

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM
MISCELLANEOUS LABOUR APPLICATION NO. 318 OF 2021**

BETWEEN

ABDUL SWAMADU MOHAMED.....1ST APPLICANT
KASSIM MWANGA.....2ND APPLICANT
JOHN J. MWAKISOLE.....3RD APPLICANT

AND

**DAR ES SALAAM WATER AND SEWERAGE
AUTHORITY (DAWASA) (Disestablished)/
DARES SALAM WATER SUPPLY AND SANITATION
AUTHORITY (DAWASA)(Established)..... 1ST RESPONDENT**
**DAR ES SALAAM WATER AND SEWERAGE
CORPORATION(DAWASCO)(Disestablished).....2ND RESPONDENT**

RULING

Date of Last Order: 10/02/2022
Date of Judgement: 18/02/2022

B.E.K. Mganga, J.

In 2012 applicants and 989 others who are not part to this application all being employees of the respondents were retrenched. On 20th December 2012, applicants and the said 989 others filed Labour

Dispute No. CMA/DSM/ILA/818/12 to the Commission for Mediation and Arbitration henceforth CMA challenging their retrenchment. Being alert that they were out of time for 12 years and 29 days, they filed an application for condonation. On 13th March 2013, Msuri, A, arbitrator after hearing submissions made on behalf of the applicants and the respondents delivered his ruling dismissing their application for condonation. Aggrieved by that decision and being out of time, on 31st August 2021, applicants filed a notice of application supported with an affidavit seeking extension of time within which to file revision application so that the said ruling can be revised. On 1st October 2021, respondents filed a notice of opposition and a counter affidavit. On 8th November 2021, respondents filed a notice of preliminary objections that: -

- 1.1. *The Commission of Mediation and Arbitration (here in CMA) entertained the Labour Dispute between the parties without having jurisdiction to do so.*
- 2.2. *The applicant's application is incompetent before this Honorable court as it contravenes the provisions of Rule 24(3) (d) of the Labour Court Rules Government Notice No.106 of 2007.*

When the application was called for hearing of these preliminary objections, parties prayed the same to be argued by way of written submissions, a prayer which was granted.

In arguing the 1st ground, Ms. Zakia Seleman Mroy, Principal officer of the respondents, submitted that applicants were Public Servants and that, in terms of Section 32A of the Public Service Act as amended by Written Laws Miscellaneous Amendment Act No.3 of 2016, they were supposed to exhaust remedies provided for under the Public Service Act before filing the dispute to CMA. Ms. Mroy cited the case of **Alex Gabriel Kazungu & 2others v. Tanzania Electric Supply Company Ltd.** Rev.No.40/2020 (unreported), **Godfrey Ndigambo v Tanzania Ports Authority,** Rev.No.772/2019 (unreported) and **Tanzania National Roads Agency v Brighton Kazoba and Julius Charles,** Rev.No.16/2018 (unreported) to support her submission. She concluded that, CMA had no jurisdiction to entertain the dispute between the applicants and the respondents.

On the 2nd ground, Ms. Mroy, submitted that the application is incompetent as it contravenes the provision of Rule 24(3)(d) of the Labour Court Rules, GN. No.106 of 2007 that requires the affidavit in support of the notice of application to contain reliefs. Ms. Mroy cited case of **Sultan and 134 Others vs Dar es salaam Water and Sewerage Corporation and Dares salaam Water and Sanitation Authority,** Miscellaneous Application No.148 of 2020 (unreported). She

insisted that the omission to include reliefs in the affidavit rendered the application incompetent.

In response, Mr. Symphorian Revelian Kitare, advocate for the applicants, submitted that it is not disputed that applicants were Public Servants. Counsel for the applicants submitted that Section 32A of the Public Service Act (supra) came into force on 16th November 2016, while applicants filed the dispute at CMA prior to coming into force of the said Act. Counsel for the applicants submitted further that ***Kazungu's case***, (supra), ***Godfrey Ndingambo's case*** (supra) and ***Tanzania National Road Agency's case***, (supra) cited by Ms. Mroy for the respondents were held per incuriam.

Regarding the 2nd point of Preliminary objection, Mr. Kitare, counsel for the applicants submitted that paragraph 18 of the affidavit of the applicants contains reliefs sought. Therefore, the respondent intends to mislead the court. Mr. Kitare submitted that ***Sultan's case***, (Supra), and ***Matanga's case*** (supra) cited by the respondent are distinguishable and not applicable to the application at hand.

In rejoinder, Counsel for the respondent reiterated her submission in chief and prayed that the application be dismissed.

In this ruling I will first deal with the 2nd ground relating to absence of reliefs in the affidavit by the applicants. It is evidently in paragraph 18 of the applicant's affidavit that they are seeking extension of time within which to file an application for revision. I will therefore not belabor much on it. It suffices to say that, arguments by Ms. Mroy for the respondents have no merit.

In the 1st ground it was contended by the respondents that CMA had no jurisdiction to deal with the dispute filed by the applicants. I am not sure as to whether Ms. Roy for the respondent in raising this purported preliminary objection knew the prayer of the applicants or she raised it just for the sake of raising a preliminary objection. Unfortunately, counsel for the applicant was caught unprepared as a result wasted much of his time to deal with a none point of preliminary objection. It is clear in my mind that applicants are seeking extension of time before this court. Whether CMA had jurisdiction or not, is an issue to be raised before the court in the revisional stage if the application is granted. From where I am standing, that cannot be a preliminary objection to be determined by this court in this application. Determination of that issue at this stage will be a preemption of the revision. That invitation strongly cannot be entertained now. All cases

cited on behalf of the respondent are irrelevant. I will not waste my precious time to consider them.

All said and done, and, in the upshot, I dismiss all preliminary objections for want of merit.

Dated at Dar es Salaam this 18th February 2022.


B.E.K. Mganga
JUDGE

Labour Court-TZ