

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LABOUR DIVISION)**

**AT ARUSHA**

**LABOUR APPLICATION NO. 25 OF 2021**

**(C/F CMA/ARS/MED/38/2008)**

- 1. NICAS BAZIL**
- 2. LUCY KUNDANKIRA NDOSS**
- 3. SIKUDHAN MAYANGE**
- 4. MARIA W. MWENDI**
- 5. AGRIPINA MWINJO**
- 6. REHEMA ALLY**
- 7. ROSE GOMBANIA**
- 8. RAHEL MCHARO**
- 9. DOROHT N. MASAWA**
- 10. MWANAHAMIS MSUMI**
- 11. REBEKA ELIAKIM**
- 12. FELISTA SHAYO**
- 13. SAPHINA MSUYA**
- 14. VICKY RITE**
- 15. HORTHENSIA STANLEY**
- 16. JAMILA DALALA**
- 17. HIRIMINA STANLEY**
- 18. AGATHA VICENT**
- 19. AMINA DAUDI**
- 20. OLIVER JAMES**
- 21. JULIANA NDOSS**
- 22. AISHA RAJABU**
- 23. LUCY KESSY**
- 24. DAINNESS MWANGA**
- 25. MATILDA MKUMBI**
- 26. AMANI M KILANGO**
- 27. HALIMA ABDURAHAMAN**
- 28. BEATRICE KITUNGA**

**APPLICANTS**

29. **AMBROSIA DIWANI**
30. **LEAH ANDREA MHAGAMA**  
(Administratrix of the late Andrea Lukuwi)
31. **SALVATOR SWAI**
32. **FRANCIS MOLEL**
33. **DIDAS A. TESHA**
34. **HAMIS YUSUPH**
35. **AGNESS MUSHI**
36. **MESHAKI MUSHI**
37. **GAUDENS BAZIL**
38. **LOBULU RAKATIA**
39. **AGNESS ABDALLAH**
40. **ANTON GADI**
41. **ISSA HAMADI**
42. **GEORIGIA AUGUSTINO**
43. **HAMIS MOHAMED**
44. **RAJABU SAIDI**
45. **VALENS ANSELIM KESSY**
46. **ABASI OMARY**
47. **NIENDIWE KAZOKA**
48. **ANJELINA KITOJO**
49. **WELU MKUMBO**
50. **RAMADHAN MSANGI**
51. **MWASHABANI HAMADI**
52. **ROSE PIUS**
53. **EVARIST KONSTANTINO**
54. **SABATO MTAKI**
55. **MARY ALEX**
56. **ABUU SENZOTA**
57. **ALLY SALIM**

**APPLICANTS**

58. ANDREA TINGATINGA
59. JOSELIN MOSHI
60. ESTEROSE ELIAS
61. JUMA ABDALA
62. MZAMILO MOHAMED
63. MARTHA SUNGI
64. HALIMA MZIRAI
65. FLORA MOSHI
66. AGATHA FAUSTIN
67. MONICA MATHIAS
68. KISAKENI MUSHI
69. RUTHI MAFIE
70. BAHATI RAMADHANI
71. LOTHI KIWANDAI
72. JACOB MEENA
73. LEONARD JOHN
74. GODFREY SUMARY
75. PIU TAIS
76. JOHN SEBASTIAN
77. MARY PALANGYO
78. THERESIA THOMAS
79. SENGASU MPOKERA
80. ISSA JUMA
81. HADIJA MOHAMEDI
82. ATHUMANI RAJABU
83. MIRAJI MBWANA
84. AGNES FERDINAND
85. DANIEL TANGO
86. BERTHA TANGARAZA
87. LUCAS AMINIEL



**APPLICANTS**

- 88. SAMWEL MARGWE
- 89. RASHID RAMADHAN
- 90. ELINAJA EZEKIEL
- 91. NOELA HAMISI
- 92. NEEMA JAMES
- 93. ADELA KIMARO
- 94. FATUMA IDDI
- 95. JULIUS MAKAO
- 96. ULIMBOKA MWAKASOLE
- 97. SOFIA SHABAN
- 98. CRISTOPHER BOBEWE
- 99. FRANCIS SAMWEL
- 100. AMBROS MARTIN
- 101. NELSON STEPHIN
- 102. SWALEH ISSA
- 103. STANLEY WILSON
- 104. ANNA PETER MAFIE
- 105. MONICA SHANGALI
- 106. BERTHA DANIEL
- 107. SOFIA NJAU
- 108. DAVITA MATUNDA
- 109. HILDA JOHN



**APPLICANTS**

**VERSUS**

**SUNFLAG (T) LTD – ARUSHA ..... RESPONDENT**

## **RULING**

2/3/2021 & 20/5/2022

### **ROBERT, J:-**

The applicants herein seek extension of time in order to file an application for revision of an award of the CMA in Labour Dispute No. CMA/ARS/MED/38/2008. The application is supported by an affidavit affirmed by one HARUN IDI MSANGI, learned counsel for the applicants.

