

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS LABOUR APPLICATION NO. 49 OF 2023

(Arising from an Award issued by CMA in Labour dispute No. CMA/DSM/ILALA/R.88/16/67)

BETWEEN

THOMAS SABAI APPLICANT

VERSUS

TAMICO RESPONDENT

RULING

Date of last Order: *01/06/2023*

Date of Ruling: *15/06/2023*

MLYAMBINA, J.

The brief facts of this application are that; the Respondent is a Trade Union of Workers in the mining sector, headed by a Secretary General as Chief Executive Officer. The Applicant was a Secretary General who got suspended at some stage of his employment. In pursuance of that suspension, the Respondent stopped payment of cash for the 'fringe benefits' hence the Applicant referred the matter to the Commission of Mediation and Arbitration (herein CMA) via *Labour Dispute No. CMA/DSM/ILA/767/19/370*. The verdict was that the Applicant was not

entitled to those allowances for the reason of that suspension. The Applicant unsuccessful sought revision at this Court.

By a dramatic turn of events, the General Assembly held a meeting and resolved to reinstate the Applicant to his post with no loss of benefits and that another person was appointed Secretary General, effectively terminating the Applicant's services. While the Respondent was now struggling to pay the withheld fringe benefits, the Applicant claimed he was entitled to 'terminal benefits' in the form of salary due, any leave not taken, notice, annual leave (if any), severance pay, repatriation, certificate of service and subsistence allowance. The claim brewed a dispute which was referred to *CMA vide CMA/DSM/KIN/4/22/2022*. The verdict was that the claim was barred by *res judicata* on ground that the question of benefits to Applicant was already settled by CMA in *CMA/DSM/I LA/767/19/370*. Aggrieved by that decision, the Applicant filed this application seeking extension of time within which to file revision to challenge the ruling that was issued in complaint *Ref. No. CMA/DSM/ILALA/R.88/16/67*.

In support of the Notice of Application, the Applicant filed his affidavit stating that there is illegality in the CMA ruling on the applicability of the doctrine of *res judicata* in the circumstances of this case, hence requires the

blessing of this Court to extend time for determination of the raised legal issues.

Resisting the application, the Respondent filed the counter affidavit affirmed by Peternus Rwechungura, her General Secretary who just denied the allegations.

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

In filing written submissions, the Applicant enjoyed the service of Everlasting Legal Aid Foundation. It was submitted on behalf of the Applicant that Courts have wide discretion in applications for extension of time in applications of this nature. It was further submitted that the test for determination of an application for extension of time is; *whether the application has established some material amounting to sufficient cause or good cause as to why the sought application should be granted*

It was submitted that, the material must be sufficient for the Court to discern factors such as reasons for delay, cause of delay, length of delay and account of days of delay and the existence of a point of law of sufficient importance, such as illegality of the decision sought to be challenged. He cited the cases of **Lvamuva Construction Company Ltd v. Board of Registered Trustees of Young Women Christians Association of**

Tanzania, Civil Appeal No. 2 of 2010, Court of Appeal of Tanzania, (unreported), **The Principal Secretary Ministry of Defence and National Service v. D. P. Valambhia** [19921 TLR, **The Regional Manager TANROADS KAGERA v. Ruaha Concrete Company Limited** , Court of Appeal of Tanzania, Civil Application No. 95 of 2007, **Barclays Bank Tanzania Limited v. Phvlician Mcheni and Tanga Cement, Fernand Nazareno Sanga v. Abdallah Leki Another** (Misc. Land Application No. 64 of 2020) 2021 (unreported).

It was submitted that, there is illegality which has undermined Applicant's entitlement to terminal benefits and such illegality should be considered as of sufficient importance in the circumstances. The Applicant added that the illegality on the impugned CMA ruling for holding that there is *res judicata*, stands in the way between disputes involving 'fringe benefits' on the one hand, and 'terminal benefits' on the other. The Applicant added that the said illegality was apparent on the face of the record.

The Applicant submitted further that; it is in the interests of justice and is the practice of the Courts that unless there are special reasons to the contrary, cases should be decided on merits. He cited *Article 107A(2)(e) of the Constitution of the United Republic of Tanzania, 1977* and the 'Overriding Objective' which is enshrined in the *Civil Procedure Code*. In supporting the

contention, he cited the Court of Appeal decision in **TANESCO v. Mufunqo Leonard Maiura and 15 others**, Court of Appeal of Tanzania at dar es Salaam, Civil Application No. of 2016, and Ugandan case of **Bonev M. Katatumba v Waheed**.

The Applicant concluded by praying for the time be extended as requested so that the illegality may be addressed and corrected accordingly.

Resisting the application, Mr. Evodi Mushi, Advocate for the Respondent, submitted that, the application has so many discrepancies namely: *Firstly*, the notice of application shows that the Applicant was praying for extension of time to file revision against decision of CMA in *Labour Dispute No. CMA/DSM/KIN* whereby the said number is incomplete as there had never been a dispute between this parties with such incomplete number. *Secondly*, the chamber summons shows that the Applicant is praying for extension of time to file revision against CMA decision in *Labour Dispute Number CMA/DSM/ILALA/R.88/16/67* Dated 26th May 2017 while the decision of the CMA attached was from *Labour Dispute Number CMA/DSM/KIN/4/22/2022* dated 10th October 2022. Therefore, what the Applicant was intending to challenge on his notice of application and chamber summons was not proper.

Counsel Mushi submitted further that the Applicant pointed out that the delay was only ten days from the date the 42 days lapsed while that fact was not true as the impugned decision of the CMA was delivered on 10th October, 2022 and the last page of the attached decision on the Applicant's affidavit shows he collected his copy on 13th October 2022. Hence, from 13th October 2022 when he collected his copy to 27th February 2023 when he filed this application was about 137 days. If one minus 42 days, he will find that this application was filed 95 days from the date 42 days to file revision lapsed and not 10 days as shown on the Applicant's submission and affidavit.

