

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

REVISION NO. 568 OF 2019

BETWEEN

YORDAN JOHIM SANGA.....APPLICANT

VERSUS

GOVERNING BODY OF COLLEGE

OF BUSINESS EDUCATION.....RESPONDENT

RULING

Date of Last Order: 17/02/2020

Date of Ruling: 03/04/2020

ABOUD, J.

Applicant, **YORDAN JOHIM SANGA** filed the present application seeking revision of the decision of the Commission for Mediation and Arbitration (herein CMA) which was delivered on 16/05/2019 in Labour Dispute No. CMA/DSM/ILA/R. 1368/17/515 by Hon. Arbitrator, Alfred Massay. The application is made under the provision of section 91 (1) (a) (b), 91 (2) (b), 91 (4) (a) (b), 94 (1) (b) (i) of the Employment and Labour Relations Act, No. 6 of 2004 (herein the Act) and Rule 24 (1), (2) (a) (b) (c) (d) (e) and (f), 24 (3)

(a) (b) (c) (d), 28 (1) (c) (d) and 28 (2) of the Labour Court Rules, GN No. 106 of 2007 (herein referred as Labour Court Rules).

The respondent vehemently opposed the application through a notice of preliminary objection indicating that the application is hopelessly time barred.

During hearing the applicant was represented by Mr. Mecky Humbo, representative from RAAWU while the respondent enjoyed the services of Mr. Ambokile Mwakaje, Learned counsel. The application proceeded by way of oral submission.

Shortly are the facts giving rise to the application. On 30th June, 2016 the applicant was terminated from employment on the ground of gross misconduct emanating from gross negligence in administering course works and marking of end of semester 1 examination, failure to perform satisfactorily duties assigned, failure to handle course works and end of semester 1 examination and omission which tends to bring the public service into dispute. Aggrieved by the said termination the applicant referred the dispute to CMA where the application was dismissed for lack of merit on 16/05/2019. Dissatisfied by the CMA's decision the applicant on

27/06/2019 filed the present application for revision before this Court.

In support of this application Mr. Ambokile Mwakaje submitted that, both parties received the award on 16/05/2019, and under the circumstance, the applicant was supposed to file his application for revision on 26/06/2019, which was the last day of six weeks (42 days) as it is provided under section 91 (1) (a) of the Act.

The Learned Counsel thus, argued that the applicant was late for one day because he filed this application on 27/06/2019. He further submitted that, the consequence of such delay is dismissal of the application as it is the position in the case of **Commercial Bank of Africa (T) Ltd. Vs. Salvatory Mwandu**, Revision No. 717 of 2018, HC, Labour Division, Dar es Salaam (unreported).

Mr. Ambokile Mwakaje also referred the court to the case of **Blue Pearl Hotel and Apartments Ltd. vs. The Labour Commissioner and Hamis Daffa and 79 Others**, Miscellaneous Application No. 135 of 2018, (unreported), where this Court decided that the applicant had to seek for prior leave of the Court to file the application out of time. He finally prayed for the application to be dismissed.

In reply to the preliminary objection Mr. Mecky Humbo for the applicant conceded to the objection. He submitted that, the application was filed beyond the 42 days prescribed by the law. However, he prayed for leave to be granted to the applicant so that can have an opportunity to file proper application. He submitted that, the circumstance of this case is different from the cases referred by the respondent's counsel. He said, in the cited cases the applicants were late for more than one day while in this application the delay was only just one day. He therefore prayed for the matter to be struck out to allow the applicant to file proper application for extension of time.

In rejoinder Mr. Ambokile Mwakaje reiterated to the submission in chief and urged the court to dismiss the application for being filed out of time.

After going through parties' submissions and court records, is crystal clear that the applicant filed this application after 42 days. The time started to run against the applicant from 16/05/2019 when the award was issued and served to the applicant on the same day. Under that situation the application was supposed to be filed before 26/06/2019 as correctly submitted by both parties, but the same was

filed on 27/06/2019, which was outside the period prescribed under section 91 (1) (a) of the Act. The relevant provision is to the effect that:-

“91.-(1) Any party to an arbitration award made under section 88 (8) 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”.

Thus, on the basis of the above discussion the only issue for determination before this court is what remedy a party is entitled for a time barred application? The applicant submitted that the delay was only for one day hence the matter should be struck out. The court’s position regarding delays to file any application is very clear as was in the case of **Commercial Bank of Africa (T) Ltd.** (supra), where

was held that:-

“Those who seek the aid of the law in the court of justice they must file proceedings within the prescribed time”.

It is also a settled principle of law that a party has to account for each day of delay. This is the position in the case of **Bushfire Hassan vs. Latina Lucia Masaya**, Civil Application. No. 3 of 2007 (unreported), where it was held that:-

“Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken”.

Therefore, the allegation that the applicant delayed for one day does not change the fact that the application was filed out of time without leave of the court.

The applicant in this matter knew that his application was out of time, but he did not bother to seek prior leave to the court as required in law as well as in practice of the court. Unfortunately the applicant failed to use the opportunity to ask for leave to come to

court out of time before he filed this matter, so he cannot ask for such order at this point of time as he did. In other words he jumped one step ahead when he filed this application and, is barred to go back to ask for the same.

It is an established principle that the only remedy for the late filed application in this court is dismissal and not striking out as the applicant prayed, so that he can file the application for extension of time to file proper application, the revision. This is the position of the court in the case of **TanESCO Ltd vs. Bakari Mayongo**, Labour Division, Sumbawanga, Revision No. 2 of 2015, LCCD, 2015. Also in the case of **DED Sengerema D/Council Vs. Peter Msungu & 13 Others**, Labour Division Mwanza, Miscellaneous Application No. 27/2013 (unreported) Rweyemamu J. held that:-

“When an action is time barred a party seeking to initiate it must first apply for extension of time. That the applicant did not do, consequently, I find this application incompetent and dismiss it as per the requirement of the law and practice”.

The foregoing position has been also restated in the case of **Blue Pearl Hotel** (supra) and the case of **Commercial Bank of Africa** (supra) as rightly referred by the respondent.

Under the circumstance the preliminary objection on the point of law raised by the respondent that the revision application is time barred is found to have merit and accordingly upheld.

In the result the application is hereby dismissed.

It is so ordered.

A handwritten signature in black ink, appearing to be 'I.D. Aboud', written in a cursive style.

I.D. Aboud

JUDGE

03/04/2020