Prior to this application, the applicants herein and others who are not party to this application filed as a representative suit (Misc. Application No. 35 of 2017) seeking revision of the CMA award without representative order and consent of others. The application was marked withdrawn with leave to refile. As a consequence, on 28/1/2019 they filed an application for representation order (Misc. Labour Application No. 4 of 2019) which was struck out on 3/9/2020 for being filed out of time. On 17/5/2021 the applicants' application for extension of time to file application for revision (Misc. Labour Application No. 4 of 2021) was struck out on technical reasons. Hence, the applicants preferred this application seeking extension of time to apply for revision. The respondent filed her Notice of opposition and Counter-affidavit opposing this application.

Prior to the hearing, the Counsel for the respondent lodged a Notice of Preliminary objection against the application to the effect that:-

- 1. The Applicants' Application is untenable in law for contravening court order(s) dated 6<sup>th</sup> day of December, 2018, 11<sup>th</sup> day of May 2015 and 11<sup>th</sup> day of May 2017, hence contempt and abuse of court processes.*
- 2. The Applicants' application is bad in law for suing a non-existing entity.*

At the request of parties, the preliminary objection was argued by way of written submissions whereby the Respondent's written submissions were prepared and filed by Innocent Mwanga, learned counsel for the respondent whereas the applicants' reply submissions were drawn and filed by Harun Idi Msangi, counsel for the applicants.

Highlighting on the first point of objection, he argued that, on 11<sup>th</sup> May, 2015 this Court issued an order in Misc. Application No. 12 of 2014 that the Court was not moved properly to entertain the applicants' application which was of the same nature like the present application. The applicants were given the last chance to avoid any more anomalies in their intended application. The applicant did not adhere to the Court Order.

Thereafter the applicants filed Misc. Labour Application No. 12 of 2014 and when it was set for hearing on 20<sup>th</sup> October, 2015 the Applicants

conceded to the anomalies in their application before the Court and pressed for leave to file a proper application. They were given 14 days to bring proper application which was unsuccessful.

On 11<sup>th</sup> May, 2017 the applicants applied vide Misc. Labour Application No. 35 of 2015 and the application was struck out for being incompetent. The Court gave the applicants last chance to bring a proper application but again in vain.

Again, the applicants vide Misc. Labour Application No. 35 of 2017 applied for extension of time to file a proper application and on 6<sup>th</sup> December, 2018 the Court gave an order to the effect that:-

*"There is sufficient cause shown to grant the applicants last 30 days within which to file a proper application. In the meantime, this application is marked withdrawn with leave to refile."*

The applicants never complied with the above mentioned court orders. They ended up filing Misc. Labour Application No. 4 of 2019 which was struck out on 3<sup>rd</sup> day of September, 2020 for being incompetent. Another Misc. Labour Application No. 4 of 2021 filed by the Applicants was struck out for being incompetent hence this application.

He argued further that, the applicants were given last chances three times to bring a proper application before the Court unsuccessfully. He maintained that, they are barred from filing another application. To support his argument, he cited the Court of Appeal decision in the case of **Universal Petroleum Services Limited vs BP Tanzania Limited, Civil Application No. 50 of 2006 (unreported)**.

He emphasized that, the applicants application is bad in law for being brought against Court orders which gave the applicant last chance but then he became unsuccessful. Hence, the application ought to be struck out.

Responding on this point of the preliminary objection, the learned counsel for the applicants argued that, the applications referred by the Respondent were all struck out by the Court and in each case where the orders were not complied with the applicants indicated in their affidavit why such orders were not complied with.

On the arguments that the applicants' application is an abuse of Court process as it contravened previous Court orders which gave them last chance to file an application, he maintained that, the respondent did not make reference to any law which has been contravened to qualify their preliminary



objection on a point law. He maintained further that, the Court can always grant extension of time if a good cause is shown for departing from its orders and if the applicant fails to do so the Court will dismiss the application.

Coming to the second point of objection, the learned counsel for the respondent argued that, the application is filed against **Sunflag (T) Limited – Arusha** (Respondent) which is not existing and or capable of being sued. He maintained that, the applicants being the ex-employees of the Respondent Company ought to have known that the proper name of the Respondent is **Sunflag (T) Limited**. He argued that the Applicants had an opportunity to rectify the name of the Respondent so that Court orders may be properly executed against the existing juristic person based on the proper names of the Respondent but they failed to do that. He made reference to the case of **Singida Sisal Products & General Supply vs Rofal General Trading Limited and 5 others** (unreported), Commercial Review No. 17 of 2017 where the Court decided that, since the applicant was found to be non-juristic person he was therefore incapable of suing or being sued. He maintained that, this application is brought against a non-existing entity hence bad in law and should be struck out.

