

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MOSHI)

AT MOSHI

LABOUR REVISION NO. 07 OF 2023

*(From the Commission for Mediation and Arbitration at Moshi in Labour
Dispute No. CMA/KLM.MOS/ARB/99/2020)*

IDDI ABEID NAIBU..... APPLICANT

VERSUS

YARA TANZANIA LIMITED..... RESPONDENT

RULING

Date of Last Order: 01.08.2023
Date of Ruling : 28.08.2023

MONGELLA, J.

This is a ruling in respect of a preliminary objection raised by respondent. Briefly, the applicant herein has filed this application for revision requesting this court to call and examine the record and proceedings of the Commission for Mediation and Arbitration (CMA) at Moshi in Labour Dispute No. CMA/KLM.MOS/ARB/99/2020 in order to satisfy itself on its legality, propriety and correctness. The application has been taken at the instance of the applicant and supported by his affidavit.



In opposing this application, the respondent filed her notice of opposition and counter affidavit accompanying the same with a notice of preliminary objection on a point of law, to the effect that "**the application for revision is hopelessly time barred.**"

The preliminary objection was disposed in writing. The respondent was represented by Mr. Reuben Robert whereas the applicant was represented by Ms. Zuhura Twalibu, both learned advocates.

In his submissions in chief, Mr. Robert contended that according to **Section 91 (1) (a) of the Employment and Labour Relations Act, [Cap 366 R.E. 2019]**, a party who is aggrieved by an award of the CMA may apply for setting aside the award within 6 weeks from date of being served with the award, which translates to 42 days. He confined himself to the pleadings averring that parties are bound by pleadings thereby citing the case of **Masaka Mussa vs. Rogers Andrew Lumenyela and 2 Others** (Civil Appeal No. 497 of 2021) [2023] TZCA 17339 (14 June 2023).

He averred that in paragraph 10 of his affidavit, the applicant deponed that the CMA award was delivered on 17.03.2023 and further supported his contention with the alleged award attached to the application as "annexure YR-3." He said that at page 28 of the said award it is indicated that the applicant was served with the same on 20.03.2023 while pleadings show that the application was filed on 02.05.2023. That, counting from 20.03.2023 to 02.05.2023, the application was thus filed on 44th day instead of the 42nd day as required under the law. As such, he had the stance that the application is time barred.



Mr. Robert further averred that though the labour statutes are silent on the consequence of filing an application for revision of an award out of time, the same is not a novel issue as the Court of Appeal addressed the issue in **Barclays Bank Tanzania Limited vs Phylisiah Hussein Mcheni**, Civil Appeal No. 19 of 2016 whereby it deliberated on the application of **Section 3(1) of the Law of Limitation Act, Cap 89 R.E. 2019**. That, in the said case, the Court was invited to decide on whether an application for revision of the CMA award filed out of time should be struck out or dismissed under **Section 3(1) of the law of Limitation Act** and the Court decided that the same should be dismissed. He further cited the case of **Hashim Madongo and 2 Others vs Ministry for Industry and Trade and 2 Others** [2009] TLR 357 in support of the same and prayed that this application be dismissed for being filled out of time.

In reply, Ms. Twalibu, averred that the objection raised was baseless since the application for revision was timely filed vide the judiciary electronic system (JSDS) on 28.04.2023 with Ref. 23466949 as per the court record and that the copy of the same was filed on the same date before this court. She was thus surprised as to why the court registry stamped the same on 02.05.2023. She attached the printed copy of the application filed vide JSDS maintaining that from 20.03.2023 to 28.04.2023 only 38 days had lapsed, hence within the 42 days prescribed under section **91 (1) (a) the Employment and Labour Relations Act**.

Ms. Twalibu further averred that on basis of judiciary notice and record, the electronic and original document of the application was filed on 28.04.2023 while the last day for filing the application was on 30.08.2023. She added that, 29.04.2023, was on Saturday and 30.04.2023 was on Sunday, a weekend, while 01.05.2023 was a public holiday, that is, "May



Day." In the circumstances, she had the stance that it was hard for the applicant to follow up and collect original documents, so instead, he collected the same on 02.05.2023.

Ms. Twalibu contended further that, according to **section 59 (1) of the Evidence Act**, the court shall take Judicial notice of the division of time, geographical division of the world, public festivals, feasts and holidays notified in the Gazette. That, **Section 60 (2) of the Interpretation of the Laws Act and Rule 4 (2) of the Rules** are clear on exclusion of non-working days (weekends and public holidays) if the prescribed limitation falls on such days. She further cited the case of **Barclays Bank (T) Ltd. vs. Jacob Muro**, Civil Appeal No. 357 of 2019/2020 to support her argument.

She maintained that since the electronic filing was done on 28.04.2023 and the last day of filing the application was to be on 30.04.2023 which fell on Sunday and 01.05.2023 was a public holiday, the dates ought to be excluded from the limitation period which shall render the application at hand filed within time. She concluded by praying for the preliminary objection to be dismissed, with costs.

In rejoinder, Mr. Robert averred that this court has interpreted the applicability of **Rule 21 and 22 of the Judicature and Application of Laws (Electronic Filing) Rules 2018** in multiple cases including that of **Mwaija Omary vs. Mohamed Said Msuya, Zaituni Omary Kondo and Zaina Omary Kondo**, Land Appeal No. 142 of 2020 whereby it has settled that electronic filing rules only provides for the procedure to file documents online and the same have not completely substituted the manual filing of documents. That, filing of a document online cannot diminish the fact that a document is deemed filed upon payment of court fees. He



therefore maintained that this revision was filed on 02.05.2023, which was out of time.

