

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

MISCELLANEOUS LABOUR APPLICATION NO. 465 OF 2022

BETWEEN

MOHAMED KIAMA AND 30 OTHERS APPLICANTS

VERSUS

TANZANIA RAILWAYS CORPORATION 1ST RESPONDENT

RULING

Date of last Order: 27/03/2023

Date of Ruling: 27/03/2023

MLYAMBINA, J.

This matter has a long history. It emanates from the decision of the Industrial Court of Tanzania in *Trade Dispute No. 43 of 2004*. It was struck out for violating *Section 87(a) of Tanzania Railway Corporation Act Cap 170 R.E. 2002*. Aggrieved with the decision therein, the Applicants preferred *Misc. Civil Appeal No. 9 of 2005* before this Court. The appeal was found incompetent. It was dismissed on 23rd October, 2009.

Out of search of their rights, the Applicants lodged *Civil Appeal No. 79 of 2010* before the Court of Appeal of Tanzania. The same was struck out on 7th August, 2017 for missing record of proceedings contrary to *Rule 96(2)(c) of the Court of Appeal Rules, 2009*. For reasons known to the Applicants, they again filed *Civil Appeal No. 193 of 2021* before this Court of

Appeal. The same was marked withdrawn on 22nd August, 2022 pursuant to *Rule 102(2) of the Court of Appeal Rules (supra)*.

Thereafter, the Applicants filed *Misc. Application No. 332/2021* before the Court seeking for extension of time to file Notice of Appeal and Appeal before the Court of Appeal.

Unfortunately, the said application was struck out on 20/4/2022 before filing *Misc. Application No. 402/2022*. The latter was withdrawn on ground that the supporting affidavit had discrepancies. That was on 9th November, 2022.

Still, the Applicants filed this application on 22nd November, 2022. On the 27th March, 2023, when this application was called for hearing, and upon been probed by the Court on the future prospects of the intended appeal, learned Counsel Eliezer Kileo for the Applicants prayed to withdraw the application with leave to refile. The main reason being that there is an affidavit of Hon. Deputy Registrar of this Court dated 19th February, 2021 to the affect that the Proceedings of the impugned decision of the Industrial Court of Tanzania cannot be traced. The Applicants would rather prefer an application for extension of time to file revision instead of appeal. In response, learned State Attorney Celine Kapange had not objection to the prayer for withdrawal save for leave to refile.

Having considered the records before the Court, the sub mission of Counsel Eliezer and Ms. Kapange, I find there is no good reason to refuse the prayer for withdrawal of the application. The prayer for leave to refile the application is rejected on two grounds. First, an application for extension of time to file Notice of Appeal and leave to file extension of time for filing Revision out of time are two different matters. Two, leave to refile an application out of time needs be supported with relevant evidences and subject to the law of limitation.

In the circumstance of the above, this *Misc. Labour Application No. 465 of 2022* is marked withdrawn with not costs pursuant to *Rule 34 of the Labour Court Rules, 2007*. It is so ordered.


Y.J. MLYAMBINA
JUDGE
27/03/2023

COURT:

Ruling delivered and dated 27th day of March, 2023 in the presence of learned Counsel Eliezer Kileo for the Applicant and learned State Attorney Celine Kapange for the Respondent.




Y.J. MLYAMBINA
JUDGE
27/03/2023