THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(LABOUR DIVISION)

AT MBEYA

MISC. LABOUR APPLICATION NO. 20 OF 2022

(Arising from the Complaint No. CMA/MBY/06/2020)

JACOB CHAULA.....1ST APPLICANT
WEDDY KAPANGE.....2ND APPLICANT

VERSUS

MOHAMMED ENTRERPRISES (TANZANIA) LIMITED.....1ST RESPONDENT
GENERAL MANAGER METL G.D ESTATES TUKUYU.....2ND RESPONDENT

RULING

Date of last order: 23/03/2023
Date of Ruling: 30/05/2023

NDUNGURU, J.

The applicants, Jacob Chaula and Weddy Kapange, through the service of Mr. William Mambo, personal representative file the present application are seeking for the following orders:

(a) That, this Honourable Court be pleased to grant leave to one, Jacob Chaula and Weddy Kapange to file representative suit on behalf of themselves and other applicants in intended application for revision of the Commission for Mediation and Arbitration Ruling in labour complaint No. CMA/MBY/06/2020 dated 24th day of June, 2021 by Hon. Naomi Kimambo (mediator).

(b) That, upon granting a leave to file the representative suit, this Honourable Court be pleased to grant an extension of time to one, Jacob Chaula and Weddy Kapange to file a revision out of time on behalf of themselves and other applicants against both respondents in intended application for revision of the Commission for Mediation and Arbitration Ruling in labour complaint No. CMA/MBY/06/2020 dated 24th day of June, 2021 by Hon. Naomi Kimambo (mediator).

(c) That, this Honourable Court be pleased to give any other order or reliefs it deems fit and just to grant.

The application is made under Rule 24 (1) and (2) (a), (b), (c), (d), (e), and (f), (3) (a), (b), (c), and (d), Rule 44 (1) and Rule 56 (1) of the Labour Court Rules, 2007 G.N. No. 106 of 2007 and section 14 (1) of the

Law of Limitation Act (Cap 89 R.E. 2019). It is supported by the affidavit depone by Jacob Chaula, the applicant herein who authorized to depone on behalf individual listed therein.

Upon being duly served with the application, the respondents filed counter affidavit separately in opposing the application and also the 1st respondent raised the preliminary objection the subject matter of this ruling. The preliminary objection is couched thus:

1. That, the 1st and 2nd applicants' application is incurably defective and bad in law for being an omnibus application.
2. That, this Honourable Court has been wrongly moved to entertain the present application.

As it is usually the practice of this Court where a notice of preliminary objection is lodged, the parties required to argue first on the preliminary objection before going into the merit of the application. This Court ordered the preliminary objection to be disposed of by the way of written submission and they complied with the order of the Court.

At the hearing of the preliminary of objection, Mr. William Mambo, personal representative, appeared for the applicants whereas Mwambene Adam, learned advocate, appeared for the 1st respondent.

Submitting in support of the preliminary objection, Mr. Mwambene argued that, this application is omnibus as the applicants has combined two prayers in one application hence contravened the spirit in Rule 24 (1) of the Labour Court Rules, CN No. 106 of 2007. He added that, it is an omnibus application because the two prayers above are dealt with different provisions of law. He invited this Court to make a reference to the cerebrated case of **Rutagatina C. L. v The Advocates Committee and another**, Civil Application No. 98 of 2010 to the effect that there is no room in Rules for a party to file two applications in one.

Again, Mr. Mwambene cited the case of **Ali Chamani v Karagwe District Council & Columbus Paul**, Civil Application No. 411/4/2017, CAT at Bukoba to the effect that, the applicant ought to file a separate application instead of lumping all of them in one application because it amounts to omnibus application. He went on submit that, the time frames for preferring the applications are different and where consideration to be taken into account in determining the applications are different.

Coming to the second limb of objection, Mr. Mwambene submitted that, the notice of application and chamber summons, have been made under Rule 24 (1) and (2) (a), (b), (c), (d), (e), and (f), (3) (a), (b), (c), and (d) of the Labour Court Rules, 2007 G.N. No. 106 of 2007 which provide for the procedure of preferring the application before this Court, read together with Rule 44 (1) for representative suit and Rule 56 (1) for extension. He also argued that, the applicants have not cited the mandatory provision of section 94 (1) (f) of the Employment and Labour Relations Act, No. 6 of 2004, which gives this Court exclusive jurisdiction to hear and determine any application before it.

