

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**MISCELLANEOUS APPLICATION NO. 144 OF 2017**

**BETWEEN**

**AIRTEL (T) LIMITED ..... APPLICANT**

**VERSUS**

**EARL MATTHYSEN ..... RESPONDENT**

**RULING**

**Date of Last Order 10/05/2018**

**Date of Ruling 18/05/2018**

**NYERERE, J.**

Applicants/ **AIRTEL (T) LIMITED** filed the present application seeking extension of time to file an application for revision against CMA award, labour dispute no. CMA/DSM/KIN/R.258/2013, delivered on 24<sup>th</sup> December, 2013. The application was moved into Court under Rule 24(1) (2) (a) – (f), (3) (a)-(d), and 56(1) (3) of the Labour Court Rules, GN No. 106/2007.

At the hearing of this application applicant was represented by Mr. Walter Masawe Learned Counsel whereas respondent was represented by Mr. Arbogast Mseke Learned Counsel.

The court suo motto noted irregularities in the present application, Counsel for Applicant thus prayed to withdraw the defective application and be allowed to bring proper application.

In rebuttal Mr. Arbogast Anthony Mseke Counsel for Respondent opposed the application, he argued and raised a concern with regard to the prayer to re-file this application with legal defects, arguing that this honourable court should dismiss it.

Counsel for Respondent argued, the award of the Commission for Mediation and Arbitration being challenged was issued on 24<sup>th</sup> of December, 2013, this is the 5<sup>th</sup> year applicant has not been able to bring a proper application challenging the award.

Counsel for Respondent proceeded to argue, the applicants 1<sup>st</sup> application was struck out on 25<sup>th</sup> July, 2014, applicant filed another application, the same was struck out again on 14<sup>th</sup> December, 2015.

Counsel for Respondent further argued, yet applicant filed another application which was again struck out on 24<sup>th</sup> March, 2017 before Mipawa,

J. thus the current application which was before Mipawa, J (rtd) and later was reassigned to me. Counsel for respondent concluded that applicant's trend will defeat object of law under Section 3(a) (e) (f) and (g) of the Employment and Labour Relations Act, No.6/2004. And contended that the remedy is to dismiss this application.

In rejoinder Mr. Walter Massawe Counsel for Applicant argued, on 1<sup>st</sup> November, 2016 in Application No. 338/2015 Senior Counsel Arbogast said application was transferred back to Mipawa, J who instructed the parties to proceed by way of written submission. Further Counsel for Applicant proceeded to argue that he ought to have cited Section 94(1) (e) of the ELRA No. 6/2004, as directed by the court. And rest his submission praying the court to withdraw this application and he be allowed to bring proper application.

After carefully examined parties' submissions in light of the relevant labour laws and practice the issue for decision is whether the court has been moved properly.

Counsel for the respondent vehemently opposed the application on ground that this legal defect warrants dismissal of the entire application.

And argued, the applicant's perpetual conducts will defeat good purpose of law, due to endless defective applications in this court.

Mr. Walter Massawe Learned Counsel for applicant conceded to the application being defective, by non citation of Section 94(1) (e) of the ELRA No. 6/2004, and argued that the application was transferred back to Mipawa, J who instructed the parties to proceed by way of written submission, however the application is genuine. Therefore argues the court to allow withdraw of it and re-file, in which counsel for respondents objects to the prayer of re-filing.

From the court records, it's clear that the court has not been properly moved, due to the incompetent application; thus the court cannot exercise its jurisdiction under incompetent application, as in the case of Davit Matiku v. The Republic Criminal Application No. 19/2013 CAT at Mwanza (Unreported) where the court stressed that;

'It is now established law that an incompetent proceeding, be it an appeal, application, etc is incapable of adjournment, the Court cannot adjourn or allow to withdraw what is incompetent before it.'

After examining court records, evaluated respondent's counsel submission I proceed to struck out the present application as it suffer from


non citation of enabling provision to wit; Section 94(1)(e) of the Employment and Labour Relations Act such omission deprived the power of this court to do what it ought to do as it touches the very root of this court jurisdiction, as observed in the case of Richard Julius Rukambura v. Issack Ntwa Mwakajila and another Civil Application No. 3/2004 CAT at Mwanza (Unreported) where Mroso J.A was of the view that;

"..... a fundamental issue like that of jurisdiction a court can Suo Motu, raise it and decide the case on the ground of lack of jurisdiction without hearing the parties."

Despite the fact that we noted that applicant has been filing incompetent application with due respect I cannot dismiss this incompetent application as submitted and prayed by Respondent because the only available remedy is to struck the incompetent application.

Therefore I proceed to struck out the present application for being incompetent, However, for the best interest of justice, applicant is hereby granted seven (7) days leave to file a proper application.

It is so ordered.

  
**A.C. NYERERE**  
**JUDGE**  
**18/05/2018**