

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

REVISION NO. 207 OF 2023

BETWEEN

AML FINANCE LIMITED APPLICANT

VERSUS

BONIFACE KAPILE RESPONDENT

RULING

Date of last Order: 30/10/2023

Date of Ruling: 14/11/2023

MLYAMBINA, J.

Recently, there has been concern expressed through legal objections by some members of the legal fraternity on entertaining labour revision prematurely. Such alarm and the divided position of the Court has triggered this Court to raise *suo motto* the preliminary legal objection against the instant application that; *the application before the Court is incompetent for being interlocutory.*

It is not in dispute that the Respondent was previously employed by the Applicant. Upon termination of his employment, the Respondent filed a referral Form No. 1 (termination dispute) along with Commission for Mediation and Arbitration (herein CMA) Form No. 2 (for condonation) before the CMA. Upon hearing the application for condonation, it was

granted. Prior mediation of the termination dispute, the Applicant preferred this application against the decision of the CMA in grant of condonation.

The preliminary objection was argued by way of written submissions. The Applicant was represented by Mr. Robert Kipingili, learned Counsel. On the other hand, Ms. Batilda Mally & Mr. Joseph Abdon Mally, learned Counsel appeared for the Respondent.

In response to the objection, Mr. Kipingili argued the Court not to consider this application as interlocutory. He stated that an application for condonation is a legal mechanism by which a litigant seeks the Court's permission to extend or waive a prescribed time limit for the filing of a document, the taking of an action or complying with a Court order. He added that the application is invoked when parties fail to meet deadlines established by rules of Court, Statutes or Court orders. Mr. Kipingili strongly submitted that this application while procedural in nature, carries significant consequences for the entire case and therefore should not be categorised as interlocutory.

Mr. Kipingili argued that interlocutory matters in legal proceedings generally refer to procedural issues or decisions that do not finally determine the rights or obligations of the parties in dispute. They are

typically issues that arise during the course of a case and are resolved to facilitate the overall progress of the case but they do not lead to the final resolution of the substantive legal questions in dispute.

It was further argued that an application for condonation pertains directly to the ability of a party to participate effectively in the legal process. That it does not merely address a procedural step within the case but directly impacts a party's access to justice and the opportunity to present their case substantively.

Ms. Mally supported the objection raised by the Court that the application is interlocutory. He referred the meaning of the term interlocutory as defined in the **Black's Law Dictionary**. She also referred to various Court decisions which will be considered in the course of the decision. She stated that condonation at the CMA is filed together with Form No. 1 and Form No. 2. The CMA did not determine the substantive rights of the parties. Thus, the main application was not closed.

According to Ms. Mally, granting of this revision application is to defeat the purpose of leave since the decision challenged was just a step taken for the purpose of assisting the parties to pursue the rights in dispute and did not determine the substantive rights of the parties. She

put reliance of her submissions to the case of **MIC Tanzania Ltd v. Peter S. Mhando**, Revision No. 431 of 2022, High Court Labour Division at Dar es Salaam (unreported).

In rejoinder, Mr. kipingili maintained that the application against condonation is not interlocutory. He stated that the main application is not closed by condonation. He referred to numerous decisions to persuade the Court not to categorise grant of condonation as interlocutory application.

I have dully considered the submissions of the parties. Much as Mr. kipingili's argument sounds convincing, I join hands with Ms. Mally's submission that the application against grant of condonation is interlocutory. The reasons for such decision to be interlocutory have been stated in numerous decisions including the cases of **International Tax Consultants Limited v. Macdonald Justus Rweyemamu**, Labour Revision No. 199 of 2023, High Court Labour Division, Dar es salaam and **Exim Bank Tanzania Limited v. Norbert Deogratias Missana**, Revision No. 223 of 2023, High Court Labour Division, Dar es Salaam (unreported).

Also, in this case, I reiterate my position in the previously cited cases. An application for the grant of condonation is interlocutory. In the

case of **International Tax Consultants Limited** (supra) it was decided that; for a matter to be determined as interlocutory there has to exist a matter pending in Court. This is also the Court's position in the case of **Commissioner General Tanzania Revenue Authority & Another v. Milambo Limited**, Civil Appeal No. 62 of 2022 [2022] TZCA 348, cited by the Respondent.

