

**IN THE HIGH COURT OF TANZANIA  
LABOUR DIVISION  
AT DAR ES SALAAM**

**MISCELLANEOUS LABOUR APPLICATION NO. 455 OF 2021**

**BETWEEN**

**LIFE CARE HEALTH SERVICES.....APPLICANT**

**AND**

**CHRISTINA HELELA .....1<sup>ST</sup> RESPONDENT**

**CHARLES KAJAKA SENGO**

**T/A CDJ CLASSICAL GROUP LTD.....2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of Last Order: 15/02/2022*

*Date of Ruling: 25/02/2022*

**B.E.K. Mganga, J.**

Applicant was an employer of the 1<sup>st</sup> respondent. It happened that applicant terminated employment of the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent being aggrieved by termination of her employment filed Labour dispute before the Commission for Mediation and Arbitration (CMA) on ground that her contract of employment was unfairly terminated by the applicant. After non-appearance of the applicant, 1<sup>st</sup> respondent prayed to proceed exparte. On 31<sup>st</sup> July 2018, Hon. Amos, A,

Mediator, issued an ex parte award in favour of the 1<sup>st</sup> respondent. It is alleged by the applicant that, the said ex parte award was served to her on 31<sup>st</sup> July 2019. Being served with the said ex parte award, applicant filed application No. CMA/DSM/MISC/23/2020 at CMA seeking to set aside the said ex parte award. On 15<sup>th</sup> December 2020, Hon. Mourice Egbert Sekabila, arbitrator, delivered his ruling dismissing that application. In an attempt to revise the said ex parte award, on 24<sup>th</sup> February 2021, applicant filed revision application No. 73 of 2021. Unluckily to the applicant, the said revision application No. 73 of 2021 was dismissed by this court for being time barred. After the dismissal of the said revision application No. 73 of 2021, applicant filed this application seeking extension of time within which to file revision application, to challenge the CMA ruling dated 15<sup>th</sup> December 2020 that dismissed her application to set aside ex parte award. The 1<sup>st</sup> respondent filed a notice of opposition, a counter affidavit and a notice of preliminary objection on point of law that the applicant is abusing the court process. This ruling is in respect of the said preliminary objection raised by the 1<sup>st</sup> respondent.

Before I kick off, I should point out briefly that the 2<sup>nd</sup> respondent, who is a court broker appointed by the court to execute the

aforementioned ex parte award, opted not to file a counter affidavit and did not enter appearance in court.

When the application was called for hearing, Mr. Hemed Omary, the personal representative of the 1<sup>st</sup> respondent appeared and argued the preliminary objection for and on behalf of the 1<sup>st</sup> respondent. In the course of arguing the aforementioned preliminary objection, Mr. Omary, added another new ground to make it two namely:

1. *The application is incompetent as the notice of application was signed by the advocate and not the applicant.*
2. *Applicant is abusing court process as she intends to file application for revision of a dispute which was already dismissed by this court for being time barred.*

In arguing the 1<sup>st</sup> limb of the preliminary objections, Mr. Omary, the personal representative of the 1<sup>st</sup> respondent submitted that, the notice of application was signed by a person who is not a party to the proceedings contrary to Rule 24(2) of the Labour Court Rules, GN. No. 106 of 2007. Mr. Omary submitted that the said notice was signed by the applicant's advocate, who at any rate is not a party to the proceedings.

In regard to the 2<sup>nd</sup> ground, Mr. Omary argued that, applicant filed Revision application No. 73 of 2021 which was dismissed by this court for being time barred but the applicant is seeking extension of

time so that she can file a new revision, which the court had already dismissed for being time barred. He argued further that, after dismissal of Revision application No. 73 of 2021 in which applicant was challenging the ruling that dismissed her application to set aside an *ex parte* award for being time barred, the court is *functus officio* as the issue of time limitation has already been determined.

Responding to the applicant's submissions on Preliminary objection, Mr. Joseph Mulamula, counsel for the applicant, conceded to the 1<sup>st</sup> limb of preliminary objection that the notice of application was signed by him as an advocate, and that he is not party to the proceedings. He conceded that parties to the proceedings are **Life Care Health Service**, as an applicant on one hand, and **Christina Helela**, the 1<sup>st</sup> respondent and **Charles Kajala Sengo T/A CDJ Classical Group Ltd**, the 2<sup>nd</sup> respondent on the other hand.

On the 2<sup>nd</sup> ground of preliminary objection, Mr. Mulamula, counsel for the applicant contended that, it is not true that once a matter has been dismissed for being time barred, a person is prevented to file an application to file the same matter out of time. To strengthen his submission, counsel cited the case of **Tanzania Fertilizer Co. Ltd v. National Insurance corporation**, Commercial case No. 71/2004.

Counsel for the applicant conceded further that, Revision application No. 73 of 2021 was dismissed by this court for being time barred. He conceded also that, this application is seeking extension of time to file revision application emanating from a labour dispute No. DSM/Misc/23/2020 and that Revision application No. 73 of 2020 also was challenging the same labour dispute. Counsel conceded that there must be an end to every litigation.

