

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

MISCELLANEOUS APPLICATION NO. 426 OF 2022

BETWEEN

DIONESE BEST JULIUS	1ST APPLICANT
JULIUS MUSHUMBA	2ND APPLICANT
BAKARI IDD INGE	3RD APPLICANT

VERSUS

NAMPAK TANZANIA LIMITED	RESPONDENT
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RULING

S.M. MAGHIMBI, J:

This application beforehand is lodged under the provisions of Rule 24(1), (2) (a)(b)(c)(d)(e)(f), (3)(a)(b)(c)(d) and Rule 56(1) and (3), of the Labour Court Rules, G.N. No. 106 of 2007. The applicants are moving the court for an order in the following terms:

1. That this Honorable court be please to extend time upon which the Applicants can file a Labour Complaint out of time for this court to interpret the Retrenchment Agreement upon Non-Settlement in

Labour Dispute No. CMA/DSM/TEM/510/19, arose at The Commission for Mediation and Arbitration on 10th December, 2019.

2. That, this honourable court be pleased to determine the matter in the manner it considers appropriate and give any other relief it considers just to grant.

3. That, this honorable Court be pleased give any other relief as the court may deem fit and just to grant.

The application was supported by a joint affidavit of the Applicants deponed on the 14th day of October, 2022. The respondent opposed the application praying for its dismissal. The application was disposed by way of written submissions. The applicants' submissions were drawn and filed by Mr. Jamael H. Ngowo from the Legal Department of TUICO who represented the applicants. The respondent's submissions were drawn and filed by Mr. Shepo Magirari, learned Counsel.

Having gone through the affidavits of the applicant as well as the submissions in support of the application, I find that the application need not detain me much. The parties mistakenly proceeded with arbitration at the CMA and the award of the CMA was issued in favour of the applicants herein. Aggrieved by the award, the respondent lodged in this Court a

Revision Application No. 81 of 2021 whereby on the 22nd day of February, 2022, this court (Hon. Rwizile J) revised the award of the CMA on the ground of lack of jurisdiction to entertain the dispute. The court further held that after failure of mediation, the parties were to file their dispute directly to the Labour Court and not to undergo arbitration at the CMA. This application emanates from that order of the court.

As per the records and the submission of the parties, after the 22nd February, 2022 when the Judgment of this court was delivered, the applicant lodged a review application which was withdrawn on the 07th September, 2022 and this application was lodged on 28th October, 2022. Although I have not seen anywhere that the applicant had adduced any reasons for the delay of one month, the question for determination of this application is if the period is inordinate to deny the applicants to be heard on their right. The dispute at hand is half way on the course after mediation having failed at the CMA. The question is if, in labour disputes where rights of the employee are at stake, it is proper to deny the applicants their rights to be heard on the interpretation of retrenchment agreement after attempting mediation. In the interest of justice and the fact that at all times the parties and the CMA were trading on the wrong

footing hoping to have the dispute resolved, time should be extended so that the dispute can be determined on merits.

For the aforesaid reasons, this application is allowed. Time is extended for the applicants to lodge their intended complaint to this court. Given the fact that this ruling came out during court vacation and some of the advocates are on vacation, the intended complaint shall be lodged in this court within thirty (30) days of the date of this order.

Dated at Dar es Salaam this 23rd day of December, 2022.




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S.M. MAGHIMBI
JUDGE