

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**MISC. APPLICATION NO. 473 OF 2021**

**TUICO (O.B.O THOMAS MASHAKA & 760 OTHERS..... APPLICANTS**

**VERSUS**

**SOUTHERN PAPER MILLS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**THE TREASURY REGISTRAR..... 2<sup>ND</sup> RESPONDENT**

**MUFINDI PAPER MILLS LIMITED .....3<sup>RD</sup> RESPONDENT**

**RAI GROUO OF KENYA .....4<sup>TH</sup> RESPONDENT**

**RULING**

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

**11<sup>th</sup> August 2022 & 23<sup>rd</sup> September 2022**

This ruling is in respect of a preliminary objection raised by the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents against the application for extension of time to file revision application against the decision of the Registrar of this Court in Execution Number 162 of 2017.

The preliminary objection is to the effect that the application is not tenable because of a dismissal of a similar application registered as Revision Application No. 499 of 2020 which was dismissed for being time barred by Mganga J.

The preliminary objection was disposed of by a way of written submissions. The respondents were represented by Ms. Dora Mcharo, State Attorney, while Mr. Richard Madibi, Learned Advocate represented the applicant.

The point of objection challenges this application for having been filed after a dismissal of another similar application (Labour Revision Application No. 499 of 2020) before Mganga J. According to Ms. Dora, the Court dismissed this application for being time barred but the applicant is coming back to seek extension of time to file a similar application as the one which is already dismissed.

In Ms. Dora's view, dismissal amounts to conclusive determination of a matter unless the dismissal order is vacated. She cited the case of **MM Worldwide Trading Company Limited and two others versus National Bank of Commerce Limited, Civil Appeal No 258 of 2017 (Unreported)**. According to Ms. Dora, in this case the Court of Appeal was confronted with an application for extension of time to lodge a petition where a similar petition was already dismissed by the court. She submitted the Court of Appeal held that it was not open for a party to go back to the same court and seek extension of time. She thus prayed for this court to dismiss the application as it is not tenable in law.

In response, the applicant defended the tenability of the application arguing that since the previous application was not heard on merit, then the applicant is not barred from refiling it. He cited the case of **Maunda S/O Mogosi @ Nyambarokera versus Republic**, Criminal Appeal No. 260 of 2018 CAT (Unreported) and the case of **Tanzania Brewaries Limited versus Edson Muganyizi Barongo and 7 others; Misc. Labour Application No. 79 of 2014**: High Court of Tanzania Labour Division (Unreported).

It is the applicant's view that a party is barred from reinstituting a matter only when the previous one was dismissed after being heard on merit, but when the dismissal did not consider the merit of the matter then a similar application can be lodged in the same court.

In rejoinder, the Ms. Mcharo challenged the relevance of the case **Maunda S/O Mogosi** in the instant application by referring the words of the justices on appeal that the time barred criminal matters in court of law are incompetent matters whose remedy is striking out. She questioned as to whether the instant case is a criminal matter.

Having gone through the parties' submissions, I feel fit to frame the following issue for determination: **whether this application is tenable in law for seeking extension of time to lodge an**

**application similar to the one already dismissed by this court for being time barred.**

It is not disputed that the application sought to be filed after this application for extension of time has already been a subject matter in similar application vide Labour Revision No. 499 of 2020 before Mganga J which was dismissed for being time barred.

It is a well known position in our law that dismissal of a matter means conclusive determination of it. When a matter is dismissed by any reason, then it becomes *re judicata* hence it cannot be filed in the similar court unless the dismissal order is vacated. I see relevance in the case of **MM Worldwide Trading Company Limited** which is cited by the Respondent's counsel.

I agree with the counsel for the respondent that the case of **Maunda S/O Mogosi** cited by the applicant is not relevant in this matter because that case was criminal matter in nature. As well in that case, the court stated that the matter ought to have been struck out and not dismissed. I could not see a position of the Court of Appeal allowing an already dismissed matter to be reinstituted in the same court. I agree with Ms. Dora that a dismissal order does not leave any door for such a

dismissed matter to return back to the same court while the dismissal order is still alive or unvacated.

From the above reasoning, the issue as to **whether this application is tenable in law for seeking extension of time to lodge an application like the one already dismissed by this court for being time barred** is answered negatively.

Consequently, I find that the preliminary objection has merit. I uphold the preliminary objection and hold the application incompetent before this court, and I hereby strike it out. No order as to costs.

It is so ordered.

Dated at Dar es salaam this 23<sup>rd</sup> Day of September 2022



**KATARINA REVOCATI MTEULE**

**JUDGE**

**23/09/2022**

