

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 745 OF 2019

MOSES PETER MHINA & 2 OTHERS.....APPLICANTS

VERSUS

PLATINUM CREDIT LIMITED.....RESPONDENT

RULING

Date of Last Order: 05/03/2021

Date of Ruling: 10/03/2021

Z. G. Muruke, J.

Moses Peter Mhina and two others were employed on divers dates and on different employment status contract. Upon termination, they both filed dispute at CMA. Same was struck out on 25th September, 2019 for misjoinder of parties hence different cause of action. Being dissatisfied, they filed revision number 670/2018 that was withdrawn with leave of 14 days to refile. They filed revision number 240/2019, that was struck out upon concession of preliminary objection filed by respondent counsel. However court granted 14 days leave to file competent application. On 19th October, 2019 applicant filed Misc application number 604 of 2019 that was struck out by this court for incompetent upon concession by applicant counsel on 27th November, 2019. Applicants now have filed present application for Moses Peter Mhina to represent his fellow. Upon being served, respondent filed counter affidavit followed by notice of preliminary objection, that application is time barred, on 10th January, 2020.

Hearing was by way of written submission. David B. Wasonga represented applicant while Praygod J. Uiso, represented respondent. In

short respondent counsel argued that, applicant has filed application out of time given by the court. Applicant has delayed nine month and 14 days from the first order dated 6th March, 2019.

The only remedy is to be dismissed with costs since the applicant's has been filing various application's which are vexatious, frivolous and time wasting. He insisted that respondent has been incurring a lot of cost and time in defending applicant's application while are frivolous and vexatious. Equally court has spent time and resources to handle applicant applications by issuing several orders and directives none of them was complied. Thus applicant counsel, pressed for dismissal of the application with costs.

Applicant counsel, admitted series of events as articulated by respondent counsel. However, he argued, application is not out of time. Reckoning of dates cannot start from the date of first order i.e. 06th May, 2019, when first revision was struck out. Then on 25th September, 2019 applicant was granted 14 days leave. The order of 27th November, 2019 did not grant applicant leave. However, last order dated 27th November, 2019 did not bar applicant from filing present application. All the applications filed was a result of respondent counsel attempt to frustrate the applicants by raising un meritorious preliminary objections insisted applicant counsel Mr. David Wasonga, who then requested for dismissal of preliminary objection that aimed at prolonging litigation process and frustrating applicants.

Having heard both parties submission on the preliminary objection on time limitation, it is worth noting at the outset that, time limitation in litigation of essence. It is they to ensure that genuine claims comes to an

end. Without limitation, courts of law will have endless litigation at the whim of the parties, that cannot be accepted.

From the records, decision sought to be challenged was delivered on 26th October, 2018 it is true that, **one;** 1st revision number 670/2018 was withdrawn on 6th March, 2019, with leave of 14 days to refile.

Two; 2nd revision No. 240 of 2019 was struck out for incompetence on 25th September, 2019, with leave of 14 days to refile.

Three; Misc application number 604/2019 was struck out for being incompetence on 27th November, 2019.

Four; present Misc application number 745/2019 was filed on 20th December, 2019, for orders of representative suit. i.e Moses Peter Mhina be granted leave to represent his fellow Joyce Peter.

Legally once an order for extension is granted, to file any matter in court, and once, such application is struck out for being incompetent, everything goes with an incompetent application, nothing left. Thus, after striking Misc application number 604/2019, for being incompetent, there was nothing left for applicant to hold as leave to file present application out of time. Argument that time start to run from the last order 27th November, 2019, that is misconception by applicant counsel. Time start to run from when decision sought to be challenged was pronounced. It is true as correctly submitted by both counsels that, Labour Court Rules GN 106/2007 does not provide for time within which to file application like present one. Thus, resort to item 21 to the 2nd schedule to the law of limitation Act, Cap 89, provides for sixty days on any other application in which time is not provided for.

The wording of the above law clearly stipulates that it is 60 days. Decision was pronounced on 26th October, 2018. Present Misc application number 745/2019 was filed on 20th December, 2019 being after one years and 54 days. Extremely out of time.

This cannot be said preliminary objection is prolonging litigation and frustrating applicants. It is pure point of law that need to be ascertained before we proceed on the merits of the application. Thus preliminary objection raised by respondent on time limitation meritious, thus upheld.

Respondent has requested this court to grant costs upon dismissal of the application. It is true, applicants have dragged respondent in court since 2018 when filed dispute at CMA with reference number CMA/DSM/KIN/R.589/18 on 28th May, 2018 when filed CMA form number One. It is almost 3 years now, i.e. a period of 2 years and 10 months or 34 months. Since filing of dispute it is applicants who are filing applications. So, respondent has been called to answer to the applicants claims.

For three years respondent have been prejudiced by ongoing dispute filed by applicants, contrary to the purpose of the Labour Laws, that is geared at regulating and guide relations in the employment and labour industry to come to an end for enhanced efficient and productivity for attainment of social justice.

Unfortunately, applicants have been dragging respondents in court without paying any costs upon failure of their case. 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, applicants has filed frivolous and vexatious applications for almost 3 years. 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. As demonstrated by series of defective applications filed by applicants for three years, against Respondents, there is a need to award costs to the respondent, for having been drugged in court unnecessarily.

By filing defective application since CMA in May, 2018 to date that application is out of time, respondent has not only incurred costs but also wasted her time for 34 months, to answer for endless defective applications. Thus application dismissed for being out of time with costs.


Z.G. Muruke

JUDGE

10/03/2021

Ruling delivered in the presence of applicant in person and Pray God Uiso for the respondent.


Z.G. Muruke

JUDGE

10/03/2021