

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 70 OF 2023

(Arising from an Award issued on 19/03/2021 issued by Hon. Amos, H, Arbitrator, in Labour dispute No. CMA/DSM/TEM/498/2019/193/2019 at Temeke)

AUGUSTINO KABALULA 1ST APPLICANT
EPAFLASI LUKASI MASONDA 2ND APPLICANT
MOHAMED SAID MTONYA 3RD APPLICANT
MOHAMEDI ABDALLAH TINDWA 4TH APPLICANT
SEVERINE PETRO MASIKA 5TH APPLICANT
WINFRED BENO MILINGA 6TH APPLICANT

VERSUS

MOROGORO PLASTIC LIMITED 1ST RESPONDENT
B.H. LADWA LIMITED 2ND RESPONDENT

RULING

*Date of last Order: 10/08/2023
Date of Ruling: 14/08/2023*

B. E. K. Mganga, J.

On 4th November 2019, the applicants filed Labour dispute No. CMA/DSM/TEM/498/2019/193/2019 before the Commission for Mediation and Arbitration (CMA) at Temeke complaining that they were unfairly terminated by the respondents. In the Referral Form (CMA F10

applicants were claiming to be paid TZS 140,739,552/= as compensation for unfair termination. On 19th March 2021, Hon. Amos, H, Arbitrator, having heard evidence of the parties issued an award in favour of the applicants that termination was unfair and awarded each applicant to be paid TZS 1,200,000/=. In total all applicants were paid TZS 7,200,000/=.

On 16th March 2023, applicants filed this application seeking the court to extend time within which to file an application for revision so that the court can revise the said award. In support of the application, applicants filed an affidavit sworn by Augustino Kabalula. In the said affidavit, the deponent stated that, after the said award, applicants filed an application for execution against the 1st respondent which is why they became out of time. He stated further that they have filed this application for extension of time so that they can file an application for revision against the 2nd respondent.

In opposing the application, respondents filed a counter affidavit sworn by Nehemia Geoffrey Nkoko, advocate. In the said counter affidavit, the deponent stated that following the issuance of the aforementioned award, applicants filed execution No. 238 of 2021 against the respondents. The deponent in the counter affidavit stated

further that on 14th June 2022, the respondents issued cheque No. 0301249991 valued at TZS 7,200,000/= covering the amounts applicants were awarded at CMA and further that applicants were duly paid the said amount by the Deputy Registrar, the executing officer. The deponent stated also that applicants have not adduced reasons for the delay and failed to account for each day for the two years they have been out of time.

When the application was called on for hearing, applicants were represented by Sadock George Mkunzi, Personal Representative while respondents were represented by Mngumi Samadani, learned Advocate.

Arguing the application on behalf of the applicants, Mr. Mkunzi, personal representative of the applicants, submitted that, reasons advanced by the applicants for the delay is that, they were prosecuting another application No. 338 of 2021 that arose from CMA/DSM/TEM/498/2019/193/2019 that was decided by Hon. Amos H, Arbitrator on 19th March 2021. He submitted further that, in the said dispute, applicants were awarded TZS 7,200,000/=. He added that, on 14th June 2022 applicants were paid the said amount through execution application No. 338 of 2021.

Mr. Mkunzi submitted further that; applicants filed Execution No. 338 of 2021 but they were not aware that they were supposed to file an application for revision. He added that on 16th March 2023 applicants became aware that they were supposed to file an application for revision after they had a discussion with him. In his submissions, he conceded that submissions that applicants were not aware that they were not supposed to file an application for revision and that they only became aware after discussing with him are not reflected in the affidavit in support of the application. All in all, Mr. Mkunzi prayed the application be granted.

Resisting the application, Mr. Samadani, learned counsel for the respondents submitted that, applicants were fully paid the amount that they were awarded at CMA. The learned counsel for the respondents submitted that there is no reason/ ground advanced by the applicants for the Court to extend time and that, applicants have not accounted for the delay from 2021 to 2023. He added that applicants have filed this application in abuse of Court process and prayed the application be dismissed with costs.

In rejoinder, Mr. Mkunzi, personal representative of the applicants reiterated his submissions in chief. He submitted further that costs should not be granted because this is labour dispute. In his submissions,

he conceded that the law allows the Court to award cost when it deems just to grant.

I have considered evidence of the parties both in the affidavit in support of the application and the counter affidavit resisting the application and submissions made on behalf of the parties in this application. It is undisputed that on 19th March 2021, Hon. Amos, H, arbitrator, in labour dispute No. CMA/DSM/TEM/498/2019/193/2019 awarded the applicants to be paid TZS 7,200,000/= against the two named respondents. It is further undisputed that applicants filed execution No. 338 of 2021 to execute the said award and that on 14th June 2022, respondents fully paid applicants the money they were awarded at CMA. It is also not disputed that applicants have filed this application for extension of time to file an application for revision to challenge the award that they have fully executed.

