

TANZANIA / JUDGMENT

NELSON MWAIKAJA V

COURT
TANZLIIDECIDED
1 January 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF TANZANIA LABOUR DIVISION AT DAR ES SALAAM LABOUR REVIEW
NO. 23289 OF 2024 (Arising from the Order of this Court in Revision Application No. 247 of 2023
dated 27/11/2023) NELSON MWAIKAJA..... APPLICANT
VERSUS GEMSHAD ISMAIL & USANGU GENERAL TRADERS.....RESPONDENT

RULING

Date of Last Order: 15/10/2024 Date of Judgment: 28/10/2024 B. E. K. Mganga, J. Brief facts of this application are that, on 19th September 2024, Nelson Mwaikaja, the abovenamed applicant filed the Notice of Review of the judgment of this Court in Revision Application No. 247 of 2023 that was delivered on 27th November 2023. When the application was called on for orders on 15th October 2024, this court asked the parties to address the court whether the application is competently before the court or not. Responding to the issue raised by the Court, Mr. Godfrey Ukwonga, advocate for the applicant submitted that, the application is competent before this court. Counsel for the applicant submitted that 1 applicant filed this application seeking the Court to review its order issued in Revision No. 247 of 2023 on 27th November 2023 striking out the said revision for want of notice of intention to seek revision (CMA F10). Mr. Ukwonga submitted further that, applicant filed this application on 19th September 2024 by filing the notice of review and on 1st October 2024 applicant filed the memorandum of review. In his submissions, Mr. Ukwonga conceded that, initially applicant filed application No. 20099 of 2024 for review and that, the said Review application No. 20099 of 2024 was heard on 10th September 2024 and the Ruling was due on 26th September 2024. He added that Review application No. 20099 of 2024 was dismissed for being time barred. Mr. Ukwonga further submitted that, this application is competent because, applicant filed this application after discovery that, CMA F10 and the Notice of Revision are one and same thing and that the said discovery is a good ground under Rule 27 (2) of the Labour Court Rule, GN. No 106 of 2007 for the applicant to file this application. In his submissions, Mr. Ukwonga conceded that, in the application at hand, applicant annexed the order of this court dated 27th November 2024 showing that applicant did not file the CMA F10. Counsel for the applicant was quick to submit that, the requirement to file CMA F10 is under Regulation No. 34(1) of the Employment and Labour Relations 2 (General) Regulations, GN. No. 47 of 2017. He further conceded that, the requirement of filing the Notice of Application for revision is under Rule 24(1) and (2) of the Labour Court Rules, GN. No. 106 of 2007. He further submitted that, the requirement of filing the notice of review is under Rule 27 of

GN. No. 106 of 2007(supra). Mr. Ukwonga further submitted that, CMA F10 is subject to modification and that, through the said modification, CMA F10 is the notice of application under rule 24 of GN. No. 106 of 2007(supra). Mr. Ukwonga also submitted that, applicant filed this application while the ruling in 20099 of 2024 was pending because, the said application was filed as miscellaneous or civil application but the documents showed that it was an application for review. He also submitted that; the said application is not an application for review filed by the applicant. Mr. Ukwonga further submitted that, in the application at hand, applicant was served with the order on 27th November 2023 and that, applicant filed the notice review on 19th September 2024 and further that, the memorandum of review was filed on 1st October 2024 after 12 days. When probed by the court he readily conceded that, the Notice of review as supposed to be filed within 15 days from the decision the subject of review was made. He also conceded that applicant did not file the notice of appeal to challenge the decision of 3 this court in Review application No. 20099 of 2024. With those submissions, Mr. Ukwonga submitted that the application is properly before the court. On the other hand, Mr. Moses Mwitete, advocate for the respondent, submitted that, this application is not properly before the court. Mr. Mwitete further submitted that, the application is res judicata because, applicant filed review No. 20099 of 2024 against the order of this court in Revision No. 247 of 2023 that was struck out on 27th November 2023 and the said Review No. 20099 of 2024 was dismissed for being time barred. This application is also out of time because, the notice of review was filed out of 15 days from the date the order was made contrary to rule 27 of GN. No. 106 of 2007(supra). He further submitted that the court is functus officio. He added that, if applicant was aggrieved with the ruling of this Court in Review Application No. 20099 of 2024, he was supposed to appeal before the Court of Appeal. With those submissions, counsel for the respondent prayed the court to dismiss this application. In rejoinder, Mr. Ukwonga for the applicant submitted that, the application is not res judicata and the court is not functus officio. He reiterated his submissions in chief that the application is properly before this court. 4 I have considered submissions of the parties and wish to state that in terms of Rule 27(1) of the Labour Court Rules, GN. No. 106 of 2007, any person who wishes to file an application for review must file the notice of review within fifteen (15) days from the date the decision to be reviewed was delivered. Again, in terms of rule 27(7) of GN. No. 106 of 2007(supra), after being supplied with the copy of the decision, applicant must file memorandum of review within fifteen days from the date he was supplied with the copy of the decision. It is undisputed by the parties that, prior to this application, applicant filed Review application No. 20099 of 2024 and the same was heard on 10th September 2024 and the ruling was delivered on 26th September 2024. It should be recalled that applicant filed the notice of review in this application on 19th September 2024 after the court has heard review application No. 20099 of 2024 and at the time the ruling in the said application was pending as it was scheduled to be delivered on 26th September 2024. With that occurrence of events, without mincing words, this application was filed in abuse of court process. It was not proper for the applicant to file this application while there was another pending application for review. On 26th September 2024, this court issued a ruling that application for review No. 20099 of 2024 was time barred consequently dismissed it. See Nelson Mwaikaja vs Gemshad 5 Ismail & Another (Revision Application No. 20099 of 2024) [2024] TZHCLD 169 (26 September 2024). In the application at hand, applicant is seeking a similar prayer

