

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

**MISC. APPLICATION NO. 64 OF 2022**

**BETWEEN**

**ZAMBIA CARGO & LOGISTICS COMPANY LIMITED ..... APPLICANT**

**VERSUS**

**STANLEY NYAKUNGA & 39 OTHERS ..... RESPONDENTS**

**RULING**

**S.M. MAGHIMBI, J:**

The current application was lodged under the provisions of Section 94(1)(e) of the Employment and Labour Relations Act, [Cap 366 RE 2019] ('ELRA'), Rules 24(1), 24(2)(a), (b), (c), (d), (e), (f), 24(3)(a), (b), (c), (d) and Rule 56(1), (2), (3) of the Labour Court Rules GN No. 106 of 2007 ('LCR'). The applicant is seeking for the following orders:

1. That the Honourable court be pleased to extend time for the applicant to file a revision out of time in respect of a decision of the Commission of Mediation and Arbitration ('CMA') delivered on 02<sup>nd</sup> May, 2018 before Hon. Stanslaus, Arbitrator on reasons more stated in the supporting affidavit.
2. Any other orders and reliefs the Hon. Court shall deem just and fit to grant.

The application was supported by an affidavit of Ms. Rachel Madumba, applicant's Principal Officer. On the other hand, Mr. Mashaka Moyo, one of the respondents sworn in the affidavit on behalf of other 6 respondents. He further notified the court that the remaining respondents are not parties to this application.

The application was argued by way of written submissions. Before the court the applicant enjoyed the service of Ms. Regina Kiumba, Learned Counsel whereas Mr. Ashery Stanley, Learned Counsel appeared for the respondents. I appreciate the comprehensive submissions of both counsels which shall be taken on board in due course of constructing this ruling.

In her submissions, Ms. Kiumba's main ground for extending time was illegality of the ruling and order of the CMA dated 02<sup>nd</sup> May, 2018 which condemned the applicant unheard, a ruling which imposed a monetary award against her. She submitted that to determine this application, the court should consider two issues to wit, was the court wrong to issue a monetary award on 2<sup>nd</sup> May, 2018 without affording the applicant a hearing and whether such error constituted an illegality envisaged under the law to warrant a cause for extension of time.

Responding to the application Mr. Stanley also proposed two issues to be addressed by the court to wit, whether applicant has locus to file an application for extension of time and whether applicant has demonstrated sufficient ground to warrant this Honourable court to extend time within which to file revision application.

Before determining the merit of the application, I have noted an important issue raised by Mr. Stanley on the locus of the applicant to lodge the current application. He pointed out that this application emanates from the decision of the CMA where the parties were Stanley Nyakunga and 39 others Vs. MOFED Tanzania Limited. He stated that the applicant, Zambia Cargo & Logistics Company Limited is a new person who never appeared in the CMA's proceedings.

Mr. Stanley went on to submit that it has been decided by this court in Revision No. 192 of 2019 that the applicant has no capacity to challenge the CMA's decision because he was never a party thereto. He elaborated that in the referred case the applicant was challenging the order in Execution No. 391 of 2017 where the Deputy Registrar also ruled out that he has no jurisdiction to entertain the application because the application was filed by the one who was not a party to CMA's proceedings, a position similar to that in Revision No. 951 of 2019

between the same parties herein. He supported his submissions by citing the case of **CRDB Bank Plc (formerly CRDB (1996) Ltd Vs. George Mathew Kilindi, Civil Appeal No. 110 of 2017**, and on that precedent, he urged the court to dismiss the application.

Responding to the raised issue, the applicant submitted that she has a right to sue in this application. That annexure 'TMA-6' proves change of name of the applicant and that the respondents conceded in their counter affidavit that the applicant was formerly trading as MOFED (Tanzania) Limited. She insisted that the applicant herein is a proper party to this suit.

After considering the arguments of both parties, I am inclined to agree with the submission of the Mr. Stanley which is also what is reflected in the records of the CMA proceedings and the subsequent award. In those records, the parties were **Stanley Nyakunga na Wenzake 39 Vs. Mofed Tanzania Limited**, in that case, the applicant's name is not featured anywhere. The record further show that the applicant herein has been trying to file various applications and the court found him a stranger to the case at hand. It is undisputed that the name **Mofed Tanzania Limited** who was the original party to CMA's proceedings has been changed to **Zambia Cargo & Logistics**

**Company Limited** who is the applicant herein, as evidenced by annexure TMA-6. However, in order to change the name of the original applicant leave of the court has to be sought. This is the court's decision in the case of **CRDB Bank Plc (formerly CRDB (1996) Ltd. V. George Mathew Kilindi** (supra) where it was held that:-


*"It is our considered view that citing of all these new names for the appellant without leave or an order of the court is a fatal irregularity which has affected the competence of the entire appeal and cannot be rectified by a Slip Rule as we decided in the case of **Inter – Consult Limited** (supra) ..."*

In line with the decision quoted above, it is my view that failure of the applicant herein to sought leave of the court before filing the present application is a serious illegality which affects his locus to sue in this application. I am also in agreement with the other decisions by this court on the same parties, that the applicant has no capacity to sue in this application without leave of the court. I have noted that in several applications on the same dispute, the applicant has been filing matters under the same new name herein and the previous applications were struck out therefore, as a prudent man she ought to have rectified the mistake and file competent application, otherwise one may be convinced that the applicant is deploying some delaying tactics to satisfy decree.

In conclusion and for the reasons stated above, I find the present application to be incompetent for being initiated by a stranger without leave of the court. In consequence thereof, the application is hereby struck out. If the applicant is still interested in pursuing her right, then she should bring a fresh application which shall feature the name of MOFED Tanzania Limited or seek leave of the court to change the name of the party.

Dated at Dar es Salaam this 22<sup>th</sup> day of July, 2022.



  
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**S.M. MAGHIMBI**  
**JUDGE**