

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

*(ARISING FROM LABOUR DISPUTE NO. CMA/DSM/TEM/218/19/104/19)*

**MISCELLANEOUS LABOUR APPLICATION NO. 71 OF 2022**

**BETWEEN**

**ANTHONY JOHNY KAZEMBE.....APPLICANT**

**VERSUS**

**INTERTEK TESTING SERVICES (EA) (PTY) LTD.....RESPONDENT**

**RULING**

**26<sup>th</sup> June 2022 & 20<sup>th</sup> July 2022**

**K. T. R. MTEULE, J.**

This ruling is in respect of a preliminary objection raised by the respondent against an application for extension of time to file revision application against the CMA award No. CMA/DSM/TEM/218/19/104/19. The Applicant herein is praying for orders of the Court as follow:-

1. That, this Honorable Court be pleased to extend time to permit the applicant to file Revision Application against part of the award of Hon. Batenga, Arbitrator in the Commission for Mediation and Arbitration (CMA) at Dar es salaam (Temeke) in Labour Dispute No. CMA/DSM/TEM/218/19/104/19.
2. Any other orders as this Honourable Court May deem fit.

The Application is supported by the affidavit sworn by the applicant. Opposing the application, the respondent filed the counter affidavit sworn by Amina Said Makunganya, the Respondent's Principal Officer. The Respondent raised the preliminary objection asserting that the application is incompetent for want of services of a notice of intention to seek revision on the respondent.

At the hearing of the preliminary objection, both parties managed to adhere to the Court schedule for filing the submissions as per the orders issued on 17<sup>th</sup> May 2022. The applicant filed his submission as represented by Mr. Lweeka, Advocate, while the respondent filed her submission as represented by Mr. Ndelwa and Mr. Kaijage, Advocates.

Arguing in support of the preliminary objection the respondent's Counsels submitted that the present application is incompetent as the applicant failed to serve a copy of a notice of intention to seek revision to the respondent, contrary to **Rule 9 (1) (2) and (3) of the Labour Court Rules GN. No. 106 of 2007**. In his opinion, the failure to observe the rule renders the application to be fatal and the remedy is for the Application to be struck out.

Opposing the application, Mr. Lweeka submitted that the preliminary objection raised is not on pure point of law, because respondent has failed to state any provision of law which was breached by the applicant. He further added that the preliminary objection is misplaced on the reason that the application before this Court relates to extension of time and not revisional application.

It was further submitted that it is well settled principle that preliminary objection must be on pure point of law and not matters which requires evidence to substantiate the same. He cited the case of **Mukisa Biscuit Manufacturing Co. Ltd. v. West End Distributors Ltd.** (1969) EA 696 to support his contention.

Having considered the parties' submission regarding preliminary objection I find that one major issue needs to be determined. The issue is **whether the point of preliminary objection raised by the respondent is meritorious.**

The requirement of notice of intention to seek revision and serving of the same is done as a condition in filing application for revision before this Court. The application before this court concerns extension of

time and not a revision application. The asserted requirement does not fit in this kind of application.

I agree with the Applicant's counsel that the point of preliminary objection raised by the respondent is irrelevant for the application at hand. In my view, the preliminary objection is misplaced as was submitted by the applicant's Counsel. In line with the case of **Mukisa Biscuit's** (Supra) cited by the applicant's Counsel the preliminary objection must be pure point of law and not otherwise. For that reason, this point of preliminary objection lacks legal stance.

Consequently, the point of preliminary objection raised by the respondent lacks merit and is accordingly dismissed. The application for extension of time to be determined on merit. Each party to the suit to take care of their own cost.

It is so ordered.

Dated at Dar es Salaam this 20<sup>th</sup> day of July, 2022.



**KATARINA REVOCATI MTEULE**

**JUDGE**

**20/07/2022**

