.....3RD APPLICANT

Vs

THE TRUSTEE OF TANZANIA NATIONAL PARK.....1ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT.

RULING

Date of last Order:9-3-2023

Date of Judgment:30-3-2023

B.K.PHILLIP,J

This application is preferred under Rule 24(1),(2),(a), (b), (c) , (d), (f) , (3)(a) , (b), (c) , (d) , 56 (1) and (3) of the Labour Court Rules, 2007. The applicant prays for the following orders;

- i) That this Honorable court be pleased to extend time upon which the applicants can file an application for revision out of time to revise the CMA award in Employment Dispute No. CMA/

ARS/ARS/118/2021 made by Hon Lyimo Joyce Christopher (Arbitrator), dated 22nd November , 2021

- ii) That this Honorable court may be pleased to determine the matter in the manner it considers appropriate and give any other relief it considers just to grant.

The application is supported by an affidavit sworn by Leonard David, who was the applicants' representative but abandoned the matter since he stopped to appear in court before the matter was fixed for hearing, thus the 1st applicant proceeded with the hearing the application on his own, unrepresented. The remaining applicants never appeared in court. A brief background to this application is as follows; that in 2021, the applicants herein lodged in this court an application for revision of the award made by the Commission for Mediation and Arbitration ("CMA") in Labour Dispute No. CMA/ARS/ ARS/118/2021 delivered on the 22nd November 2021, vide Revision Application No.133 of 2021. Upon being served with the aforesaid application the advocate for the respondent raised five points of preliminary objection; to wit;

- i) That this Honourable Court had no jurisdiction to entertain the application.
- ii) That the application was incompetent and incurably defective for failure to observe mandatory legal procedures set under the Government Proceedings Act cap 5 of the laws as amended from time to time.
- iii) That the application was incompetent and incurably defective for offending the Employment and Labour

Relations (General) Regulation , Government Notice No.47 of 2017

- iv) That the application was incompetent and incurably defective for offending Rule 34 (1) (a) (b) (3) of the Labour Court Rules, Government Notice No.106 of 2007.
- v) That the application was incompetent and incurably defective for non- disclosure of the names of the mentioned 2 other applicants.
- vi) That the application was incompetent and incurably defective for want of the affidavits of the mentioned 2 other applicants.
- vii) That the application was incompetent and incurably defective for offending Rule 44 (2) of the Labour Court Rules, Government Notice No. 106 of 2007.
- viii) That the affidavit in support of the application was incurably defective for containing defective verification clause.

When the matter was called for hearing of the points of preliminary objection the applicants' personal representative, Mr. Leonard David conceded to all points of preliminary objection raised by the respondents' advocate and prayed for withdrawal of the application with leave to refile it. In rebuttal, the advocate for the respondents moved the court to strike out the application because the applicants' representative conceded to all points of preliminary objections he had raised. Further, he contended that one of the points of preliminary objection admitted by the applicants' personal representative was failure to comply with the requirement for

filing the notice of intention to file an application for revision pursuant to Regulation 34(1) of GN. No. 47 of 2017 which is supposed to be filed at the CMA, thus he was of the view that under the circumstances the prayer for withdrawal of the application with leave to re-file it was misconceived because the applicants have to first to comply with the aforesaid provision of the law. On 24th March 2022 this court delivered its ruling in which it struck out the applicants' application. Thereafter, on 26th May 2022, the applicants through their personal representative, Mr. Leonard David filed the instant application.

The hearing of this application proceeded ex-parte in the absence of the learned State Attorney because he did not enter appearance on the hearing date despite the fact that the hearing date was fixed in his presence.

In his submission, the 1st applicant argued that they filed the first application within the time limit prescribed by the law. However, the same was struck out following their representative's admission of the points of preliminary objection which were raised by the respondents' advocate. Thereafter, they filed the instant application in May 2022 because it was not possible to file the application for extension of time immediately as they had to raise money for payment of costs for the preparation of the documents for this application. He prayed this application to be allowed.

Having analyzed the arguments raised by the 1st applicant, let me proceed with the determination of the merit of this application. My task in this application is to determine whether or not the applicant adduced good

cause for the delay to warrant the grant of extension of time sought in this application. The position of the law is that this court has discretionary powers to grant extension of time or deny it. However, that discretion has to be exercised judiciously. The conditions to be taken into consideration in an application for extension of time like the one at hand were stipulated in the case of **Lyamuya Construction Company Limited Vs Board of Trustee of Young Women's Christian Association of Tanzania , Civil application No. 2 of 2010** (unreported), to wit;

- i) The applicant must account for all period of delay
- ii) The delay should not be inordinate.
- iii) The applicant must show diligence in the prosecution of the action that he intends to take and
- iv) If the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance/such as the illegality of the decision sought to be challenged.

In the case of **Bushiri Hassan Vs Latifa Lukio Mashayo, Civil Application No. 03 of 2007** (unreported)] the Court of Appeal held that a delay of even a single day has to be accounted for. In the affidavit in support of this application the deponent stated the factual background to this application similar to the ones I have narrated at the beginning of this Ruling, thus I do not need to reproduce the same here again. I am alive of the position of the law that difference has to be drawn between actual delay and technical delay where the applicant had filed his / her application timely but the same was struck before it was heard on merit. Now, Counting from 24th March 2022, the date the applicants' previous

application for revision was struck out to 26th May 2022 , the date this application was filed there are more than sixty days of delay which the 1st applicant was supposed to account for. I have perused the applicant's affidavit in support of this application, the same does not state anything on the aforementioned days of delay. The reason for the delay adduced by applicant in his oral submission, that they were not able to file the application for extension of time immediately because they were raising money for the costs for preparation of the pleadings for this application, is a pure afterthought because the same is not reflected in the affidavit in support of this application. It is a trite law that submission made by the parties or advocates are not part of evidence and parties are bound their pleadings.(See the case of **Tanzania Union of Industrial and Commercial Workers ('Tuico') at Mbeya Cement Company Ltd Vs Mbeya Cement Company Limited and National Insurance Corporation (T) Limited, Civil case No.315/2020** and **Yara Tanzania Limited Vs Charles Aloyce Msemwa t/a Msemwa Junior Agrovet and others, Commercial case No.5 of 2013, (Both unreported)]**).

From the foregoing it is the finding of this court that the 1st applicant has failed to account for each day of delay and has not exhibited diligence in prosecuting his case. In the upshot, this application is dismissed.

Dated this 30th day of March 2023



B.K.PHILLIP

JUDGE