In response, the learned counsel for the applicants argued that, the respondent company based in Arusha was a party in Labour Dispute No. ARS/CMA/MED/38/2008 and the name they have been holding in the award which the applicants seek to be revised is Sunflag (T) Ltd – Arusha. He maintained that, the employer was a party to the proceedings and had a duty to notify the Commission and the Court her correct name as she knows the registered name of the company based on the certificate of incorporation.

He made reference to section 3A of the Civil Procedure Code (Cap. 33 R.E. 2019) and urged the Court to give effect to the overriding objective principle referred to in the cited provision in order to facilitate expeditious resolution of disputes. He maintained that, if the respondent's name in the certificate of incorporation is Sunflag (T) Limited, this error has not caused any prejudice and can be corrected by deleting the word ARUSHA so as to effect the overriding objective. In the end, he prayed for this objection to be dismissed.

Having abridged the submissions made by the learned counsel for both parties in respect of the raised points of preliminary objection, I am now in a position to make a determination in respect of the raised points.

Starting with the first point of objection, the question for determination is whether the present application contravenes Court orders dated 6<sup>th</sup> day of December, 2018, 11<sup>th</sup> day of May, 2015 and 11<sup>th</sup> day of May, 2017 which gave the applicants last chance to file another application.

At the outset, it should be noted that while this application arises from an order of this Court dated 6<sup>th</sup> December, 2018 it has no direct relationship with the orders of this Court given on 11<sup>th</sup> May, 2015 and 11<sup>th</sup> day of May, 2017. Having looked at each of the respective orders it is clear that, the orders dated 11<sup>th</sup> May, 2015 were given in respect of Misc. Application No. 12 of 2014 between **Lucy K. Ndossy and Sunflag (T) LTD ARUSHA** while the orders dated 11<sup>th</sup> May, 2017 were given in respect of Misc. Application No. 35 of 2015 between **Lucy K. Ndossy na Wenzake 408 vs Sunflag (T) Limited.**

Apart from the obvious differences in the names of the parties in the respective applications, the most important point, as stated by the learned counsel for the respondent, is the fact that orders given on 11<sup>th</sup> May, 2015 and 11<sup>th</sup> May, 2017 were followed by subsequent orders of this Court which allowed the applicants to file continual applications as mentioned by the learned counsel for the respondent. The respondent had a chance to raise

her concern in each of the applications filed immediately after the said orders. The decisions of this Court having been made in each of the applications filed immediately after the said orders it would be wrong for the respondent to assume that I have powers to interfere in the decisions made by other Judges of this Court in each of the subsequent applications.

As for the Court order made on 6<sup>th</sup> December, 2018, I have noted that the said order was given in Misc. Application No. 35 of 2017 between **Lucy Ndossy & Others vs Sunflag (T) Ltd** and it reads as follows:

*"There is sufficient cause shown to grant the applicants last 30 days within which to file a proper application. In the meantime this application is marked withdrawn with leave to refile"*

It is obvious that, the said order gave the applicants leave to file another application within 30 days. Therefore, there is no merit arguing that the applicants have contravened the orders of this Court by pursuing their right to file another application. The question that will be determined in this application is whether the applicants deserve an extension of time to file another application having been given the last 30 days to file another application which they didn't or failed to use. I therefore find no merit in the first point of preliminary objection.

Coming to the second point of preliminary objection, the question for determination is whether the applicants have sued a non-existing entity. The learned counsel for the respondent maintained that the name of the applicants' employee is **Sunflag (T) Limited** and not **Sunflag (T) Limited – Arusha** which is indicated in this application. On the other hand, counsel for the applicants maintains that, the name held by the Respondent in the CMA Award which the applicants seek to revise is **Sunflag (T) Ltd – Arusha** and the Respondent did not correct that name at the proceedings before the CMA and in the subsequent applications filed in this Court. It is unfortunate that, the relevant CMA Award is not attached to this application and therefore this Court cannot ascertain the name used by the Respondent in the application sought to be revised in this Court. Similarly, the Court cannot ascertain the proper name of the respondent without getting evidence from the parties. Under the circumstances, this point does not qualify as a point of preliminary objection and therefore it cannot be determined accordingly.

Consequently, the two points of preliminary objection are hereby dismissed for lack of merit. The Court will proceed to determine this application on merit.

It is so ordered.



*K.N. Robert*

K.N.ROBERT  
JUDGE  
20/5/2022