

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

AT ARUSHA

MISC. LABOUR APPLICATION NO. 10 OF 2023

(Origination from Commission for Mediation and Arbitration Application No.
CMA/ARS/ARS/182/2020)

FRANK MSINGIA.....1ST APPLICANT
AMINIEL SARAHIKYA.....2ND APPLICANT
EMMANUEL SUMAYE.....3RD APPLICANT
GERALD MAPANGO.....4TH APPLICANT
ATHUMAN JUMA.....5TH APPLICANT
EMMANUEL AMIDIUS KISANGA.....6TH APPLICANT
GERAD TANAKI.....7TH APPLICANT
FRANK PAULO.....8TH APPLICANT
DERICK PENIEL MBISE.....9TH APPLICANT
GOODLUCK BENSON MALISA.....10TH APPLICANT
SALIMU DELIMA.....11TH APPLICANT

VERSUS

TANGANYIKA WILDERNESS CAMPS LTD.....RESPONDENT

RULING

04th May & 16th June 2023

TIGANGA, J

This ruling stems from the preliminary objection raised by the respondent in the course of responding to the applicant's application. This

application, the applicants have filed this application seeking for enlargement of time to file an application for revision against the decision of the Commission for Mediation and Arbitration (CMA) in application No. CMA/ARS/ARS/182/2020. In moving the court to grant the relief sought, the applicants cited rule 10(1), (2), 11(1), (2), (3) and rule 29(1), (2), (3) & (4) of the Labour Institution (Mediation and Arbitration) Rules 2007. They contended that the delay to file their application for revision on time was due to legal technicalities resulting in striking out the previous application for revision which was filed on time.

In responding to the applicant's application, the respondent raised a preliminary objection on point of law on the ground that the application is incurably defective for offending the provisions of rules 24(1), 24 (2) (a), (b), (c), (d), (e), (f) and 24 (3) (a), (b) (c) and (d) and rule 56 (1) of the Labour Court Rules, 2007 GN No. 106 of 2007.

The preliminary objection had to be determined first before going to the merit of the application and with leave of the court, the same was disposed by way of written submissions.

Supporting the objection, the respondent through her counsel Mr Pendael Pedro Remmy Munis submitted that the provision which empowers the court the grant the relief sought by the applicants is

founded under rule 56 (1) of the Labour Court Rules G.N No. 106 of 2007 and the court can grant the said relief on applications that have been brought under the provisions of rules 24(1), 24 (2) (a), (b), (c), (d), (e), (f) and 24 (3) (a), (b) (c) and (d). That being said, it was the view of the respondent that the application at hand is incurably defective and misplaced since it has been made on improper provisions of the law which do not apply to this court.

The learned counsel went further to state that, the provision of the law cited by the applicants is used in applications for condonation at the CMA therefore since the applicant has moved this court with a wrong enabling provision of the law, even the oxygen principle cannot be invoked. Supporting his argument the counsel cited the case of **China Henan – International Co-operation Group vs Salvand K.A. Rwegasira** (2006) T.L.R 220

Countering the objection raised by the respondent, the applicants' submitted that, much as the application is brought under a wrong enabling provision of the law this court is vested with jurisdiction to extend the time as long as there are good grounds to do so. To cement on that, the applicants cited the decisions in the cases of **Bin Kuleb Transport Company Limited vs Registrar of Titles & 3 Others**, Civil Application

No. 522/17 of 2020 (Unreported), **Dangote Cement Limited vs NSK Oil and Gas**, Misc. Commercial Application No. 08 of 2020 (Unreported) and **Alliance Tobacco Tanzania Limited and Another vs Mwajuma Hamisi and another**, Misc. Civil Application No. 803 of 2018 (Unreported). The applicants further urged the court to avoid technicalities and proceed with the determination of the merit of the application.

After a careful reading of the rival submissions by the parties herein, this court is called upon to determine one main issue which is whether the application at hand is incurably defective. As already submitted by the counsel for the respondent, this court has also observed from the application that this court has been moved by the provisions of the law applicable at the CMA. The same seems to be observed by the applicants through their submission, where they insisted that substantive justice should override legal technicalities.

Much as it is plain that this court has been improperly moved then what is next for consideration is the way forward. This court is well aware of the principle of overruling objective which enjoins the courts to do away with legal technicalities and decide cases justly. Nevertheless, it should be noted that the requirement of the applicant to cite the provision of the

law upon which the court can be moved to grant the relief sought is not decoration, it goes to the jurisdiction of the court. And as we all know, the jurisdiction of the court is basic in every application or motion advanced before the court. Courts grant prayers because there is a provision of the law empowering them to do so.

In this case, as properly submitted by the respondent and conceded by the applicants, the chamber summons cited the provisions which do not empower this court to give the order sought. It has also been the position of the law that the said principle cannot be applied blindly to cure every failure to comply with mandatory provisions of the law. See decisions in the cases of **Mandorosi Village Council and Two Others v. Tanzania Breweries Limited and Four Others**, Civil Appeal No. 66 of 2017 and **Njake Enterprises Limited v. Blue Rock Limited and Another**, Civil Appeal No. 69 of 2017 (Unreported)

Moreover, the Court of Appeal of Tanzania in the case of **Juma Busiya vs Zonal Manager, South Tanzania Postal Corporation**, Civil Appeal No. 273 of 2020 (Unreported) had the following observations about the applicability of the principle of overriding objective;

"The Principle of Overriding Objective is not the ancient Greek goddess of universal remedy called Panacea,

such that, its objective is to fix every kind of defects and omissions by parties in courts."

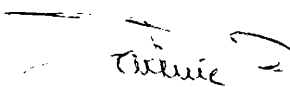
Now, having found that the applicants have not moved this court properly, with due respect this court cannot invoke the principle to cure the mandatory provisions of the law, that need to be complied with. Had it been that the applicants have properly moved this court with a proper enabling law but have missed some of the provisions then the principle of overriding objective could be invoked.

Eventually, for the stated reasons, this court uphold the preliminary objection and hereby strike out the application. This being a labour matter no costs are awarded.

It is accordingly ordered.

DATED and delivered at **ARUSHA** this 16th June 2023




J. C. TIGANGA
JUDGE