

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

REVISION NO. 431 OF 2022

BETWEEN

MIC TANZANIA LTD_____ **APPLICANT**

VERSUS

PETER S. MHANDO_____ **RESPONDENT**

RULING

S. M. MAGHIMBI, J.

This ruling is in respect of the preliminary objections, raised by the respondent's counsel, on points of law that:

- i. That the order of the CMA against which the revision application is preferred is interlocutory.
- ii. That the orders of the CMA did not finally determine the substantive rights of parties before it and explicitly conclude the dispute.

The preliminary objections were disposed by way of written submissions. Before this court the applicant was represented by Mr. Rahim Mbwambo, learned Counsel whereas Mr. Balthazar Kitundu learned Counsel appeared for the respondent.

In his submissions to support the objection, Mr. Kitundu submitted that interlocutory order only settles intervening matter relating to the cause. That in the present application, the applicant is applying for revision of the order of the CMA which granted the respondent condonation so as to proceed with the main application. He stated that such order cannot be challenged at the High court independent of the main application.

Mr. Kitundu submitted further that the CMA's decision did not determine the substantive rights of the parties thus the main application was not dosed. That the remedy to an application like this is to let the main application be heard and determined on merit. To support his submission, he cited the case of **Hon. Minister for Finance and Planning and 2 others v. Legal and Human Rights Center**, Miscellaneous Application No. 16 of 2021, High Court of Tanzania at Dar es salaam.

He further submitted that the granting of this application is to defeat the purpose of leave since the decision challenged was just a step taken for the purpose of assisting the parties to pursue the rights in dispute and did not determine the substantive rights of the parties. He added that this application is prematurely filed before this court and the

applicants are advised to apply their rights at the appropriate time for consideration on merit by the court. He therefore urged the court to dismiss the application. The counsel further urged the court to award cost of this application. He sought support of his prayer from the High Court case of **Christian Kalinga v. Paul Ngwembe, Misc. Land Application No. 26 of 2020.**

Responding to the objection Mr. Mbwambo urged the court to adopt the meaning of interlocutory order defined in the case of **Seif Sharif Hamad v. S.M.Z (1992) TLR 43** where it was held: -

"An order which decide not the cause, but settle some inteneing matter relating to it "

He submitted that the assertion that the decision of condonation forms part of the main application is erroneous and not supported by the labour laws. He stated that condonation is a different application from the main application and the provisions regulating the same are distinct. That an application for extension of time is not interlocutory as submitted by Mr. Kitundu because it affects the rights of the parties therein. He added that extension of time being the unique application, the orders sought are also unique on its nature and cannot be concluded as interlocutory application. He invited the court to apply the test of

interlocutory order applied in the Court of Appeal case of **Tanzania Posts Corporation v. Jeremiah Mwandu, Civil Appeal No. 474 of 2020**, at Kigoma. He added that the cases cited by Mr. Kitundu are distinguishable to the case at hand.

Having considered the rival submissions of the parties, in order to clearly determine the objections on record, it is important to define the term interlocutory. I appreciate the definition of the relevant term as was stated by the cases cited by the parties. Under the Legal Dictionary by SL Swan and U.N. Narang, 25th Edition, 2015 cited in the case of [**The Board of Trustees of National Social Security Fund \(NSSF\) v. Pauline Matunda, Labour Revision No. 514 of 2019**](#) the term interlocutory order was defined to mean: -

"Order determining an intermediate issue, made in the course of a pending litigation which does not dispose of the case but abides further court action resolving the entire controversy. They are steps taken towards the final adjudication for assisting the parties at the prosecution of their case in pending proceedings".

The above meaning is also in line with the decision in the case of [Seif Sharif Hamad v. S.M.Z](#) (supra) cited by Mr. Mbwambo. From the cited definitions, the question to be addressed is whether an order of grant of an application for condonation is interlocutory? To answer this issue, I adopt the test put in the Court of Appeal of Tanzania case of [Vodacom Tanzania Public Limited Company vs. Planetel Communications Limited](#), **Civil Appeal No. 43 of 2018** (unreported) where the Court adopted the test in the case of **Bozson vs. Artincham Urban District Council (1903) I KB 547** wherein Lord Alverston stated as follows:

"It seems to me that the real test for determining this question ought to be this: Does the judgment or order; as made finally dispose of the rights of the parties? If it does, then I think it ought to be treated as final order; but if it does not, it is then, in my opinion, an interlocutory order. "

In line with the above test, it is my considered view that the order of granting extension of time to the applicant did not dispose of the rights of the parties. By granting the condonation sought, the applicant's rights are not prejudiced in any way. The CMA only clothed itself with

jurisdiction to determine a dispute was then filed under CMA Form No.

1.

On that basis I am in agreement with Mr. Kitundu that the purpose of ruling that application for condonation is interlocutory is to avoid prolonged litigations. Being an interlocutory order, the applicant's right to challenge the contested decision is reserved until final determination of the main application. Rule 50 of the Labour Court Rules provides that:

"Rule 50- No appeal review, or revision shall lie on interlocutory or incidental decision or orders, unless such decision had the effects of finally determining the dispute. "

From the wording of the Rule, it prohibits revisions against interlocutory orders or decisions which do not determine the matter to its finality, With respect, I have also noted Mr. Mbwambo's submission that the application for condonation and the main application are two distinct applications. This interpretation is contrary to the provision of Rule 11 (1) (2) of GN 64/2007 which provides as follows: -

"Rule 11 (1) This Rule applies to any dispute, referral document or application delivered outside the applicable time prescribed in the Act or these Rules.

(2) A party shall apply for condonation, by completing and delivered delivering the prescribed condonation form when delivering the late document or application to the Commission.

This form must be served on all parties to the dispute "

Going by the wording of the above quoted provision, it is unambiguously provided that an application for condonation has to be filed together with the late document or application. In this application, the late document was the CMA Form No. 1 therefore it is the requirement of the law to file both documents at once. Under such circumstances, it is crystal clear that an application for condonation cannot stand alone as a distinct application from the main application. Determination of the main application depends on the determination of the application for condonation hence in the premises, the decision of condonation is an interlocutory order which is prohibited to be challenged at this stage under Rule 50.

On the findings above, it is conclusive that the present application emanated from an interlocutory decision of the CMA. Consequently, it is hereby dismissed. As for the respondent's prayer for costs, this being a labour matter and having no facts establishing that the applications

vexatious, I make no orders to cost pursuant to the provision of Rule 51 of the LCR.

Dated at Dar es Salaam this 22nd day of April, 2022.



A handwritten signature in blue ink, appearing to be 'S.M. Maghimbi', is written over a horizontal dotted line.

S.M. MAGHIMBI
JUDGE