

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LABOUR DIVISION)  
AT DAR ES SALAAM**

**MISC. APPLICATION NO. 148 OF 2021**

**BETWEEN**

**TANZANIA UNION OF INDUSTRIAL AND COMMERCIAL  
WORKERS (TUICO) On behalf of its 502 members) ..... APPLICANT**

**VERSUS**

**ALUMINIUM AFRICA LIMITED ..... RESPONDENT**

**RULING**

**S.M. MAGHIMBI, J:**

In this application, the Applicant is seeking for an extension of time within which to file an appeal against the decision of the Industrial Court of Tanzania in Revision No. 10/2004 arising from Enquiry No. 157/2002. The applicant sought for costs of the application and any other relief that the court may deem fit and just to grant. The application was lodged under the provisions of Rule 24(1), (2) (a) (b) (c) (d) (e) and (f), (3) (a) (b) (c) and (d), and Rules 55(1)&(2) and 56 (1)(2) and (3) of the Labour Court Rules [G.N. No. 106 of 2007] ("LCR"). The application was brought by way of Chamber summons supported by an Affidavit sworn by Mr. Noel Lotary Nchimbi, Head

of Legal Department of the applicant and the same is dated 17<sup>th</sup> March, 2021. The application was disposed by way of written submissions. The applicant's submissions were drawn and filed by Mr. G. S. Ukongwa, learned advocate while the respondent's submissions were drawn and filed by Ms. Hamida Sheikh, learned Senior advocate representing the respondent.

In their affidavit as well as the written submissions, the applicant's grounds of delay can be narrowed down to forum shopping by their alleged advocate's mistake. The applicants instituted Labour Enquiry No. 157/2002 which was determined by the Industrial Court on 06/02/2004. Unsatisfied by the holding of the court in the said decision on the ground that the calculation of the salary arrears was wrong, they again lodged a Revision No. 10/2004 which was determined by the same Chairman of the Court, Hon. Mwipopo J, (as he then was) on 11/04/2005. The Honorable Chairman came up with the same decision as in Labour Enquiry No. 157/2002. According to the applicant, their advocate embarked to pursue a wrong course by challenging the validity of the decision of Hon Mwipopo, J in both Labor Enquiry and the subsequent Revision.

Now, according to the applicants, they suddenly came up with a new course, challenging the substantive decision at the Court of Appeal so that

they can come back and lodge a dispute at the CMA. What is interesting about the whole narrations of the applicant is that they have not come up with any ground to back up their submissions. For instance, they have just said that they were convinced by a State Attorney that they may lodge a Dispute to the CMA. So, I have paused to wonder as to what authority does this mysterious State Attorney have to move this court to grant orders sought simply because he said so. Two, I have also asked myself whether the applicants had time to give a thought on the jurisdiction of the CMA to determine their matter whose cause of action arose in 1997 way before the CMA even came into existence, let alone the 30 days' time limit from the time the dispute arose to the time of lodging the dispute at the CMA. I did not get any justification to these questions; either did the applicant adduce any reasons to that effect.

On those observations, I need not be detained much by this application. As correctly argued by the advocate for the respondents, there is no single reason for the delay to file this application adduced by the applicants. What I am seeing at this point is forum shopping and second thoughts. After the applicants have faced failures all these years, now they are coming up with another new issue; that suddenly a State Attorney

advised them to pursue another route of challenging decision of the Revision Application. This, it should be borne in mind, is after a period of 16 years counting from 11/04/2005 when the decision was pronounced to the 04/05/2021 when this application was lodged in court. It is trite law that in applications of this nature, the applicant must account for each day of delay so that the court can be satisfied that the delay was for reasons beyond the applicant's control. None has been adduced in this case for the period of 16 years from the time the decision was made.

In the case of **Tropical Air (TZ) Limited Vs Godson Eliona Moshi (Unreported) Civil Application No 9 of 2017**, the Court held that it is the requirement of the law that for the Court to extend time, the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action which he intends to take. As for the case at hand, I do not see diligence but apathy because in all fairness, you cannot drag a counterpart to court after 16 years have lapsed on a mere ground that suddenly a State Attorney advised you to do so. I will adopt the wisdom of the Court of Appeal in the case of **Stephen Masatu Wasira v. Joseph Sinde Warioba, [1991] TLR 332** where it was held at page 342 that:

*"like life, litigation must come to an end."*

the jurisdiction of the CMA to entertain the matter should the application be granted. Consequently, this application is hereby dismissed.

Dated at Dar-es-salaam this 21<sup>st</sup> day of February, 2022.



A handwritten signature in black ink, appearing to read 'S.M. Maghimbi', written over a horizontal dotted line.

**S.M. MAGHIMBI**  
**JUDGE**