

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

MISC. LABOUR APPLICATION NO. 10 OF 2022

(Arising from Labour Revision No. 20 of 2020 and Misc. Labour Application No. 10 of 2019 all before the High Court of the United Republic of Tanzania at Dodoma, Original Labour Dispute No. CMA/DOM/20/2019 before the Commission for Mediation and Arbitration for Dodoma)

ISSA NIYA SIRAJI..... APPLICANT

VERSUS

FEISAL CABLE NETWORK..... RESPONDENT

RULING

13/3/2023 & 27/4/2023

MASAJU, J.

The Applicant, Issa Niya Siraji, has filed in the Court a Chamber Summons Application made under Rule 24(1), 24(2), (a), (b), (c), (d), (e), and (f), 24(3) (a), (b), (c) and (d), 11(b), and 36 (1), (2) & (3) and 56(1) of the Labour Court Rules, GN No.106 of 2007 seeking for leave of the Court to file an Application for revision in the Court in an extended time, against the decision of the Commission for Mediation and Arbitration (CMA) for Dodoma in Labour Dispute No. CMA/DOM/20/2019, which labour dispute, was between the Applicant and the Respondent, Feisal Cable Network.

The said Chamber Summons Application is supported by the Affidavit sworn by the Applicant himself. The Respondent contests the Application, hence a Counter Affidavit sworn by Mohamed Abdinoor Mohamed, the Director thereof, to that effect accompanied with a notice of preliminary objection on two points of law, that;

- i. That, this Honourable Court has no jurisdiction to entertain this matter.*
- ii. That, this Honourable Court is functus officio.*

The preliminary points of law were heard in Court on the 13th day of March, 2023 whereby Mr. Lucas Komba and Mr. Robert Owino both learned advocates represented the Applicant and the Respondent respectively.

The Respondent submitted jointly on the two points of law. That, there had been Labour Revision No.20 of 2020 in the Court before the Court (Mdemu,J) between the parties which the same was dismissed on the 10th day of May, 2022 for being filed out of time. The Respondent stated that the Applicant himself conceded to the fact the application was filed out of time, hence the matter was closed before the Court. The Respondent argued that, the Applicant could either appeal to the Court of Appeal of the United Republic or apply before the Court for an order of setting aside the dismissal order. The Respondent further argued that

the instant Application is tantamount to praying the Court to set aside its own order, unprocedurally. The Respondent thus submitted that the Court is already *functus officio* as per the holding in the case of **International Airlines of the United Arab Emirates v. Nassor Nassor** (CAT) Civil Appeal No.379 of 2019, Dar es salaam Registry (unreported). The Respondent thus prayed the Court to dismiss the Application accordingly.

The Applicant disputed all the two preliminary points of law. He submitted that Labour Revision No. 20 of 2020 was not heard and determined on merits. That, the Respondent's preliminary point of law are based on that the matter had been filed beyond the timeline. The Applicant thus argued that he was still entitled to file the instant Application for extension of time to file the Application for revision. That, the enabling provision cited in the Application, i.e Rule 56 of the Labour Court Rules, GN No.106 of 2007 entitles the Applicant to file the Application. The Applicant submitted that the case of **International Airlines of the United Arab Emirates v. Nassor Nassor** (supra) cited by the Respondent is distinguishable from the instant Application. The Applicant submitted that the Application is similar to case of Judith Emmanuek Lusohoka v. Patory Binyura Mlekule and Two Others (HC) Misc. Land Case No 74 of 2018, Tabora Registry (unreported) as it can

be observed therein of the Ruling. The Applicant thus prayed the Court to dismiss the two preliminary points of law raised by the Respondent for want of merit.

The Respondent maintained his submissions in chief and added that the Applicant has not submitted on the 2nd preliminary point of law that the Court is *functus officio* which implies that he admits the said preliminary point of law. The Respondent once more prayed the Court to sustain the preliminary points of law and dismiss the Application accordingly.

That is what was shared by the parties in support of, and against the preliminary points of law before the Court.

Perusing the record, the Applicant initially filed in this Court Misc. Labour Revision No. 10 of 2019 seeking for extension of time to file the Application for revision out of time against the Commission for Mediation and Arbitration award in Labour Dispute No. CMA/DOM/20/2019 which the same was accordingly granted on the 3rd day of August, 2022 by the Court (Siyan,J) and the Applicant was accorded 14 days' time to file the revision. Consequently, on 19/8/2020 the Applicant filed Labour Revision No. 20 of 2020 seeking for revision of the Commission for Mediation and Arbitration award in Labour Dispute No. CMA/DOM/20/2019 which the

same was dismissed by the Court (Mdemu, J) on 10/5/2020 for being out of time.

Section 3 of the Law of Limitation Act, [Cap 89 RE 2019] provides that every proceeding instituted out of the prescribed time shall be dismissed. The Court was therefore right to dismiss Labour Revision No. 20 of 2020 which was filed out of time. The instant Application has been brought under (among other provisions) Rule 56(1) of the Labour Court Rules, GN No.106 of 2007 which the same gives the Court discretion to extend any period prescribed by the rules upon proof of good cause hence condone a delay in an Application for extension. In that view, the first preliminary point of law by the Respondent that the Court has no jurisdiction to entertain this Application for extension of time is baseless.

The second preliminary point of law by the Respondent that the Court is *functus officio* is superfluous. This is because, in Misc. Labour Revision No. 10 of 2019 the Applicant was seeking for extension of time to file the Application for revision out of time, which the same was granted. In effect, the Applicant filed Labour Revision No. 20 of 2020 whereby the same was not heard to finality rather dismissed by the Court for being out of time (the delay was a two-days' time). In the instant Application the Applicant is seeking for extension of time to file an Application for revision as he did earlier in Misc. Labour Revision No.

10 of 2019. Although the attempt is similar, but an Application for extension of time is not one of such Applications that seeks to substantially conclude the rights of the parties. Considering that the Applicant has not yet to-date realized his right of appeal, it cannot be justly resonated that the Court is in the circumstances of this second Application for extension of time *functus officio*.

All said, the two preliminary points of law as raised by the Respondent are hereby overruled accordingly in their totality for want of merit. The Applicants' pending Application for extension of time to file an Application for revision of the Commission for Mediation and Arbitration award in Labour Dispute No. CMA/DOM/20/2019 is thus proper before the Court. The parties shall bear their own costs.



GEORGE M. MASAJU

JUDGE

27/4/2023