Having heard submissions from both parties, it is undisputed that the notice of application was signed by the person who is not a party to the application. It is undisputed further that, the notice of application was signed by Joseph Mulalmula, the applicant's advocate. As correctly conceded, that was contrary to Rule 24 (3) of the Labour Court Rules, GN. No. 106 of 2007 that requires a notice of application to be signed by a party bringing the application before the Court. The said Rule provides that: -

*"The notice of application shall substantially comply with form No. 4 in the schedule to these Rules, **signed by the party bringing the application...**"* [Emphasis added]

It is my considered view that, **"the party bringing the application"** is the one who, is directly, affected by the outcome of

the application, of which, an Advocate is not. This is the position of this court in the case of ***Simon John v. Brac Tanzania Finance Ltd***, Misc. Application. No. 60 of 2018 and the case of ***Rose Ongara & 2 Others v. National health Insurance Fund***, Revision Application. No. 237 of 2019. In ***Ongara's case***, (supra), this court ( A. Aboud, J) emphasized that: -

*"Therefore, any party representing the employer or employee, will only remain with the status of representative of a party as provided under section 56 of the Labour Institutions Act, but not to automatically acquire the status of signing documents and bringing the application before the Court. It is very clear from Rule 24 (2) that if the drafters of such provision had in mind that parties should comply with form No. 4 in the schedule to the rules, they would have stopped there without adding the words **"signed by the party bringing the application"**. So, I am strongly convinced that the drafters wanted a party or applicant to sign the notice and no one else."*

I associate myself to that position of the law, which, in my view, is a correct interpretation of Rule 24(2) of GN. No. 106 of 2007 (supra). For the foregoing, I therefore find that, the 1<sup>st</sup> limb of preliminary objection has merit and hold that the application is incompetent for being signed by the Applicant's advocate and not the applicant herself. I sustain the 1<sup>st</sup> preliminary objection.

In the 2<sup>nd</sup> ground of preliminary objection, counsel for the applicant argued that, it is not true that once a matter is dismissed for being time

barred, a person is prevented to file a new application seeking extension of time for the same matter to be heard on merit. On the other hand, the personal representative of the 1<sup>st</sup> respondent, submitted that once the application is dismissed, the court cannot entertain an application to extend time to revive the dismissed matter as the court will be functus officio.

It is apparent that, applicant has filed this application so that she can file an application for revision challenging the CMA ruling emanating from CMA dispute No. DSM/Misc/23/2020. It is clear that revision application No 73 of 2021 was dismissed for being time barred as evidently shown in paragraph 13 of the applicant's affidavit in support of the application, wherein the deponent stated that:-

*"13. That Rev. No. 73/2021, has been in court for the whole time since its filling until when it came for hearing before Hon. Biswalo, J, who dismissed it for being time barred"*

It is clear that, in the said revision application No 73 of 2021 that was dismissed for being time barred, applicant was challenging the same ruling she intend to challenge in the application at hand if extension of time is granted. I am of the strong view that, since the issue of time limitation has been adjudged by this court by dismissing Revision Application No. 73 of 2021 for being time barred, applicant is

barred from filling an application for extension of time to file revision application on similar issue. I am of that view because, if this application for extension of time will be granted, then, applicant will be granted an opportunity to challenge an already dismissed application for being time barred. It is a cardinal principle that limitation of time goes to the jurisdiction of the court. As the court dismissed revision application No. 73 of 2021, it ceased to have jurisdiction to entertain the matter. Applicant, trickery through this application, is praying the court to cloth itself with jurisdiction which it is lacking.

The only remedy applicant had, was to challenge the said dismissal order before the Court of Appeal if she felt that it was erroneously given and not to file this application. This position was given by the Court of Appeal in the case of **Hashim Madongo & 2 Others v. Minister for Industry and Trade & 2 Others**, Civil Appeal No. 27 of 2003 wherein it was held that:-

*"That after the application before Kelegeya, J was dismissed, as it should have been, it was not open to the appellants to go back to the High Court and file the Application subject of this appeal..., the only remedy available to the appellant after the dismissal of the applicant was to appeal to the court of Appeal and that the application for extension of time ought to have been filed prior to filling the application for prerogative orders."*



Guided by the above Court of Appeal decision, I hold that the 2<sup>nd</sup> ground of preliminary objection has merit. I therefore sustain it. This will be in line with the well-known principle that, always there should be an end of litigations. The *Tanzania Fertilizers Company's case*, (supra), cited by counsel for the applicant is no longer a good law as the said case was overturned by the Court of Appeal in the *Madongo's case*, (supra).

In the upshot, I find both grounds of preliminary objections with merit and are hereby sustained. Having so found, the present application is hereby dismissed for want of merit.

Dated at Dar es Salaam this 25<sup>th</sup> February 2022.



  
B.E.K. Mganga  
**JUDGE**