IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 160 OF 2021

BETWEEN

TANZANIA ZAMBIA RAILWAYS AUTHORITY ..... APPLICANT

VERSUS

ENG. GISBERT SAMBALA ..... 1ST RESPONDENT

MARY MESSO ..... 2ND RESPONDENT

ADAM MONGI ..... 3RD RESPONDENT

FADHIL MWINDANDI ..... 4TH RESPONDENT

NASHON KASERA ..... 5TH RESPONDENT

RULING

S.M. MAGHIMBI, J:

The current application was lodged under the provisions of Section 91(1)(b), 91(2)(b) and Section 94(1)(b)(i) of the Employment and Labour Relations Act. Cap. 366 R.E 2019 ("ELRA") and Rules 24(1), 24(2)(a), (b), (c), (d), (e), (f) and (3)(a), (b),(c)&(d), 28(1)(c)(d)&(e), 55(2), 56(1) of the Labour Court Rules GN No. 106 of 2007 ("the Rules"). The applicant was aggrieved by the arbitration award of the Commission for Mediation and Arbitration at Temeke ("CMA") dated at 29th April, 2019 in Labour Dispute No. CMA/DSM/TEM/664/17/38/18 ("the Dispute"). The Chamber

Summons was supported by an affidavit of the applicant dated 23/04/2021.

On the 27th May, 2021, the respondent filed a notice of preliminary objection on point of law that the application is time barred. The objection was argued by way of written submissions. The respondent's submissions were drawn and filed by Mr. Paschal Temba, personal representative, while the applicant's submissions were drawn and filed by Mr. Marco Mabala, learned advocate.

In his submissions to support the objection, Mr. Temba submitted that the award of the dispute was received by both parties on the 30th day April, 2019. The aggrieved party was to lodge revision 42 days thereafter, something which they did vide Revision No. 534/2019. That sometimes on 14th April, 2021 the application was struck on legal technicalities without leave to refile. That to the respondent's surprise, on 27th April, 2021 the applicant lodged the current application without leave of the court to file the application out of time. He then argued that the application is an irregularity against procedure. That Rule 56(1) of the Rules requires an applicant to show good cause for the delay on which she failed.

He submitted further that there is nothing on the record to show that leave was granted to the applicant to file revision out of time hence the application out of time. He supported this submission by citing the case of **Tanzania Zambia Railway Authority Vs. Gerald S. Msovela (Revision 451 of 2020) [2021] TZHCLD 311 (19 August 2021)** where the Court held that:

"Extension of time can be granted based on the issue of illegality. As the same was not pleaded as conceded by counsel for the applicant, it cannot detain me. I hereby reject it. For all said and done, the applicant has failed to adduce good reasons for delay and has failed to account for that delay. I therefore, reject the prayer for extension of time."

That the principle was also well cemented in the decision of the Court of appeal in the case of **Tanzania Fish Processors Ltd Vs Christopher Luhangula, Civil Appeal No161/1994** (unreported), where the court held:

"Limitation is a material point in the speedy administration of Justice. Limitation is there to ensure that a party does not come to court as and when he chooses"

He also cited the cased of **Baclays Bank Tanzania Limited Vs. Physiah Hussein Mcheni, Civil Appeal No. 19 of 2016**, Court of Appeal at Dar-es-salaam (unreported) where the court emphasized that the matter filed out of time needs to be dismissed pursuant to the provisions of Section 3(1) of the Law of Limitations Act, Cap. 89 R.E 2019 and not to be struck out. He concluded by praying that the application be dismissed because the applicant has fatally and totally violated the fundamental procedure and law.

In reply, Mr. Mabala admitted the facts established by the respondent that the award that revision is sought for was issued on 30th April, 2019 and that there was filed a Revision No. 534/2019 which was struck out on the 14th day of April, 2021. His defence was that thirteen days later the applicant filed the current revision. He argued that the respondent wants to mislead the court that the revision was filed out of time because the applicant filed the revision on time. He submitted further that the provisions of Rule 56(1) of the Rules were well adhered to as the applicant filed the revision within time and that the applicant was granted stay of execution pending full determination of this revision application.

