

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IRINGA SUB REGISTRY)**

AT IRINGA

LABOUR REVISION NO. 7 OF 2022

*(Original Labour Dispute No. CMA/IR/MED/72/2021 of the Commission for Mediation
and Arbitration of Iringa before Hon. L.L. Mwakyusa, Arb.)*

UNIVERSITY OF IRINGA APPLICANT

VERSUS

DR. LOY MBWILO RESPONDENT

RULING

23rd & 24th May, 2023

I.C. MUGETA, J:

On 31/8/2022 this court (Utamwa, J. as he then was) ordered the preliminary objections raised by the respondent to be disposed of by way of filing written submission. The rejoinder which puts the schedule to an end was to be filed on 3/10/2022. For reasons which are unnecessary to state here, the file has not been attended by a judge since then. All along it has been adjourned by the Deputy Registrar. The file was place before me today the 23/5/2023 with view of fixing a ruling date pursuant to the order of 31/8/2022. The applicant and respondent were represented by Geoffrey Mwakasege and Steward Ngwale, learned advocates respectively. I put to their attention the fact that the applicant did not file the reply submissions as scheduled. The applicant's counsel took the floor and



prayed for extension of time to file the same. The reason he advanced for the delay being that he travelled to Dar es Salaam to take care of his sick wife and the time expired in the course. That as the file had not been placed before a judge, the Deputy Registrar refused his prayer to have the time extended, hence, the need to wait up to this day. Counsel for the respondent had no objection to the prayer. Consequently, I granted the prayer and the submissions in reply was filed as counsel for the applicant had it already. The respondent's counsel said he shall file no rejoinder, hence, this ruling.

The facts of this matter simple and straight forward. The respondent was late to file a dispute with CMA. Consequently, she applied for condonation which application was granted. The applicant was aggrieved by the condonation order, hence, this application to challenge the condonation order as no good cause had been demonstrated to warrant its grant. The respondent has raised three points of preliminary objections which are the subject of this ruling. These are:-

- i). That this court has no jurisdiction to entertain this ruling.*
- ii). This application is filed without filing notice of intention to seek revision.*



iii). That this application is vexatious and frivolous for being deponed by the person who has no locus standi.

I shall determine the first objection only as, in my view, it is sufficient to dispose of the case.

Counsel for the respondent has submitted that condonation orders are interlocutory by nature. Therefore, in terms of rule 50 of the Labour Court Rules, 2007 they are unappealable. Rule 50 reads:-

"No appeal, review or revision shall lie on interlocutory or incidental decision or orders, unless such decision has the effect of finally determine the dispute".

The said rule was discussed in **African Nursery and Primary School V. Iddi Mtali**, Revision No. 287/2021, High Court Labour Division, Dar es Salaam (unreported) **and Equity Bank (T) Ltd V. Abdulhussein J. Mvungi**, Labour Revision No. 62/2019, High Court, Labour Division, Dar es Salaam (unreported) cited by counsel for the applicant. In those cases, my learned sister and brother Justice Maghimbi and Tiganga respectively, held that a condonation order is interlocutory in nature, therefore, not appealable per rule 50 above cited.

Counsel for the applicant hold a different view. He argued that as far as condonation is concerned, a decision thereon is final. He cited

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Brooklyne Media (T) Ltd V. Bakary Ally Mzee, Revision Application No. 329/2021, High Court, Labour Division – Dar es Salaam (unreported) where my learned brother Justice Mganga held that condonation order is final and appellable.

It follows, therefore, that there are conflicting decisions of this court. On my part I go with what my sister Justice Maghimbi said in **Africa Nursery Case** (supra) that:-

"... unless the condonation is dismissed, where the applicant's right would finally be barred from determination, granting of condonation is nothing but an interlocutory order falling under the prohibition provided for under rule 50 of the Rules".

Grant of a condonation is interlocutory not appellable. For the foregoing, I find merits in the first objection. I uphold it. This application is hereby struck off this court's register. No order as to costs because this is a labour dispute.



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I. C. MUGETA

JUDGE

24/5/2023

Court: Ruling delivered in chambers in the presence of Geoffrey Mwakasege, advocate for the applicant and in the absence of the respondent.

I. C. MUGETA

JUDGE

24/5/2023