

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

MISC. APPLICATION NO. 205 OF 2022

BETWEEN

ACCESSBANK TANZANIA LIMITED APPLICANT

VERSUS

SAMWEL KILULU RESPONDENT

RULING

S.M. MAGHIMBI, J.

The applicant has moved this court under the provisions of Rule 24(1), Rule 24(2),(a),(b),(c),(d),(e) and (f), Rule 24(3), (a),(b),(c) and (d) and Rule 28(1), (c)(d) and (e), Rule 55(1), Rule 56(1) of the Labour Court Rules GN. No. 106 of 2007. He is seeking for orders extending time so that he can file an Application for Revision of the award of the CMA in Labour Dispute No. CMA/DSM/KIN/419/19/205. The applicant also prayed for costs of this application and any other orders as the court may deem fit.

While filing his counter affidavit to oppose this application, the respondent, duly represented by Mr. Dismas Raphael, raised three preliminary points of objection on point of law that:

1. The application is un-procedural and an abuse of court process.
2. The application is vexatious, frivolous and unfounded.
3. The application is defective for containing defective affidavit which offends Rule 24(3)(a)(c) and (c) of the Labor Court Rules,
4. The application is defective for being supported by an affidavit with untrue information.

On the day of the hearing of the preliminary objection, Mr. Dismas Raphael, learned advocate, represented the respondent while Mr. Humphrey Mwasamboma, learned advocate, represented the applicant.

In his submissions to support the objection, Mr. Raphael started with the submission on the first point of objection that the application is un-procedural and an abuse of court process. He submitted that this is a 4th application before this honorable court lodged by the applicant. The first application was Revision Application No. 203/2021 which was before Hon. Arufani, Judge. The application was withdrawn for being defective and the applicant was granted leave to refile it, she then refiled Labor Revision No. 385/2021 which was filed out of the time limit they were granted by the Court (Hon. Arufani, J). The respondent raised an objection and the applicant conceded that the matter was filed out of time. Owing to that,

this court (Hon. Rwizile Judge) dismissed the application on the 24/03/2022.

Mr. Raphael pointed out that subsequent to the dismissal of the Revision for being time barred, the applicant lodged a Misc. Application No. 115/2022 (herein I will refer to it as "Application No. 115") seeking for extension of time to file yet another revision. That in the said Application No. 115, the respondent raised a Preliminary Objection on the application on the ground that the applicant has filed two similar applications in this court, the current one and another one (Application No. 115/2022) which was pending before Hon. Rwizile Judge. In the Application No. 115/2022, the applicant, represented by an advocate called Humphrey, prayed to withdraw the application so that they come and proceed with this application. That when this particular application was filed, the Application No. 115/2022 was still pending. Mr. Raphael argued what the applicant did be un-procedural and abuse of court process.

Submitting on the position of the law, Mr. Raphael pointed out that the law is clear arguing that when any matter is dismissed for being time barred, then the aggrieved party will not be allowed to institute an application for extension of time in the same court. He supported his

submissions by citing the case of **East African Development Bank Vs. Blueline Enterprises Limited, Civil Appeal No. 101/2009**, (DSM) which was also cited in the case of **Abihali J. Songa & 164 Others Vs. Sinoma International Engineering, Misc. Labor Application No. 26/2019**, High Court Mtwara whereby on page 5&6 of the decision, the judge was faced with a similar situation and emphasized that after the case is dismissed then a person cannot come back again. On that principal, he argued the applicant was not supposed to bring an application for extension of time in this same court.

In reply, Mr. Mwasamboma, learned Counsel representing the applicant, submitted that we submit that the objection is unfounded. His reason for saying so where that in Mr. Raphael's explanation, there is nowhere that he has proved to this court an abuse of court process. He elaborated that Revision No. 203/2021 was withdrawn before Hon. Judge Arufani, because the applicant came to realize that the application is defective and as an officer of the court he thought it was wise that he withdrew the application so that he could bring a proper application. As for the reason of withdrawal, Mr. Mwasamboma pointed out that the application was not supported by Chamber Summons. This Court (Arufani,

J) granted him 7 days to refile the application. On what he alleged to be a misinterpretation of the law, Mr. Mwasambona filed Revision Application No. 385/2021 which was before Hon Rwizile J. that in the said application, the respondent raised an objection that the application was out of time and after analyzing the application and saw that it was filed the application on the 08th day of the order, the applicant's advocate realized that he was wrong and that is why in order to serve the time of the court and parties, the advocate present on that day conceded to the raised objection that the application was time barred.