Mr. Mabala then pointed out that in this application which the respondents are contesting, the applicant made joint application for extension of time and if the prayer is granted then the applicant prayed for this court to revise the CMA award stated above. He hence argued that the respondent's submissions are highly misleading the court as there are both prayers for extensing time combined with the application for revision.

On combining the two prayers, Mr. Mabala submitted that the same is permissible when two or more prayers are interrelated. He supported his submission by citing a case where combination of two prayers was found to be permissible, the case of **Uwenacho Salum Vs. Moshi Salum Ntankwa, Misc. Civil Application No. 367 of 2021** where in determining whether the application combining two prayers was omnibus the court held:

> *"the position in our law in our jurisdiction is that combining of more than one prayer in the Chamber Summons should be encouraged rather than thwart it for fanciful reasons as there is no law barring the same. "*

He also cited the case of **Tanzania Knitwear Limited Vs. Shamshu (1989) TLR 48 (HC)** where the same position was held. He then argued that such prayers should be encouraged on as long as they do not contravene any substantive or procedural law bearing in mind that each case has to be decided on its own facts. That the reason to allow such application is far-fetched so as to allow parties to avoid multiple proceedings and save both parties and court's time, supporting this submission by citing the case of **MIC Tanzania Limited Vs. Minister for Labor and Youth Development, Civil Appeal No. 103 of 2004** (unreported) where the court emphasized that to avoid multiplicity on unnecessary applications, applications may be conveniently combined.

He then pointed out that the law requires each case to be decided on its own peculiar facts but the question is on the factors to be considered when determining whether combined prayers on a single application are competent or not. He answered the question to the effect that the application may be combined when the prayers are interlinked or interdependent. Unfortunately, Mr. Mabala did not elaborate how the two prayers in this case are interlinked, I must say this was not an accidental omission, but Mr. Mabala did not have any substantive submissions on how

the two prayers are interlinked or interdependent. I have also noted that Mr. Temba did not make any submission in rejoinder.

I will start with disposing the objection raised by Mr. Teemba that the application beforehand is filed out of time without leave of the court. On this point, I am in agreement with Mr. Mabala that Mr. Temba is misleading the court because indeed the applicant's prayer in the Chamber Summons are combined prayers for extension of time to file revision and the substantive prayers for revision application. Therefore I cannot ignore this fact and sustain Mr. Temba's prayer that the application be dismissed for being out of time. By doing this, I would have denied the applicant a right to be heard on the prayer for extension of time sought in the Chamber summons. That said, the objection raised is hereby overruled. The next issue is what Mr. Mabala has raised and argued in his submission in reply. I also had a concern on whether this application which combines two distinct prayers is tenable in this court. I thank Mr. Mabala for having made submissions on this point. His submission is that such applications are allowed in our jurisdiction and their purpose is to save time of both the parties and the court. To support his submissions he cited several cases including the case of **Uwenacho Salum Vs. Moshi Salum Ntankwa,**

Misc. Civil Application No. 367 of 2021 and the case of **Tanzania Knitwear Limited Vs. Shamshu (1989) TLR 48 (HC)** where the same position was held.

Much as I do agree with Mr. Mabala that the filing application with combined distinct prayers is allowed in our jurisdiction, and that the rationale behind is to save the time for both the court and the parties, it is also pertinent to note that not in every situation that filing of distinct applications with distinct prayers is allowed. That is why in his own submissions, Mr. Mabala pointed out that the law requires each case to be decided on its own peculiar facts. The question is on the factors to be considered when determining whether combined prayers on a single application are competent or not. He answered the question to the effect that the application may be combined when the prayers are interlinked or interdependent. As I noted, he did not make any submissions in reply to whether the prayers in this case are interlinked or not.