This being an application for extension of time, the court is called to exercise its discretion whether to grant or not but that must be done judiciously. See the case of [Mza RTC Trading Company Limited vs Export Trading Company Limited](#), Civil Application No.12 of 2015 [2016] TZCA 12. For the application for extension of time, applicant(s) must show that they had good reasons for the delay as it was held by the Court of Appeal in the case of [Victoria Real Estate Development](#)

Ltd vs Tanzania Investment Bank & Others (Civil Application 225 of 2014) [2015] TZCA 354, *Rose Irene Mbwete vs Phoebe Martin Kyomo* (Civil Application 70 of 2019) [2023] TZCA 111, *Omary Shaban Nyambu vs Dodoma Water & Sewarage Authority* (Civil Application 146 of 2016) [2016] TZCA 892. Not only that but also, they must account for each day of the delay as it was held in the case of *Elias Mwakalinga v. Domina Kagaruki and 5 others*, Civil Application No. 120 of 2018 [2019] TZCA 231 and *Airtel Tanzania Limited V. Misterlight Electrical Installation Co. Ltd & Another*, Civil Application No. 37 of 2020[2021]TZCA 517.

I have read the affidavit in support of the application and find that the only reason advanced by the applicants for the delay is that they were prosecuting another application before the court. During hearing, it came clear to me that the application that applicants were prosecuting before the court is execution No. 338 of 2021 which, luckily was concluded on 14th June 2022 by the respondents paying the amount applicants were awarded. Whatever the case, in my view, prosecution of execution No. 338 of 2021 cannot be a ground for extension of time in this application. It is my view that, if applicants were aggrieved with the award, they were supposed to file an application for revision and not execution No. 338 of 2021. In filing executing No. 338 of 2021 and not

revision, means that applicants were satisfied with what were awarded at CMA. It is my view that, after being paid the amount they were awarded, applicants have filed this application as an afterthought. That cannot be allowed. After all, litigations must come to an end as it has been held several times both by this court and the Court of Appeal. See the case of [Issa Hassani Uki vs Republic](#) (Criminal Application No. 122 of 2018) [2019] TZCA 372, [Ansaar Muslim Youth Center vs Ilela Village Council & Another](#) (Civil Application 310 of 2021) [2022] TZCA 615, [Johnson Amir Garuma vs The Attorney General & Others](#) (Civil Appeal No. 206 of 2018) [2023] TZCA 116. In [Garuma's case](#) (supra) the Court of Appeal held inter-alia: -

"It is a public policy and interest that litigation should not continue forever. Litigation must come to an end so that the litigants will be able to focus on other important things in their life."

In the application at hand, applicants after being fully paid by the respondents the amount they were awarded, have come to the court with an application for extension of time to challenge the award that they have already executed. In my view, this is an abuse of court process and I totally agree with submissions made by Mr. Samadani, learned counsel for the respondents.

Submissions by Mr. Mkunzi, personal representative of the applicants that applicants filed this because initially they were not aware that they were supposed to file revision and that they became aware after discussing with him is not supported by evidence in the affidavit of the applicants, as such, it is submissions from the bar that cannot be acted upon by the court as evidence. See the case of [*Rosemary Stella Chambejairo vs David Kitundu Jairo*](#), Civil Reference 6 of 2018) [2021] TZCA 442, ***Registered Trustees of the Archdiocese of Dar es Salaam v. The Chairman, Bunju Village Government & 11 Others***, Civil Appeal No. 147 of 2006, [*A. Nkini & Associates Limited vs National Housing Corporation*](#), Civil Appeal No.72 of 2015) [2021] TZCA 564, [*Shadrack Balinago vs Fikir Mohamed @ Hamza & Others*](#), Civil Application No. 25 of 2019 [2021] TZCA 45 and [*Ramadhani J. Kihwani vs Tazara*](#) (Civil Application No. 401 of 2018) [2019] TZCA 171 to mention but a few. In fact, that submission is an admission that, it is Mr. Mkunzi, personal representative who advised applicants to file this bogus application in the abuse of court process. I should point out that, the court will not spare him in future because he has wasted time of the court and resources of the parties.

It was correctly submitted by Mr. Samadani, learned counsel for the respondents that applicants have not adduced good reasons for the

delay and further that they have not accounted for that delay. I agree with those submissions.

Since applicants have not adduced good reason for the delay and have not accounted for that delay, I find that the application is unmerited and dismiss it.

Dated at Dar es Salaam on this 14th August 2023.



B. E. K. Mganga
JUDGE

Ruling delivered on 14th August 2023 in chambers in the presence of Sadock George Mkunzi, Personal Representative of the Applicants and Mngumi Samadani, Advocate for the the Respondents.



B. E. K. Mganga
JUDGE