Mr. Mwasambona went on submitting that the Application No. 115/2022 that was aimed to apply for extension of time to file revision, escaping liability by saying that when the Application No. 115/2022 was filed in court he was on leave and it was Baraka who lodged the application and also the one who told him the application was dismissed and he then lodged the application No. 205/2022. That it was not until when he came to court for execution when Mr. Raphael told him that the Application No. 115/2022 was pending in court and that is why he decided to withdraw one application and chose the one in which he was not aware of and proceeded with this one. He argued that the essence of the withdrawal

was to stop an abuse of court process. Further that all was done to ensure that the applicant was getting an opportunity to be heard on his case and not abusing the court process.

On the cited case of East African Bank and the case of Abdilahi J Songa & Others, Mr. Mwasamboma submitted that the case is distinguished with what the advocate has said. He alleged that in the cited cases the proper remedy was not to apply for extension because the case was dismissed. he cited the case of **Hezron Nyachia Vs. Tanzanian Union of Industrial and Commercial Workers and Another, Civil Appeal no. 79/2001** (unreported), where the court had this to say:

"We were impressed by Mr. Magesa's observation that it has been a practice by court to strike out such proceedings but with due respect to the learned Counsel, we think he had in mind this court. If that is what he had in mind, then he was right. This is so because the LLA does not apply in respect of proceedings instituted in this court as provided for under Section 43(b) of the said Act."

He argued that as per the cited case, the matter was to be dismissed and not to be struck out as ordered by Hon. Judge Rwizile.

Having gone through the submissions on the first point of objection, I am in agreement with Mr. Raphael that what the applicant is attempting to do is a pure abuse of court process. This is because first; the applicant's advocate was present when Hon. Judge Arufani struck out the application and granted the applicant leave to refile within 7 days. The applicant did not abide to and instead the application was filed out of the time granted by the court. Following the failure to refile the application within time, this Court (Hon. Rwizile, Judge) dismissed this application for being time barred.

It is trite law that after the application for Revision was dismissed, this court ceased to have jurisdiction to entertain the same matter even by extending time to refile the intended application. I am sure the applicant, who is represented by learned advocates, is aware of the situation because it is a fundamental principle of law. A dismissed application cannot be restored at the same court; neither can a court extend time after the matter was dismissed in the same court. If the applicant was aggrieved by the dismissal order of this court, he ought to have appealed to the Court of Appeal and not come back to this court and seek for extension of time.

Owing to that, I find the objection to have merits and it is hereby sustained.

I have noted that Mr. Raphael pressed for costs, a prayer which I will discuss in line with his second line of objection that the application is frivolous and vexatious. Generally speaking, Section 50(6) of the Labour Institutions Act, Cap. 300 R.E 2019 ("LIA") prohibits any fees, cost or interest to be payable in respect of any proceedings before the Court under the provisions of the Act. However, under exceptional circumstances, Section 50(7) allows the Court to order costs when the application is found to be frivolous and vexatious. The Section provides:

"(7) Notwithstanding subsection (6)-


(a) where any proceedings appear to the Court to be frivolous or vexatious, the Court may, in its discretion, order the party initiating such proceedings to defray the general costs and interest and, in default of payment, the said party shall be liable to imprisonment for such a period not exceeding one month as may be ordered by the court; and

(b) the general cost or interest may be imposed upon the occasion of the trial and without any action or proceeding for the recovery."

The important thing to see at this juncture is whether the act of the applicant to file multiple applications which are found to be an abuse of process, justify the court to exercise the discretion to award costs. Indeed the circus shown by the applicant show nothing but a pure abuse of process which is inclined to block the ends of justice and bar the process of execution. I cannot imagine how a learned advocate can have so many rough plays in one court. Having two applications struck out and eventually dismissed from the court, lodging subsequent applications on a trial and error basis by having same Application (Applications No. 115 of 2022 and the current application) and most of all applying for extension of time after an application has been dismissed for being time barred is a pure abuse of the process. All these show frivolous and vexations conducts which call for the special circumstances under which this court can grant costs u/s 50(7) of the LIA. Therefore under these peculiar circumstances I hereby proceed to award costs to the applicant.

In conclusion, having sustained the first objection, I need not dwell on the 3rd and 4th points of objection. This application is hereby dismissed with costs awarded to the respondent.

Dated at Dar es Salaam this 15th July, 2022.


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S.M. MAGHIMBI
JUDGE

