

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY  
AT MWANZA**

**HC LABOUR REVISION NO.12 OF 2020**

(Arising from the CMA Arbitrator's Award by Hon. Msuwakollo S. in  
Labour Dispute No. CMA/MZ/ILEM/216/84/2019)

**NYANGORO ONGITO ..... APPLICANT**

**VERSUS**

**KENYA KAZI SECURITY (T) LTD ..... RESPONDENT**

**RULING**

*Last order: 14.05.2020*

*Ruling Date: 15.05.2020*

**A.Z.MGEYEKWA, J**

The applicant filed a Notice of Application seeking for revision of the Commission of Mediation and Arbitration (CMA) Ruling delivered on 18<sup>th</sup> December, 2019. The application is supported by an affidavit deponed by Nyangoro Ongito, applicant. On the other hand, the respondent opposed the application by filing a

counter affidavit deponed Mohmade Omary, and he raised one point of Preliminary Objection as hereunder:-

*1. The instant application is hopelessly time-barred.*

The hearing was conducted via audio teleconference, whereas the applicant and Mr. Nassoro, learned counsel for the respondent were both remotely present.

In support of the Objection, the respondent' Advocate valiantly submitted that the application is time barred, he referred this court to section 91 (a) and (b) of the Employment Labour and Relation Act of 2017 which has set a time limit of six weeks to lodge a revision before this court. He went on to state that the applicant delayed for approximately 5 to 7 days to file the instant application. Mr. Nassoro argued that the CMA decision was pronounced on 18<sup>th</sup> December, 2019 and the applicant received a copy of the decision on 24<sup>th</sup> December, 2019, therefore he was aware of the outcome of the case but he filed his application on 10<sup>th</sup> February, 2020. He went on to submit that the 42 days ended on 3<sup>rd</sup> February, 2020 thus he was time barred. Mr. Nassoro fortified his submission by referring this court to the case of Joseph Mushi v

damson Katama Miyaga and 2 others Civil Appeal No. 210 of 2016.

It was Mr. Nassor's further submission that the consequence of application which is filed out of time is to be dismissed. He cited section 3 of the Law Limitation Act Cap. 89 [2019] saying that there is no any specific section in Labour law that states the consequence of filing an application out of time. To support his submission he cited the case of **Motisa Chacha v Living Water Primary School** Labour Revision No.88 of 2018.

In conclusion, Mr. Nassoro prays this court to dismiss the applicant's application for being time barred.

In reply thereto, the respondent submitted that his application was filed within time. He counted the days from the date when he collected a copy of the decision on 3<sup>rd</sup> January, 2019. Hence he immediately filed the instant application on 10<sup>th</sup> February, 2019.

In conclusion, the respondent argued that section 91 of the Employment and Labour Relations Act was complied with. He urged this court to dismiss the preliminary objection.

Rejoining, Mr. Felix reiterated his submission in chief and went on to submit that the date of collecting copies of CMA decision be considered that the applicant was aware of the decision of the CMA. He argued that the applicant's claims that he was not aware that the decision was pronounced are not stated in his affidavit. Thus, the same is an afterthought. He insisted that the application is time barred the same be dismissed.

Having considered the arguments for and against the point of preliminary objection along with the evidence on record, I will address the question of ***whether the preliminary objection is meritorious.***

Responding to the objection raised by the applicant's Advocate that the applicant's application is time-barred. I had to go through the CMA judgment and found that the said judgment was pronounced on 18<sup>th</sup> December, 2018 and the applicant collected the copy on 24<sup>th</sup> December, 2019. The application before this court was filed on 10<sup>th</sup> February, 2020.

The prescribed time limit in labour cases is provided under section 91 (1) (a) of the Employment and Labour Relations Act, 2017 provides that:-

*"91.-(1) Any party to an arbitration award made under section 88 (10) who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for a decision to set aside the arbitration award -*

*(a) within six weeks of the date that the award was served on the applicant unless the alleged defect involves improper procurement."*

Pursuant to the above provision, the applicant was required to file his application before this court within 6 weeks of the date of the award was served on the applicant. Counting the 6 weeks the applicant was required to file the instant application not later than 3<sup>rd</sup> February, 2020 instead he filed the same on 10<sup>th</sup> February, 2020 that means his application is out of time. There is no record that shows that the applicant applied for an extension of time to file his application out of time and that the application was granted. As

stipulated under section 3 (1) of the Law of Limitation Act. Cap. 89 [R.E 2019] that:-

*“ 3 (1) ... every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, shall be dismissed.”*

Guided by the above authority, the preliminary objection regarding the limitation of time is upheld. Therefore, the applicant's application is hereby dismissed without costs.

Order accordingly.

Dated at Mwanza this date 15<sup>th</sup> May, 2020.



  
A.Z.MGEYEKWA  
**JUDGE**  
15.05.2020

Ruling delivered on 15<sup>th</sup> May, 2020 via audio teleconference, and both parties were remotely present.

  
A.Z.MGEYEKWA  
**JUDGE**  
15.05.2020