IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT MWANZA

MISC. LABOUR APPLICATION NO. 79 OF 2019

BETWEEN

RUTUNDA MASOLE ..... APPLICANT

AND

MAKUFULI MOTORS LTD ..... RESPONDENT

RULING

21st April, & 6th June, 2020

ISMAIL, J.

This ruling is in respect of preliminary points of objection, taken at the instance of the respondent, challenging tenability of the revision application instituted by the applicant. The revision application seeks, *inter alia*, to move this Court to call for and examine the records of proceedings of the Commission for Mediation and Arbitration (CMA) at Mwanza, in respect of CMA/MZ/ILEM/PP/14/2018, for the purpose of satisfying itself as to the correctness, legality, rationality, regularity and propriety of the decision made in respect thereof.

In the said decision, delivered on 22nd February, 2019, CMA (Hon. Mwebuga, Arbitrator) struck out the application on the ground that the dispute was improperly filed. The complaint was that termination of the applicant's services was not fair.

Vide a notice of preliminary objection, filed in this Court on 2nd November, 2018, the counsel for the respondent raised a preliminary objection to the effect that the instant application is incompetent for containing omnibus prayers. When the matter was called for orders on 21st April, 2020, the parties unanimously implored the Court that the preliminary point of objection be disposed of by written submission. This proposal was acceded to by the Court. Accordingly, a schedule for filing of the submissions was drawn and the parties commendably complied with it.

Submitting in support of the preliminary point of objection Mr. Kabago Godwin, learned counsel for the respondent, held the view that prayers sought in the instant application are distinct and unrelated, and governed by different pieces of legislation, different time frames and that the considerations to be taken in determining the said prayers are different, as well. Expounding further, the learned counsel contended that, whereas an application for extension of time is granted upon

demonstrating sufficient reasons or good cause, revisional application is grantable upon proof, by the applicant, that the arbitrator indulged in a misconduct; that the award was improperly procured; excess of jurisdiction; failure to exercise its jurisdiction or any form of illegality, irregularity or material error that occasions an injustice. With respect to the applicable law, the learned counsel argued that enabling provisions under each of the prayers are different, citing Rule 56 (1) (3) of the Labour Court Rules, GN No. 106 of 2007 for extension of time, while section 91(1) (2) of the Employment and Labour Relations Rules, 2004 and Rule 28 of the Labour Court Rules, GN No. 106 of 2006 are applicable in the case of application for revision. As for time frames, the counsel's contention is that, whereas extension of time has no time limit in its preference, in the case of revision, the requisite time prescription is six weeks. To buttress his arguments, the respondent's counsel cited the decision of this Court in ***Gibson Petro v. Veneranda Bachunya***, HC-Civil Revision No. 10 of 2018 (Mwanza, unreported). The respondent prayed that the application be adjudged incompetent with an order that the same be struck out.

The applicant did not find any plausibility in the respondent's contention. He holds the view that the objection is misconceived. Mr.

Edward John, learned advocate for the applicant castigated the respondent by levelling an allegation without citing a specific provision of any law which prohibits combination of two or more prayers in one application. On the contrary, the learned counsel retorted, such conduct is encouraged as it saves time and resources of the parties and the Court. On the law applicable in respect of the prayers, the counsel's view is that both of the said prayers have been preferred under the same law, and that the prayers depend on each other. He contended that this Court is seized with jurisdiction to entertain the matter. To aid his cause, he referred me to the decision of the Court of Appeal in ***MIC Tanzania Limited v. Minister for Labour and Youth Development & Another***, CAT-Civil Appeal No. 103 of 2004 (DSM-unreported), in which it was held that combination of one or more prayers in one application is a permissible conduct which should be encouraged. He penned off by contending that the decision in **Gibson Petro** (supra) is, in the circumstances of this, irrelevant.

From these laconic but splendid submissions by the counsel, the singular question for resolution is whether the application suffers from the malady of irregular combination. Put it differently, it is whether the application is omnibus and incompetent.

As stated on numerous occasions, and, as a general rule, combination of prayers in a single application is not only a permissible conduct, but one that is highly encouraged. Reasons for that holding are not hard to discern. They create convenience and are a time and cost saving indulgence to the parties and the courts. This is what was emphasized in ***MIC Tanzania Limited*** (supra); ***Tanzania Knitwear Ltd v. Shamshu Esmail*** [1989] TLR 48; and ***Gibson Petro*** (supra). This general rule is not without conditions. The condition precedent for applicability of this rule is that the applications should not be diametrically opposed to each other, or preferred under different laws, complete with different timelines, and distinct considerations in their determination.

Reviewing the prayers, yet again, I gather that the substantive prayers sought by the applicant are essentially two. One intends to knock the Court's door and enlarge time which will enable him challenge the arbitrator's ruling which struck out the application. The other is for revision against the CMA award and the ground is that CMA failed to conform to certain legal requirements as enumerated in paragraph 11 of the supporting affidavit. While the prayer in item (ii) is seemingly consequential, in that it is a culmination of the Court's decision in item (i),

the two are distinct and operating under distinct pieces of legislation, with different considerations and governed by different time prescriptions. Whereas the former requires assigning reasons for dilatoriness in taking action i.e. showing sufficient cause, the latter entails demonstrating to the Court that CMA strayed into procedural and/or decisional error which culminated into the injustice that is the subject of the intended impeachment by the Court. Like all other applications for revision, the time frame in the latter is six weeks while no time prescription has been set out for applications for extension of time. Thus, the Court's consideration in granting or refusing any of the prayers will, quite inevitably, be varied depending on the demands set in each of the enabling provisions of the law. While lumping them together, as it is in the instant application, would achieve expedience and time and resource saving, consistent with the holdings in ***Tanzania Knitwear Ltd*** (supra) and ***MIC Tanzania Ltd*** (supra), dangers of doing so gravitate towards the abhorrence discussed by the Courts in ***Ally Chamani v. Karagwe District Council & Columbus Paul*** CAT-Civil Application No. 411 of 2017 (Bukoba-unreported); ***C.L. Rutagatina v. The Advocates Committee & Another***, CAT-Civil Application No. 98 of 2010 (DSM-unreported; and

Gibson Petro (supra). Thus, while the reasoning in ***MIC Tanzania Ltd*** is imperative to this Court, circumstances of this case militate against the application of the reasoning enunciated in the said decision. The prayers are too dissimilar to be maintained under one roof. They share no common denominator and, as such, they require two separate ways of handling them. It would not amount to a multiplicity of actions if these prayers were pursued under distinct applications.

In view of the foregoing, I find the objection plausible and well resonating. Consequently, I sustain it and order that the application be struck out. This being a labour matter, I make no order as to costs.

It is so ordered.

DATED at **MWANZA** this 4th day of June, 2020.

M.K. ISMAIL

JUDGE

Date: 04/06/2020

Coram: Hon. J. M. Karayemaha, DR

Applicant: John Edward, Advocate

Respondent: kabago, Advocate

B/C: B. France

Mr. John:

Your honour, the matter is set for ruling. I am ready to receive it.

Mr. Kabago:

I am also ready for the ruling.

Court:

1. Ruling has been delivered on line in the presence of Mr. John Edward, Advocate for the applicant and Mr. Kabago, Advocate for the respondent, this 04th June, 2020.
2. Right of Appeal fully explained.

J. M. Karayemaha

DEPUTY REGISTRAR

At Mwanza

04th June, 2020