Interlocutory order is the one which does not determine to its finality the matter or dispute in Court. The test as to whether a ruling or order is interlocutory was set by in the case of **Tanzania Motor Services Ltd & Another v. Mehar Singh t/a Thaker Singh**, Civil Appeal No. 115 of 2006 Court of Appeal of Tanzania where it was held that:

It seems to me that the real test for determining this question ought to be this:

Does the judgement or order, as made, finally dispose of the rights of the parties? If it does then I think it ought to be treated as final order; but if it does not, it is then, in my opinion an interlocutory order.

At the CMA, an application for condonation is not an independent application as rightly submitted by Ms. Mally. Such application is filed together with the main application, be it dispute of unfair termination or

breach of contract or any other disputes filed by a complainant. This is pursuant to *Rule 12(1)(2)(c) of the Labour Institutions (Mediation and Arbitration) Rules, GN. No. 64 of 2007 (herein GN. No. 64 of 2007)*. Therefore, when an application for condonation is determined, it allows the main application brought before the CMA to proceed. When the Respondent file an application for revision, like this case, the main case ceases to be determined. Such circumstance, in my view, makes the decision of grant of condonation interlocutory.

Being interlocutory, the Respondent's right to challenge such application is reserved until final determination of the main application. This is done so to give effect to the provision of *Rule 50 of the Labour Court Rules (herein LCR)* which prohibits parties to file review, revision or appeal against interlocutory decisions. The purpose of *Rule 50 of the LCR* was also stated in the case of **International Tax Consultants Limited** (supra) where the Court stated that it to expedite Court's business by allowing cases to be determined timely instead of having so many revisions which are pre-maturely.

The essence is also to serve time of the parties. When an application for condonation and the main application are determined together then the rights of the parties are finally determined by the

It is the observation of this Court that; if the application for condonation is denied, the order is final in effect. It is definitive of the rights of the parties because nothing remains in place for determination. As such, the aggrieved party will have the right to file revision before this Court. But if the application for condonation is granted, the primary consideration should be to accord the parties with the right to be heard on merits because that course will bring the just and expeditious decision of the major substantive dispute between them.

I'am aware of the decision of this Court in the case of **Lucky Games Ltd v. Salim Madati**, High Court of Tanzania Labour Division at Dar es Salaam, Revision Application No. 53 of 2023 (unreported) p. 12 in which the Court held that:

An application for condonation is not an interlocutory order. The logic is simple namely the application was decided to its finality against the Applicant. As a matter of fact, if the application for condonation is decided against the Respondent then it is also decided to its finality. Therefore, Respondent had an option to file application for revision. To hold otherwise, in my view, is treating the parties in the same application with double standard namely granting the party who filed an application for condonation right to file revision but denying the same right to the Respondent. It is my

considered view that parties in the same proceedings must be treated equally.

However, as observed in the case of **International Tax Consultants Limited** (*supra*), the Labour Court paramount consideration in exercising its discretionary powers is to make sure that parties participate in production and service to achieve social stability and economic development. The emphasis therefore is on whether a revision on condonation decision will necessarily lead to a more expeditious and cost-effective final determination of the main dispute between the parties and thereby lead to decisively contribute to its final resolution.

On the basis of the above reasoning, it is my position that the decision on grant of condonation is interlocutory. In the result, I find the present application is untenable. The file be remitted back to the CMA for the substantive matter to proceed at mediation stage.

It is so ordered.



Y.J. MLYAMBINA

JUDGE

14/11/2023

Ruling delivered and dated 14th November, 2023 in the presence of Counsel Batilda Mally holding brief of Robert Kipingili for the Applicant and Ms. Batilda Mally for the Respondent.



A handwritten signature in blue ink, appearing to read "Y.J. MLYAMBINA".

Y.J. MLYAMBINA

JUDGE

14/11/2023