

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM
MISCELLANEOUS APPLICATION NO. 51 OF 2023

JOSEPH W. MWITA.....APPLICANT

VERSUS

KARIAKOO BAZAAR LTD.....RESPONDENT

RULING

Date of last order: 15/05/2023
Date of Ruling: 22/05/2023

B. E. K. Mganga, J.

Brief facts of this application are that Joseph Wesiko Mwita, the herein applicant, was an employee of Kariakoo Bazaar Ltd, the herein respondent. It happened that respondent terminated employment of the applicant. Aggrieved with termination, applicant filed Labour dispute No. CMA/DSM/KIN/688/2019/131 before the Commission for Mediation and Arbitration henceforth CMA complaining that he was unfairly terminated. On 23rd May 2022, Hon. William R, Arbitrator issued showing that applicant worked for less than 6 months' hence cannot file the dispute for unfair termination. The arbitrator awarded applicant to be paid one month salary in lieu of notice.

Aggrieved with the said award, applicant filed Revision No. 234 of 2022 before this court. When the said Revision application was called on for hearing, the court(B.E.K. Mganga, J) raised the issue of limitation of

time suo motu and asked the parties to make submissions thereof. Having heard submissions of the parties, on 17th August 2022, the court dismissed Revision application No. 234 of 2022 for being time barred.

After dismissal of Revision application No. 234 of 2022, applicant filed this application seek extension of time within which to file revision to challenge the award that was issued by Hon. William R, Arbitrator on 23rd May 2022. In support of the Notice of Application, applicant filed his affidavit stating that he did not file the application within time due to negligence of his counsel one Victor Serv Kessy, who was assigned the case under *pro bono* basis by TLS. Applicant stated further that, after Revision application No. 234 of 2022 was dismissed for being time barred, the said advocate filed in this court a fresh application No. 350 of 2023 which did not contain reasons for delay and attracted objection from the respondent. Applicant also stated that the said advocate after distorting the case, withdrew from the case which necessitated him to seek legal aid from the University of Dar es salaam.

Resisting the application, respondent filed the counter affidavit affirmed by Adinani Abdullah Musalam, who just denied the allegations.

By consent of the parties, the application was disposed by way of written submissions.

In filing written submissions, applicant enjoyed the service of Legal Aid Committee of the University of Dar es Salaam. It was submitted on

behalf of the applicant that applicant frequently searched for his rights through his trusted advocate who knowingly or unknowingly failed the case by his lack of diligence. The cases of ***Felix Tumbo v. Tanzania Telecommunication Co. Ltd and Tanzania Posts and Telecommunication Corporations*** [1997] T.L.R 154 and ***Yusufu Same and Another v. Hadija Yusufu***, Civil Appeal No. 01 of 2002, CAT(unreported) to support submissions that lack of diligence of advocate would warranty sufficient cause for extension of time to the affected party. It was therefore argued on behalf of the applicant that, the delay was due to technical issues and negligent advocate and prayed the application be granted.

Opposition the application, Ms. Queen Sambo, advocate for the respondent, submitted that applicant first filed Revision application No. 234 of 2022 which was dismissed by this court for being time barred hence the court is *functus officio*. Counsel for the respondent cited the case of ***Mohamed Enterprises (T) Limited Vs Masoud Mohamed Nasser***, Civil Application No. 33 Of 2012, CAT(unreported) and ***Malik Hassan Suleiman v. SMZ*** [2005] T.L.R. 237, ***Medard v. Minister for Land Housing and Urban Developments and Another*** [1983] T.L.R. 250 to support her submissions that the court is *functus officio*. Counsel for the respondent submitted further that, the available remedy for the applicant if he was dissatisfied with the ruling dismissing Revision

application No. 234 of 2022 for being time barred, was to file an Appeal before the Court of Appeal and not to apply for extension of time in the same court. Counsel for the respondent cited the case of ***Vedasto Lesteh Lwizah v. Ahmadi Mussa Chombo and Hamis Said***, Land Revision No. 36 of 2020, HC (unreported).

In rejoinder, it was submitted on behalf of the applicant that counsel for the respondent misdirected herself in submitting that the court is *functus officio* after dismissal of revision application No. 234 of 2022. It was further submitted on behalf of the applicant that, the remedy available after dismissal of revision No. 234 of 2022 for being time barred, was for the applicant to apply for extension of time and not to file an appeal before the Court of Appeal. It was further submitted on behalf of the applicant that, the court becomes *functus officio* when it renders orders finally disposing of the case before it. It was further argued that Revision application No. 234 of 2022 was not decided on merit hence the court is not *functus officio*.

It is undisputed by the parties that on 17th August 2022, this court issued a ruling dismissing revision application No. 234 of 2022 between the parties for being time barred. See ***Joseph Wesiko Mwita vs. Kariakoo Bazaar Ltd*** (Rev. Appl 234 of 2022) [2022] TZHCLD 737. There is a litany of case laws to the effect that once a matter is dismissed for being time barred, the party to the proceedings cannot go

back to the same court and file an application for extension of time. See the case of **Johnson Amir Garuma vs The Attorney General & Others** (Civil Appeal 206 of 2018) [2023] TZCA 116, **Olam Uganda Limited Suing vs Tanzania Habours Authority** [2007] T.L.R. 211[CA] also Tanzlii Media neutral citation [2007] TZCA 183, **Hashim Madongo and 2 Others v. Minister for Industry and Trade and 2 Others**, Civil Appeal No. 27 of 2003 to mention but a few. In **Garuma's case** (supra), the Court of Appeal quoted its earlier decisions in the case of **Olam Uganda's case** (supra) and **Madongo's case** (supra) and held:-

"...Once an order of dismissal is made under section 3 (1) it is not open to an aggrieved party to go back to the same court and institute an application for extension of time. The rationale is simple that is, as far as the court is concerned the issue of time limitation has been determined. So, a party cannot go back to the same court on the same issue".

It is clear from the foregoing that, the Court of Appeal was discussing the provisions of section 3(1) of the Law of Limitation Act[Cap. 89 R.E. 2019]. In **Olam Uganda's case** (supra) the Court of Appeal held:-

"...the dismissal amounted to a conclusive determination of the suit by the High Court as it was found to be not legally sustainable. The appellant cannot refile another suit against the respondent based on the same cause of action unless and until the dismissal order has been vacated either on review by the same court or on appeal or revision, by this Court..."

In the application at hand, the ruling dismissing Revision application No. 234 of 2022 has not been vacated either on review by this court or by the Court of Appeal on appeal. It is my considered opinion that the court is *functus officio* as far as the issue of limitation of time is concerned. I therefore agree with counsel for the respondent that this court cannot reopen the same issue. If applicant was aggrieved with the ruling dismissing revision application No. 234 of 2022 for being time barred, he was supposed to appeal to the Court of Appeal.

For the fore going, I hereby dismiss this application for want of merit.

Dated at Dar es Salaam on this 22nd May 2023.



B. E. K. Mganga
JUDGE

Ruling delivered on this 22nd May 2023 in chambers in the presence of Joseph Wesiko Mwita, the Applicant and Queen Sambo, Advocate for the Respondent.



B. E. K. Mganga
JUDGE