Counsel Evodi argued that; no any reason for the delay had been mentioned by the Applicant, rather insisted that, the delay was only for ten days from the date the 42 days lapsed and the point he want to challenge on revision was point of law. He argued further that, failure to account for 74 days delayed is good reason not to grant this application because the Applicant was trying to mere state that there is point of law. An intention to raise in his intended revision itself is sufficient reason to come into this Court the time he wishes.

He submitted further that; on paragraphs 5 and 6 of Applicant's affidavit, the Applicant admitted that the claims were denied by CMA by honourable Msina and he applied for revision and the same was determined

by honourable Arufani, J, but the Applicant filed the same claims to CMA before honourable Chacha who held that it was *res judicata*, the position which is basically correct.

Counsel Evodi argued further that; allowing the Applicant to bring the revision will be allowing him to bring revision for the second time while the same thing was decided to its finality by honourable Arufani, J. He added that; if the Applicant was aggrieved, the remedy was to appeal to the Court of Appeal and not to go back to CMA. He submitted further that; the Applicant's application is confusing and misleading with full of lies and contradictions as pointed and no good reasons for his delays had been submitted.

He concluded by praying for this matter be dismissed with costs for being frivolous and vexatious.

In rejoinder, the Applicant conceded on the said contradictions as raised by the counsel for the Respondent but insisted for the Court to be guided by the existence of the point of law intended to be revised, even if the delay was inordinate. The Applicant concluded that this application fit for favorable consideration by this Court for the interest of justice.

Having gone through the pleadings and rivalry submissions between the parties, this Court before discussing the merits of the application, finds

it proper to rule out on; *whether or not there is a competent application before me*. In other words, the main issue for determination is; *competency of the application*.

Addressing the issue pointed out *hereinabove*, I have gone through the enabling provision of this application. Rule 24 of Labour Court Rules, GN. 106 of 2007 provides inter alia that:

24 (1) *Any application shall be made on notice to all persons who have an interest in the a application*

(2) *The notice of application shall substantially comply with Form No. 4 in the Schedule to these Rules, signed by the party bringing the application and filed and shall contain the following information-*

(a) *N/A*

(b) *N/A*

(c) *N/A*

(d) *N/A*

(e) *N/A*

(f) ***List and attachment of the documents that are material and relevant to the application***

(3) *The application shall be supported by an affidavit, which shall clearly and concisely*

set out-

- (a) the names, description and address of the parties;*
- (b) a statement of the material facts in a chronological order, on which the application is based;***
- (c) a statement of the legal issues that arise from the material facts; and*
- (d) the reliefs sought.” [Emphasis added]*

Having revisited the record of revision, particularly the Notice of Application, Chamber Summons and the supporting affidavit thereof, and clearly, as expounded by the learned counsel for the Respondent, it is my humble opinion that, the affidavit deposed by the Applicant himself and the attached CMA ruling do not comprehend with the Notice of Application as well as the Chamber Summons. The contradiction is that, the averments on the affidavit supporting the application do not match/fit with the notice of application as well as Chamber Summons and at the same time the attached impugned CMA decision do not match with the labour dispute mentioned on the Notice of Application and the Chamber Summons. The Applicant, in his rejoinder conceded to the fact of discrepancies on the pleadings but insisted

that there is point of law on the impugned CMA ruling which need to be clarified only when this application for extension of time for filing revision is granted.

This Court is in dilemma as to which decision is called upon to extend time for it to be filed in this Court for Revision. This is on the fact that, while in Notice of Application and Chamber Summons, the Applicant is seeking extension of time to file revision of CMA decision in *Complaint Ref. No. CMA/DSM/ILALA/R.88/16/67*, on the other hand, in the affidavit supporting the Notice of Application, the Applicant avers on the extension of time to file revision in *Labour Dispute No. CMA/DSM/KIN/4/22/2022* at the same time the attached decision reflects *Labour Dispute No. CMA/DSM/KIN/4/22/2022*.

This Court finds it prudent to borrow the wisdom of the Court of Appeal when it was faced with the same scenario in the case of **South Freight and Export Company Ltd. v. CRDB Bank Ltd**, Civil Application No. 96 of 2013, where it was held:

In the circumstances, after finding that the Notice of Motion is, apart from being defective in substance, not supported by any valid affidavit, we hold without any demur that this application is incompetent and that being the case, it does not exist. It is, therefore, incapable of being amended. We accordingly strike it out.

In view of the above authority, where the Notice of motion was not properly supported by an affidavit, the Court of Appeal considered it as an incompetent application. Guided by the above principle, in the case at hand, the purported affidavit sworn by the Applicant on 6th December, 2022 and filed in this Court on 27th December, 2022, and the attached CMA Ruling *No. CMA/DSM/KIN/4/22/2022*, do not make reference to the impugned CMA Award which is reflected in the notice of application and Chamber Application. That is shown clear on the record while the notice of application is on complaint *Ref. No. CMA/DSM/ILALA/R.88/16/67*, The affidavit avers on *Labour Dispute No. CMA/DSM/KIN/4/22/2022* hence mismatch.

In the circumstances, without any further ado, I find that the application before the Court is incompetent to the extent explained. Consequently, the application is struck out without costs.

Right of Appeal explained.



Y.J. MLYAMBINA

JUDGE

15/06/2023

Ruling delivered and dated 15th day of June, 2023 in the absence of the Applicant and Ambakisye Kipamila, Legal Officer for the Respondent. Right of Appeal fully explained.




Y.J. MLYAMBINA

JUDGE

15/06/2023