to what he prayed in Review application No. 20099 of 2024 that was dismissed for being time barred. It was correctly submitted by counsel for the respondent that, the court is *functus officio* and the matter is *res judicata*. I am of that settled view because, once the matter is conclusively determined, the same parties cannot litigate it. The matter becomes *res judicata* and the court becomes *functus officio* as it was held in the case of *Quality Group Ltd vs Tanzania Building Agency* (Civil Application No. 182 of 2016) [2021] TZCA 65 (4 March 2021) and *Peniel Lotta vs Gabriel Tanaki and 2 Others* (Civil Appeal 61 of 2001) [2001] TZCA 16 (14 September 2001), T.L.R. 312 [CA]. In Lotta's case (*supra*) held *inter-alia* that:- "The Doctrine of *res judicata* is provided for in section 9 of the Civil Procedure Code, 1966. Its object is to bar multiplicity of suits and guarantee finality to litigation. It makes conclusive a final judgment between the same parties or their privies on the same issue by a court of competent jurisdiction in the subject matter of the suit. The scheme of section 9, therefore, contemplates five conditions which, when co-existent, will bar a subsequent suit. The conditions are: (i) the matter directly and substantially in issue in the subsequent suit must have been directly and substantially in issue in the former suit; (ii) the former suit must have been between the same parties or privies claiming under them; (iii) the parties must have litigated under the same title in the former suit; (iv) the court which decided the former suit must have been competent to try the subsequent suit; and (v) the matter in issue must have been heard and finally decided in the former suit." It is my view that the principle of *res judicata* applies also in applications like the one at hand. With that in my mind, it is my considered opinion that, this court having dismissed Review application No. 20099 of 2024, it became *functus officio*. See the case of *James Kabalo Mapalala vs British Broadcasting Corporation* (Civil Appeal 43 of 2001) [2002] TZCA 11 (11 November 2002), *CRDB Bank vs The Registered Trustees of Kagera Farmers Trust Fund & others* (Civil Appeal No. 496 of 2021) [2024] TZCA 94 (23 February 2024). In CRDB's case (*supra*) the Court of Appeal held *inter-alia* that:- "As we understand the law, a court becomes *functus officio* after having finally and conclusively determined an issue before it. Once that happens, it is settled law, the same court cannot, whether by the same judicial officer or a successor judicial officer, entertain the issue." The Court of Appeal went on by quoting its earlier decision in the case of *Bibi Kisoko Medard v. Minister for Land, Housing and Urban Development* [1983] T.L.R 250 that:- "In matters of judicial proceedings once a decision has reached and made known to the parties, the adjudicating tribunal thereby becomes *functus officio*." 7 In CRDB's case (*supra*) the Court of Appeal further quoted its decision in the case of *Maria Chrysostom Lwekanwa v. Placid Richard Lwekamwa*, Civil Application No. 549/17 of 2019 (unreported) wherein it held that:- "It is trite law that when a court finally disposes of a matter, it ceases to have jurisdiction over it. The application of this principle was emphasized in the case of *Tanzania Telecommunication Company Limited and Others v. Telecommunications Tanzania Limited* [2006] 1 EA 393. Indeed, as stated above, after Makuru J. had determined the objection on the matter being *res judicata* on a matter that is founded on the determination of the estate of Richard Lwekamwa, there was no need for another judge to decide on the same issue as what transpired in the instance case. In consequence, on this ground has merit." In the application at hand, on 26th September 2024 this court dismissed Review application No. 20099 of 2024 for being time barred. The said decision was pronounced in presence of the parties, and they are aware of it. They therefore cannot litigate on a similar

application of review of the same decision of this court. That said and done, I hereby dismiss this application. Dated at Dar es Salaam on this 28th October 2024 B. E. K. Mganga JUDGE 8 Ruling delivered on 28th October 2024 in chambers in presence of Godfrey Ukwonga, Advocate for the Applicant but in the absence of the Respondent. B. E. K. Mganga JUDGE 9

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/324209/source_file/b71d6c94c12d8f03/NELSON_MWAIKAJA___V.___GEMSHAD_ISMAIL__USANGU_GENERAL_TRADERS__LABOUR_REVIEW_NO._23289_OF_2024.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/nelson-mwaikaja-v-gemshad-ismail-usangu-general-traders-Reviewapplications-tanzlii-2024--6a3ea52d3b1caa9129826e68>

Prepared on 14 October 2026 · Esheria