Having so noted, I will now elaborate when prayers which would have been in two different applications may be combined in one prayer, this is called an omnibus application. Omnibus applications are not totally prohibited by law, but as submitted by Mr. Mabala, each case has to be

decided into its own peculiar facts and circumstances. So far, there have been no hard and fast rules as to when and how two applications may be combined. But in my view, several tests have to be put by court in order to ascertain whether two applications may be combined. The first test should be the nature and origin of the application test, this is in relation to the originating laws that are used to move the court. The second test is the reasoning of the court test and the third test is the time to file the applications. In this test, the court should see whether the grounds for granting one application are interlinked or interdependent in the two distinct prayers.

Starting with the first test, nature and origin of the application test, the court should see whether the two applications are from the same law. In our case at hand, the substantive law that allows a party to file an application for Revision is the ELRA. Citation of the Rules cited in the revision only relates to the procedures and forms in which such an application should be lodged in court. On the other hand, extension of time is not provided for under the ELRA, which is why the applicant has moved the court under Rule 56 of the Rules. At this point, I will direct myself to the decision of the Court of Appeal in the case of **Rutagatina C.L. Vs.**

The Advocates Committee & Clavery Mtindo Ngalapa, Civil Application No. 98 of 2010 whereby when dealing with the issue of omnibus application, the court, while referring to the Court of Appeal Rules, 2009 had this to say:

> *"Under the relevant provisions of the law* ***an application for extension of time and an application for leave to appeal are made differently. The former is made under Rule 10 while the latter is preferred under Section 5 (1) (c) of the Appellate Jurisdiction Act*** *read together with Rule 45. So, since the applications are provided for under different provisions it is clear that both cannot be "lumped" up together in one application, as is the case here."*

It is pertinent to note that in the said case, although the application for leave was made under Section 5(1)(c) of Cap. 141 R.E 2019 read together with the Court of Appeal Rules, the court ruled out that the two applications are made under different laws. Therefore the applicant should not think that not the substantive law that the application for Revision is brought, the application is lodged under Section 91 and 92 of the ELRA to be read together with Rule 24.

Coming to the application for extension of time, the same is strictly made under Rule 56(1) which allows this court to extend or abridge any period prescribe under the Rules. Therefore as held in the cited Court of Appeal decision of **Rutagatina C.L**, since the two application come from different laws, they cannot be lumped in one application.

The second test is the reasoning of the court test. In this test, the court should see whether the grounds for granting one application are interlinked or interdependent in the two distinct prayers, something which Mr. Mabala could not explain. In the reasoning test, the court has to see whether the factors or reasons for granting one prayer are connected to interdependent with the other one. In the same cited case of **Rutagatina C.L.** The court held:

> *"An application under Rule 10 may be granted upon good cause shown. An application for leave is usually granted if there is good reason, normally on a point of law or on a point of public importance, that calls for this Court's intervention."*

In this case, the application for extension of time may be granted upon good cause or sufficient reasons for the delay being given. However,

in the application for revision, the court has to call for the records of the CMA, examine them and eventually revise and set aside the award of the CMA. This procedure requires the court to be seized with the CMA records, re-analyse the evidence and come up with its own findings. Obviously, the reasoning in the first prayer and the second one are not connected in any way.

Going to the third test, the time to file the applications test. In determining an omnibus application, the issue whether the two prayers are filed within time may be pivotal. A revision application has its own time frame under Section 91(1)(a) of the ELRA, 42 days. Therefore if that has lapsed, the extension of time has to be sought first before the court can be seized with jurisdiction to entertain the revision because when time to lodge a certain matter lapses, the court is not seized with jurisdiction to entertain that matter unless leave has been so granted. In the case of **The Project Manager ES-KO International Inc Kigoma versus Vicent J. Ndugumbi, Civil Appeal No. 22 of 2009**, (unreported) it was observed that:-

"The application for extension ought to have been determined first and if granted, the application for leave would have been considered and determined accordingly in the same ruling."

So facts on the ground are than since extension of time has not been granted, I am not seized with jurisdiction to entertain the revision application already filed in this court. Even the title of the application before me is not extension of time, is a revision Application No. 160/2021. At this point, the conclusion is that this revision application which contains omnibus prayer is incompetent before this court. The same is hereby struck out.

Dated at Dar es Salaam this 25th day of April, 2022.

.....

S.M MAGHIMBI
JUDGE