

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION**

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 65 OF 2020

COMMERCIAL BANK OF AFRICA (T) LTD.....APPLICANT

VERSUS

SALVATORY MWANDU.....RESPONDENT

RULING

Date of last Order: 18/11/2020

Date of Ruling: 30/11/2020

Z.G.Muruke, J.

Applicant filed revision number 717 of 2018 that was confronted by respondent two notices of preliminary objection namely.

- (i) Revision is out of time
- (ii) Revision has been prepared under wrong provisions of law.

Parties submitted for and against, as a result, court upheld preliminary objection on time limitation, and ended dismissing the same. Applicant was dissatisfied, being out of time to file review, application for extension of time to file review was filed and granted by this court, after respondent counsel concede to the same for reason of serving time. Following seven days leave, granted to the applicant to file review, on 26th February, 2020, applicant filed notice of representation in review application, and memorandum of review containing 2 grounds of review both on 4th March, 2020.

Muruke

Equally, on the same date applicant filed notice of application and affidavit titled affidavit in support of the application under Rule 24(3)(a),(b), (c) and (d) of the labour Court Rules GN 106/2007.

It is worth noting at this juncture that, prayers in the affidavit in support of the application are.

- (i) Extension of time which to present another memorandum of Appeal after the one that counsel for the applicant had filed within time prescribed by law was returned to after not being admitted by the Hon. registrar
- (ii) Any other orders as this Honourable court shall deem proper to grant in the circumstances of the application.

Hearing was done by way of written submissions, Emmanuel Nasson who was holding brief of Mr. Denis Maringo represented applicant while Felix Makene represented respondent. Both parties submitted for and against. For reason to be adduced later, I will not deal with merits of application. The manner in which applicant counsel filed his client's case leave a lot to be desired because, applicant filed memorandum of review on 4th March, 2020 raising two grounds. Then followed with an extension of time to file another memorandum of appeal it was wrong.

After being granted leave of 7 (seven) days to file review, applicant out to have filed first **Notice of review** to the registrar in terms of Rule 27(i) of the Labour Court Rules GN 106/2007, that provides that;

Any review shall be instituted by filing a written notice of review to the registrar with 15 days from the date the decision to be reviewed was delivered.

This court granted extension of 7 days to file review, meaning that applicant should have first filed notice then follow other procedure as prescribed in Rule 27(2) up (9) of Labour Court Rules GN 106/2007. Surprisingly as respondent counsel Mr. Felex Makene wonders, applicant together with memorandum of review filed notice of application supported by an affidavit. More surprisingly applicant prays for extension of time in which to present another memorandum of Appeal after the one that counsel the applicant had filed within time was returned after not being admitted by Hon. Registrar.

From the prayer above, sought by applicant, what appeal? Was there any order to file appeal by this court? Why mixing application for extension of time to file appeal and memorandum of review of this court decision dated 26th February, 2020, on the same applications.

Respondent counsel alerted the court in his preliminary remarks which this court agree that applicant being allowed by this court to present her review, on 4th day of March, 2020 the applicant filed a Notice of Application Number 65 of 2020 supported by an affidavit sworn by applicant's advocate. To the surprise of the respondent, the sworn affidavit by the applicant seeks reliefs for extension of time to present another memorandum of appeal. Such relief is not only irrelevant but also inconsistent to the order of this court delivered on 26th day of February, 2020. This creates ambiguities, a fact which this court, under the principle of certainly and specificity is obliged, not to entertain an application, rather to dismiss it with cost for being vexatious and frivolous.

I totally subscribe to the above as submitted by respondent counsel. Indeed present application is a totally confusion. It lacks certainty and specificity, thus vexatious and frivolous, more so is an abuse of court process by applicant counsel.

According to Section 50(6) of the Labour Institutions Act No. 7 of 2004 as amended by Section 19(b) of the written laws (Miscellaneous Amendment) Act No. 3 of 2010 and Rule 51 of the GN No. 106 of 2007 and Section 88(9) of the Employment and Labour Relations Act No. 6 of 2004 and Rule 34 of the GN No. 64 of 2007, Labour disputes are free of costs, interests and fees, however, costs are only allowed where there is the proof of frivolous and/or vexatious proceedings. Issue of costs in labour cases was also discussed in the case of Tanzania Breweries Limited Vs. Nancy Maronie, Labour Dispute no. 182 of 2015 (unreported) where it was held that;

Whether the dispute or application is before the Commission for Mediation and Arbitration or in the High Court of Tanzania, cost is awarded only where there is an existence of frivolous and/or vexatious proceedings.

