IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 171 OF 2022

SALEHE HASSAN MJINJA ..... APPLICANT

VERSUS

VOCATIONAL EDUCATION AND

TRAINING AUTHORITY (VETA) ..... RESPONDENT

RULING

28th June & 22nd July 2022

Rwizile, J

The applicant brought two applications. It is therefore an omnibus one. In the first application, the applicant asked this Court to extend time to file an application for revision. In the second, the applicant petitioned this Court, upon granting an extension, then proceed to hear, revise and set aside the decision of the Commission for Mediation and Arbitration (CMA) in the labour dispute No. CMA/DSM/TEM/74/2010 dated 08th July, 2010.

In his two affidavits, the applicant alleged, he was employed by the respondent since 23rd July, 2002 to hold a post of Laboratory Instructor and was sent to work at Mtwara RVTSC-Mtwara. On 19th April, 2006, the

applicant was transferred to Dar es Salaam RVTSC in what he considered an ambiguous transfer. On 29th January, 2010, he was served with the termination letter. Being aggrieved, the applicant filed a labour dispute at CMA claiming terminal benefits due to unfair termination. On 08th July, 2010, the CMA dismissed the dispute for being incompetent. Again, the applicant was not satisfied, hence this application which is preferred out of time.

The application is supported by two affidavits of the applicant. The respondent opposed by the counter affidavit sworn by Mr. Mathias Kulwa, Legal Officer of the respondent. But before hearing of this application Mr. Mathias raised a preliminary objection:

> *That the application is bad and unmaintainable in law for combining two unrelated applications to wit an application for extension of time to file revision out of time and application for revision."*

Despite being unrepresented, the applicant pressed for oral hearing of the objection. Mr. Mathias submitted that the application is untenable in law. He stated that the application has combined two separate applications which do not relate. He argued, by filing separate affidavits, it means, the applicant knew the applications were to be filed separately in compliance

to Rule 24 of the Labour Court Rules, G.N. No. 106 of 2007, which provides for a notice of application.

He submitted that the two separate applications are governed by two different provisions. He added, the application for revision is governed by rule 24(1) and (2) (a-f), (3)(a)(b) and (d), rule 28(1)(a)(d) and (e) of G.N. No. 106 of 2007 and section 91(1)(a)(b) of The Employment and Labour Relations Act [CAP. 366 R.E. 2019], while an application for extension of time is governed by rule 24(1)(2) and (3), 55(1) and rule 56(1) of G.N. No. 106 of 2007.

Mr. Mathias stated that the applicant lumped the two applications in one and since they are governed by different sets of law, they cannot be lumped together. Mr. Mathias submitted that the application for extension of time is to show sufficient cause as provided for under rule 56(1) of G.N. No. 106 of 2007, while an application for revision, the applicant has to show that the award is illegal as provided for under rule 28 of G.N. No. 106 of 2007. He also stated, an application for revision, has time limitation of 6 weeks from the date of revision as provided under section 91(a)(2) of [CAP. 366 R.E. 2019] while the application for extension of time has no limit. He supported his submission by citing the case of **Rutagatina C.L v The Advocates Committee and Another**, Civil Application No. 98 of

2010 at page 8. He stated that in the present application, the applicant has not only filed an application combining two related prayers but has gone further to file another application for revision in the same Court record. He asked this court to have this application struck out.

In reply, Mr. Salehe submitted, it is a settled law that a Court can entertain an application in more than one set. He stated, factors to be considered are whether there is a specific law barring such combination. And, if the Court has jurisdiction to entertain the combined applications.

Mr. Salehe continued to argue, this application would be incompetent if, it is found, the court has no jurisdiction to entertain them. It was his view that the case of **Rutagatina C.L v The Advocates Committee and Another** (supra) is distinguishable because it dealt with matters before the Court of Appeal not before the High Court.

He submitted, the two applications before this court have to be entertained one after another, since entertaining the application for revision, depends on granting of the first prayer for extension of time. He was keen and held the view that, factors for determination of both applications require the applicant to state reasons as under paragraphs 11 to 13 of affidavits supporting the applications. To support his

submission, he cited the case of **Uwenacho Salum v Moshi Salum Ntankwa**, Miscellaneous Application No. 367 of 2021 at page 6-10.

He stated that there is no specific law for the preposes of avoiding multiplicity of suits and it also saves time for parties and the Court. He stated that the prayer for extension of time and an application for revision are interlinked and interdependent. Finally, he stated that, the application should be granted and the preliminary objection be overruled with costs.

In re-joining, Mr. Mathias reiterated what was stated in the submission in chief. He but added that the applicant has not shown how the application for extension of time and revision are interrelated. The learned State Attorney argued that the rules governing this Court do not allow combining of suits. For that matter, they should not be entertained as the law does not allow riding two horses at a time. He finalised by stating that the application has to be granted first if the other one has to be filed. He then prayed for the application to be struck out.

Having heard the parties, it is a practice in Courts of law to combine more than one prayer in an application. The reasons for doing that are apparently, clear as stated in the case of **Uwenacho Salum v Moshi Salum Ntankwa** (supra), as time and resources serving. However, in this application the applicant has filed two different applications at par,

which are for extension of time and for revision. Even though they are between the same parties and emanated from one labour dispute, they are different.

For extension of time to be granted, the applicant has to show reason for the delay and account for each day delayed. The Court then after considering what has been adduced by the party may or may not grant the extension of time. If granted, then the party is allowed to file an application for revision.

On the other hand, the application for revision is to revise the proceedings and an award of the CMA. In order for the revision to be heard, the applicant has first to be granted extension of time to file the already filed application out of time. These two applications cannot be entertained in the same record and at the same time.

In the case of **Recho Joshua v Meda Joseph**, Miscellaneous Civil Application No. 10 of 2020, High Court at Mwanza at page 5 cited the case of **Mohamed Salimin v Jumanne Omary Mapesa**, Civil Application No. 103 of 2014, where it was held that: -

> *"As it is, the application is omnibus for combining two or more unrelated applications. As this court has held for time(s) without*

number an omnibus application renders the application incompetent and is liable to be struck out."

With respect to resilience and boldness of the applicant, I hold a different view, but shared with the respondent. This omnibus application cannot be entertained. Therefore, it is struck out with no order as to costs.

A.K. Rwizile

JUDGE

22.07.2022