He continued to submit that, the position of this Court has been to the effect that failure to cite the above mandatory provision, the application becomes incompetent of which the remedy is to struck out. He referred this Court to the case of **Airtel (Tanzania) Limited v Earl Matthysen**, Misc. Labour Application No. 144 of 2017, HC (Labour Division) at Dar es Salaam and **Tedy Njovu v Nashera Hotel**, Revision No. 48 of 2019, HC at Morogoro (both unreported) to cement his submission. In conclusion, counsel for the 1st respondent prayed for the Court to struck out this application.

In response, Mr. Mambo submitted that, the case of **Rutagatina C. L. vs. The Advocates Committee and another** and **Ali Chamani v Karagwe District Council & Columbus Paul** (supra) are distinguishable because their facts which give the rise of omnibus application ruling differed from the present application. It was also submitted by Mr. Mambo that, the current circumstances practice encourages and allow the combination of application, and therefore the combination of application by applicants currently is not bad in law.

To reinforce his position, he cited the case of **China Communication Construction Company Limited v Simon Manfred**, Labour Revision No. 8 of 2014, HC at Mbeya and **MIC Tanzania Limited v Minister for Labour and Youth & another**, Civil Appeal No. 103 of 2004 to the effect that, there is no a specific law barring the combination of more than one prayer in one chamber summons. He added that, the facts of this case allow the two applications to be brought altogether because the representative suit prayer and an extension of time are all emanated from the same main dispute which is unfair termination.

Responding the second point of the preliminary objection, Mr. Mambo contended that, it is true that section 94 (1) of the Employment and

Labour Relations Act. He also argued that, its omission was not a deliberate action but only a slip of the pen. He further prayed to make alteration by hand, hence, to insert section 94 (1) of the Act (supra). He cited the case of **Alliance One Tobacco Tanzania Limited & another v Mwajuma Hamisi (As administratrix of the estate of Philemoni R. Kilenyi) & another**, Misc. Civil Application No. 803 of 2018, HC at Dar es Salaam (unreported) to bolster his argument.

In a brief rejoinder, Mr. Mwambene reiterated his submission in chief. He went on to submit that, the case of **Rutagatina C. L. vs. The Advocates Committee and another** and **Ali Chamani v Karagwe District Council & Columbus Paul** (supra) are relevant in the instant case. Again, he stated that, why before they are allowed by the Court to file representative suit, they bring an application for extension of time within which to file an application for revision out of time. He added that, this Court to disregard the reply submission for the reason that the applicants failed to attach the copies of the case of **China Communication Construction Company Limited v Simon Manfred**, and **MIC Tanzania Limited v Minister for Labour and Youth & another** (supra).

In relation the second point of objection, Mr. Mwambene rejoin that, this Court to disregard the reply submission for the reason that the applicants failed to attach the copies of the case of **Alliance One Tobacco Tanzania Limited & another v Mwajuma Hamisi (As administratrix of the estate of Philemoni R. Kilenyi) & another** (supra). Again, he contended that, the prayer by the applicants to amend notice of application and chamber summons by inserting by hand the uncited provision of section 94 of the Act (supra). He cited the case of **Standard Chartered Bank & Standard Chartered Bank (HONG KONG) Ltd v VIP Engineering & Marketing Ltd & 4 others**, Civil Appeal No. 222 of 2916, CAT at Dar es Salaam (unreported) to cement his submission. Finally, he reiterated his prayer that the preliminary objection raised be upheld and the application should be struck out.

Having taken due consideration to the written submissions made by the both parties and the pleadings filed before this Court, the issue here is whether the preliminary objections raised by the counsel for the respondent has merit or not.

Starting with the first the point of the preliminary objection, it is settled principle of law that the combination applications are not bad in law

because there is no law that forbids such a course. See the case of **MIC Tanzania Limited vs. Ministry for Labour and Youth Development and another**, Civil Appeal No. 103 of 2004, Court of Appeal of Tanzania (unreported). It also must be noted that, the Courts are encouraged the omnibus application to avoid multiplicity of applications, provided reliefs are not diametrically opposed to each other.