Honourable Vallensi Wambali, Acting Director Arbitration Department in the Commission for Mediation and Arbitration (CMA) in his recent paper titled IS COST FREE THE SOURCE OF DELAY IN HANDLING LABOUR DISPUTE: LAW AND PRACTICE IN TANZANIA, at page 3 paragraph 2 he said. ***The law is designed to make sure that in making decisions on costs orders the CMA and LC seek to strike a balance between on one hand, not unduly discouraging employees, employers, unions and employers association from approaching the Commission for Mediation and***



Arbitration(CMA) and Labour Court (LC) to have their disputes dealt with and on the other hand not allowing those parties to being frivolous and vexatious case.

Court of Appeal granted costs upon withdraw of the notice of appeal in a matter originated from labour dispute in **Civil Application No. 600/08 of 2017 Stanbic Bank Tanzania Limited Vs. Bryson Mushi**, for clarity order is reflected below.

Upon the applicant lodging in Court a notice of withdrawal of the application on 22/05/2020 and non –appearance while duly notified to appear, Mr. Steven Emanuel Makwega, Learned Advocate, who appeared for the respondent, had no objection to the prayer to withdraw the application but he pressed for costs.

We indeed, agree with Mr. Makwega that the applicant lodged the aforesaid notice for withdrawal of the application in terms of Rule 58(1) and (2) of the Tanzania Court of Appeal Rules, 2019 (the rules). We accordingly grant the applicant’s prayer we mark the application withdrawn under Rule 58(3) of the Rules. The respondent to have costs of the case.

The above Court of Appeal decision is based on withdraw of notice, only, but costs was granted. In the case at hand, applicant has filed frivolous and vexatious applications. It is worth insisting that the law is designed to make sure that in making decision on costs the Commission for Mediation and Arbitration (CMA) and Labour Court, seek to strike a balance between on one hand, not **unduly discouraging** employees, employers, unions and employers association from approaching the CMA and Labour

Court to have their disputes dealt with, and on the other hand not **allowing those parties to bring frivolous and vexatious case.**

According to Vallenci Wambali (supra) cost-free labour litigation as contemplated by the International Instrument had good motive specifically in assisting the **weaker** party who have **genuine claims** to easily access the court and Tribunal with aim of resolving the dispute **fairly** and **quickly** with the spirit of repairing the relationship between capital and labour. At the same time looking the way forward on how to increase efficiency through productivity at work and when doing so, social justice is upheld. The aim of cost –free was not to delay or deny or burry justice rather was to make sure justice is costless and time met.

It should be understood that, cost-free in labour matters is not a leeway or loophole to the parties to waste time and other resource, either in the Commission or in Courts and once this is not observed the court or the Commission will regulate the situation by awarding costs where frivolous and vexation acts have been proved.

In the case at hand applicant counsel has filed a total confusing application, lacking certainty and specificity, thus frivolous and vexatious more so, it is an abuse of court process by applicant counsel. This court on 23th October, 2020 in Misc application number 759 of 2019 between Gibson Weston Kachingwe & 620 others who filed several frivolous and Vexations application, held that;

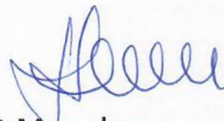
“Application before this court, does not meet the test of Rule 44(2) of the Labour Court Rules GN No. 106 of 2007, **two** applicants have no

cause of action against respondents, **three** application is frivolous, vexatious and it is an abuse of court process. Thus dismissed with costs, to be born by Gibson Wenston Kachingwe in person."

Equally in the most recent case ruling dated 18th November, 2020 of **Anthony Ligw'etu & 156 Others Vs. Tanzania Ports Authority** Misc Appl No. 81/2020 this Court held that;

"As demonstrated by series of frivolous and vexations applications filed by applicants for 18 years against Tanzania Ports Authority, thus there is a need to award costs to the respondent, for having been drugged in court unnecessarily, after the award in inquiry number 115 of 2003, which applicants are to enforce if not paid. First preliminary objection is upheld, thus, Misc Labour application number 81 of 2019 filed on 16th March,2020 is dismissed for being out of time with costs. Having resolve so, there is no need to deal with other grounds of objections."

This application deserve to be treated the same way the way two applications above were handled by this court. In the circumstances, Misc application struck for being incompetent, confusing, lacking certainty, specificity frivolous, vexations and an abuse of court process, with costs to be borne by applicant counsel Mr. Denis Maringo, in person. Ordered accordingly.



Z.G.Muruke

JUDGE

30/11/2020

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VERSUS

SALVATORY MWANDU RESPONDENT

Date: 30/11/2020

Coram: Hon. S.R. Ding'ohi, DR.

Applicant:

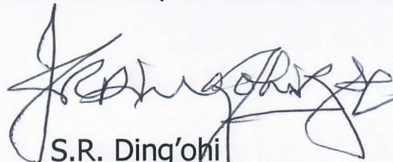
For Applicant: } Ms. Hamisa Nkya, Advocate

Respondent:

For Respondent: } Mr. Felex Makene, Advocate

CC: Halima

Court: Ruling delivered this 30th day of November, 2020.



S.R. Ding'ohi
DEPUTY REGISTRAR

30/11/2020