

**IN THE HIGH COURT OF TANZANIA  
LABOUR DIVISION  
AT DAR ES SALAAM  
MISCELLANEOUS LABOUR APPLICATION NO. 377 OF 2020**

**BETWEEN**

**ISON BPO (T) LTD ..... APPLICANT**

**VERSUS**

**GODWIN ASSENGA ..... 1<sup>ST</sup> RESPONDENT  
NESTORY MTAKI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of Last Order: 08/07/2021*

*Date of Ruling: 30/07/2021*

**T.N. Mwenegoha, J.**

The applicant filed the present application praying for extension of time within which to file an application for revision against the decision of the Commission for Mediation and Arbitration (CMA) in Labour dispute No. CMA/DSM/ILA/R.257/1236 delivered on 11/11/2016 by Hon. Mbena, Arbitrator. The application is supported by the affidavit of Josephine Michael Mwakyusa, applicant's Principal Officer.

The respondents bitterly challenged the application in their joint counter affidavit and they raised preliminary objections which are the subject matter of this ruling. The relevant preliminary objections are as follows:-

- i. That, this application is overtaken by event.
- ii. That, the application is an abuse of the Court procedure.

The Learned Counsel for the respondent argued the preliminary objections in question jointly. He submitted that, garnishee order absolute has already been issued by this Honourable Court by Hon. Ding'oi, Deputy Registrar since 10/08/2020 after the result of the dismissal order of Misc. Appl. No. 54/2019. He argued that, it is a matter of law that a decree holder is entitled to enjoy the fruits of the award entered in his favour. That, in this matter the execution has already concluded and garnishee absolute has already been issued thus, entertaining this matter is an abuse of Court procedures. He therefore submitted that, the application is overtaken by event.

To support his submission, he cited the case of **St. John University Tanzania v. Jeffery Industries Saini Ltd & St. Marks College Teaching Centre**, Misc. Commercial Appl. No. 64 of 2021 where it was held by Hon. Nangela J. that;

*'Legal speaking once a garnishee order absolute is made there would be nothing left before the Court in the matter. At such a final stage, the Court is done with a determination of the matter between the parties as far as the proceeding are concerned and*

*that matter it becomes functus officio, there would be nothing left to be determined by the some Court.'*

The Learned Counsel argued that, where it is shown that the application has already been overtaken by event and abuse of court procedure, the court has only one remedy which is to dismiss the application as it was the position in the case **of Joachim Kalembe v. M.K. Mwalima**, Civ. Appl. No. 76/1998. On the basis of the above submission the Learned Counsel prayed for the application to be dismissed with cost.

Responding to the application the Learned Counsel for the applicant submitted that, in this application the applicant is not challenging the execution which has already been effected as per garnishee order absolute issued by the Deputy Registrar. He stated that, in the present application the applicant is seeking leave to file revision out of time which resulted due to the previous applicant's application for revision being struck out.

It was further submitted that, the fact that the garnishee absolute has been issued as alleged by the respondents, that alone cannot deprive the applicant his constitutional right of appeal, review or seeking revision against the award or ruling which erroneously granted the respondents reliefs not entitled. It was argued that, in observance of the

requirement of Article 107 (A) (2) (e) of the Constitution of the United Republic of Tanzania, 1977 the Court is required to determine matters on merit and not to entertain technicalities.

It was strongly submitted that, since leave to refile an application for revision was not granted in Revision No. 181/2019 which was struck out, that the only remedy left to the applicant is to file revision afresh. It was insisted that, since the application for revision is out of time then the application at hand is proper. It was also submitted that, the case of **St. John University** (supra) and other cases cited by the respondent's Counsel are distinguishable to the circumstances at hand. He stated that, in the cited cases they were challenging the garnishee order which is not the position at hand. He therefore prayed for the preliminary objections to be dismissed.

After hearing of the rival submissions by the Counsels for the parties, I find the Court is called upon to determine whether the preliminary objections in question are meritorious.

In the matter at hand, it is undisputed fact that garnishee order absolute has already been issued. The respondent's Counsel alleged that since there is a garnishee absolute order then the present application has no merit. Now the question to be addressed by the Court is whether

the garnishee absolute order precludes the applicant to file an application for revision? The answer is no. The record shows that when the award was delivered at the CMA each of the parties came to this Court with his/her application. The applicant filed the application for revision No. 181 of 2019 which was later on struck out for being incompetent while the respondents filed an application for execution which succeeded as per garnishee order. Therefore, under such circumstances, it is my view that the garnishee order does not preclude the applicant from filing the present application because his application for revision would have proceeded if it had no defects. Unfortunately, the said application had defects and he was not automatically granted an extension of time to file proper application for revision. In the event, I find the present application to be proper before the Court.

As rightly submitted by the applicant's Counsel the applicant filed the present application praying for extension of time to file an application for revision, an application which is distinctive from the respondent's application for execution which granted them garnishee order. I have considered the cases cited by the respondents' Counsel, as rightly submitted by the applicant's Counsel the referred cases concerned about stay of execution which is not the position in the matter at hand thus, the referred cases are distinguishable.

On the basis of the above discussion, it is my view that, the present preliminary objections have no merit. The garnishee order does not in any way preclude the applicant from pursuing his right to be heard on the revision application. Consequently, the preliminary objections raised by the respondent's Counsel are hereby overruled and the matter is hereby ordered to proceed on merit.

It is so ordered.



  
T. N. Mwenegoha

**JUDGE**

30/07/2021