

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR- ES SALAAM

MISC. LABOUR APPLICATION NO. 373 OF 2020

EXUPER SABASI KESSY.....APPLICANT

VERSUS

GERALD WILLIAM URASSA.....RESPONDENT

RULING

20th September & 1st October 2021

Rwizile J.

This application was filed by the chamber summons, supported by an affidavit of the applicant stating grounds for which this application is grounded. It is preferred under Rules 24 and 56(1) of the Labour Court Rules, GN 106 of 2007. The applicant is praying for extension of time to refile the application for Revision of the decision of Commission for Mediation and Arbitration (CMA) dated 27th November 2018 in labour dispute No. CMA/DSM/ILA/R.1024/18.

It is gathered from the record that the applicant had a dispute with the respondent. The dispute was heard by the CMA. The applicant was not successful because the commission ruled out that applicant failed to prove if there was employer-employee relationship between the parties.

He was aggrieved by the decision; he filed the application for revision before this court. It was struck out for being defective. He was granted leave to refile. For two other successive times, the applicant filed applications that were defective. On 18th June 2020, this court last dismissed application No. 79 of 2020. The same declined to grant leave to refile and advised the applicant to follow the law if he desired to pursue the same. this application therefore, is an attempt to seek leave to file the same application.

At the hearing, which was by way of written submission, the applicant who was represented by Kahoho, personal representative submitted that the applicant initially filed Revision No. 936 of 2018, which was struck out for contravening rule 24(2) of the labour Court Rules. He was however given leave to refile. He filed application No. 460 of 2019, which was again struck out for containing a defective affidavit. This time, he was given the last

change to file a proper application. Then, the applicant filed Revision No. 79 of 2020, which was, as well struck out for contravening Rule 24(3) of the rules. This time, the court declined to grant him leave but advisedly, told him to follow the law, if he intends to still file this application.

He went on submitting that as that was done, his personal representative got sick and he later came to file this application. At the interest of justice, the applicant asked this court to grant the applicant another chance to strictly follow the law and file another application.

On his party, the respondent was of the opinion that the applicant has failed to show the reasons for such delays. It was his submission that the apart from negligently filing the applications that were struck out, still he delayed to file this application. He said, the reasons that his personal representative was sick does not hold any substance.

He submitted that the record attached to the affidavit shows, the personal representative was hospitalized on 29th June and 27th July 2020, when application No. 79 of 2020 was struck out on 18th June 2020. In his view, he did not account for the days of delay of those days. He asked this court therefore to follow the decision in the case of **MS Monarch Investment**

vs Faustine Joseph Kamuhabwa, Misc. Civil Application No. 99 of 2019.

He asked this court to dismiss the application.

When rejoining, Mr. Kahoho was of the view that the applicant had materially failed to file the application because of defects that should not be held to defeat the rights of the applicant. He therefore asked this court to grant the applicant another chance to file the application.

Having heard submission of the parties, it is opportune to state here that this application is another attempt to file an application for revision for the fourth time. Three applications were filed as the record shows and struck out. The reasons for having them struck out are well stated in the affidavit supporting the application.

It has also been submitted by the applicant that since his representative was sick, he should be allowed time to file this Revision. The record shows, he has all the time enjoyed services of the same personal representative. The fact that he filed three applications previously which did comply with the law. It seems to me the applicant is negligent. He has not utilized, the mercy of this court granting him time to rectify errors for the sake of justice. It has also been shown that the representative was sick. The

record presented shows, he was an outpatient for all that time. The hospital record does not show if he was admitted immediately before or after the striking out the last filed application for revision. It took too long for him to institute this application without any reasonable excuse. In as much as I sympathize with what happened to him, it is clear from the record that the applicant has failed to exercise his right to file proper applications and file them in time and as directed by the court. That being the case, I find no merit in this application. It is dismissed with no order as to costs.



A.K.Rwizile

JUDGE

01.10.2021