Again, it is settled law that, the two or more prayers qualify to be combined in one application if they are so inter related each other or are not opposed to each other. This is position is well emphasized by the Court of Appeal in the case of **Daudi Lengiyeu vs. Dr. David Shungu**, Civil Application No. 28 of 2015 while quoting with approval the case of **Bibie Hamad Khalid vs. Mohamed Enterprises (T) Ltd & 2 others**, Civil Application No. 6 of 2011 stated as follows:

> *"As pointed earlier, it is wrong for a notice of motion to contain omni-bus application. As application for revision which is under the domain of the three justice cannot be in the same notice of motion with application for extension of time which is to be heard by a single justice. The defect renders the application incompetent for being omni-bus."*

Also the same position is re stated in the case of **MIC Tanzania Limited vs. Ministry for Labour and Youth Development and another** (supra) where the Court held that:

> *"Having perused the chamber summons and its supporting affidavit as well as the respondents' counter affidavit in the High Court, we are satisfied that the three prayers were properly combined in one chamber summons. They were not diametrically opposed to each other, but one easily follows the other."*

Further the Court stated that:

> *"The application was, therefore, competently before the High Court. We accordingly allow the first ground of appeal."*

Turning to the case at hand the applicants' pleadings contained two prayers namely firstly leave to one, Jacob Chaula and Weddy Kapange to file representative suit on behalf of themselves and other applicants in intended application for revision of the Commission for Mediation and Arbitration Ruling in labour complaint No. CMA/MBY/06/2020 and secondly an extension of time to one, Jacob Chaula and Weddy Kapange to file a revision out of time on behalf of themselves and other applicants against both respondents in intended application for revision of the Commission for

Mediation and Arbitration Ruling in labour complaint No. CMA/MBY/06/2020.

In my understanding these two prayers are so inter related and fall under the same domain, I hold so because once leave to file representative suit is granted, then application for extension of time to file revision out of time follows. On that regards, if they brought into separate applications, it will cause a multiplicity of applications. In that regard the first point of objection lack merit.

Regarding to the second point of objection, my determination is that, it must be noted that, now it is settled principle of law that, the non-citation of the law or wrong citation of the law cannot render the application to be incompetent. To reinforce my view, I opt to borrow the imports of Rule 9 of the Court of Appeal Rules G.N. No. 345 of 2019 which amends Rule 48 of the Court of Appeal Rules of 2009 by adding sub Rule (1) in the said Rule 48 though the Court of Appeal Rules are not applicable to this Court. But this Court can borrow the wisdom of the Tanzania Court of Appeal (Amendment) Rules G.N. No. 345 of 2019. The amendment reads: -

"Provided that where an application omits to cite any specific provision of the law or cites a wrong provision but the

jurisdiction to grant the order sought exists, the irregularity or omission can be ignored and the Court may order that the correct law be inserted."

The same position is well emphasized by this Court in the case of **Alliance One Tobacco and 2 other Versus Mwajuma Hamisi (As the administratrix of the estate of Philemoni R. Kilenyi) and another, Misc. Civil Application No. 803 of 2018, HC (unreported)** where the Court inter alia stated that:

"It must be noted, however, that the imported wisdom of Rule 48 (supra) into this Court is limited to circumstances where an application has omitted to cite any specific provision of the law or has cited o wrong provision, but the jurisdiction to grant the order sought exist. It does not cover where the application has cited a wrong law altogether."

In the instant case, there is no dispute that the applicants omitted to cite section 94 (1) of the Act (supra) which gives exclusive jurisdiction to this Court, but cited other provisions of the law which gives jurisdiction to this Court to grant an extension of time and leave to file representative

suit. I agree with Mr. Mambo that, to omit to cite section 94 (1) of the Act (supra) it is just slip of the pen.

The only remedy available to the applicants is to insert the said missed provision of the law through the hand right. Upholding this preliminary objection will not solve the dispute of the parties and also this matter will not come an end. I hold so because if this Court sustain this preliminary objection can only struck out this application and the applicants still have the room to refile the same before this Court. Taking into account that, the labour disputes are of their own nature, they affect the parties to the disputes as well as those who depend on the employment as a means of their livelihood.

In the event and for the foregoing reasons, the preliminary points of objection are overruled. I accordingly rule out that this application is not incompetent. Further I order each party to bear its own cost.

It is so ordered.

MAHAKAMA KUU YA TANZANIA (The High Court of Tanzania) DIVISHENI YA MAHAKAMA YA KAZI (Labour Division)

D. B. NDUNGURU
JUDGE
30/05/2023