As to the print out herein attached to the submission of the applicant, he argued that the same was not part of the pleadings and since submissions are not evidence, the attachment of the same was a mere statement from the bar and could not be relied. In support of his argument, he referred a decision by the Court of Appeal in **Rosemary Stella Chambe Jairo vs. David Kitundu Jairo**, Civil Reference No. 06 of 2018 (unreported) cited with approval in **Registered Trustees of Archdiocese of Dar es Sallam vs. The Chairman, Bunju Village Government and 11 Others**, Civil Appeal No. 147 of 2006 and; **Bish International B.V. and Rodolf Teurnis Van Winkelhof vs. Charles Yaw Sarkodie and Bish Tanzania Limited**, Land Case No. 9 of 2006 (unreported).

As to the revision being filed on time in respect of section 60 (1) of the Interpretation of Laws Act, Mr. Robert averred that Ms. Twalib was lying as she first stated that the case was filed on 28.04.2023 but the stamp was issued on 02.05.2023 while at the same time she contended that the application was filed in time in view of section 60(1) and (2) of the Interpretation of Laws Act.

He further argued that the decision in **Barclays Bank (T) Ltd. vs. Jacob Muro** (supra) is distinguished, unreliable and should be disregarded. He argued so saying that it was section 91(1) (a) of the Employment and Labour Relations Act, which was under discussion. That, Section 59 (1) of the Evidence Act is inapplicable as the applicant cannot have two



versions of the story. He prayed for the application to be dismissed for being time barred.

I have dispassionately considered the submissions of both parties. It is true that the Employment and Labour Relations Act is silent on the implications of filing an application for revision out of time. However, such circumstance calls for applicability of the Law of limitation Act as well expounded by the Court of Appeal in the case of **Barclays Bank Tanzania Limited vs. Phylisiah Hussein Mcheni** (supra).

Observing the award by the CMA, I find that the same was indeed delivered on 17.03.2023. As contended by the applicant, at page 28 of the said award it is shown that the same was served on 20.03.2023 to one Exaud Mgaya. There is no objection on the date of delivery of the award and the date the applicant was served the same. Reservations are on whether this application was filed within time which is based on two issues being; **one**, the application was electronically and physically filed on 28.04.2023 and **two**, that in view of exclusions under **section 60 (1) and (2) of the Interpretation of Laws Act**, the date of 02.05.2023 was the last day in the period of limitation.

As to the first line of argument, the counsel for the applicant averred that he filed this application on 28.04.2023. The record reveals that the registry office stamped the same as filed on 02.05.2023. Though the exchequer receipt is missing in the bundle, I cannot entertain the argument that the filing was done on 28.04.2023 by relying on a document presented during submission by the applicant. This is a practice that has been shunned by the courts in a plethora of authorities See for instance; **Bruno Wenceslaus Nyalifa vs. Permanent Secretary Ministry of Home Affairs &**



Another (Civil Appeal No. 82 of 2017) [2018] TZCA 297; **DRTC Trading Company Ltd vs. Malimi Lubatula Ng'holo & Another** (Civil Application 89 of 2020) [2022] TZCA 352 and; **Rosemary Stella Chambejairo vs. David Kitundu Jairo** (supra).

Even if I decide to entertain the argument that the applicant filed this application electronically on 28.04.2023 as marked in the document he attached, the same seems to have been filed around 17hrs way beyond work hours. As such, it is highly improbable that the applicant physically filed his documents on the same day as he claims because if that was the case even the payment of the court fees would not have been effected.

The counsel for the applicant relied on **Rule 21 of the Judicature and Application of Laws (Electronic Filing) Rules, 2018** to defend her stance that the application was filed within time. For ease of reference, the provision states:

"A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the date it is submitted, unless a specific time is set by the court or it is rejected."

Addressing similar circumstances pertaining the issue of filing, this court in plethora of its authorities, has addressed the application of **Rule 21** above and its implication in relation to **Rule 3 and 5 (1) of the Court Fees Rules G.N. 247 of 2018** which state:



"3. The fees for any matter shall, unless otherwise expressly provided, be paid in accordance with these" Rules.

"5. (1) For the purposes of this Part, fees specified in the First Schedule to these Rules shall be paid to the High Court, a court of a resident magistrate and district court in respect of proceedings and matters other than those for which specific fees are prescribed under any other written law."

There are two schools of thought on application of **Rule 21 of the Electronic Filing Rules and Rule 3 and 5 of the Court Fees Rules**. The first maintains that according to Rule 21 once a document is electronically filed the same is considered to have been duly filed. The second school of thought maintains the position before coming into force of the Electronic Filing Rules to the effect that, a document is considered to have been filed upon payment of court fees. It is in the second school of thought where it is maintained that both **Rule 21 of the Electronic Filing Rules and Rule 3 and 5 of Court Rules** must be read together. For instance, in the case of **Maliselino B. Mbipi vs. Ostina Martine Hyera** (Misc. Civil Application No. 8 of 2022) [2022] TZHC 14256, my learned brother, Mlyambina, J. reasoned that the two rules do not conflict each other. He stated:

"... it is the view of the court that the general purpose suggests that Rule 21 of the Electronic Rules cannot be interpreted in isolation because in effect, there is no conflict between Rule 21 of GN No. 148 and Rule 3 or 5 of GN No. 247 of 2018. None of the Rules allows what another prohibits or prohibits what another allows. By fiat, there is no ambiguity between them."



In **Robert Maziba vs. Emil Maziba @ Erasto Maziba**, (Misc. Civil Application No. 135 of 2023) [2023] TZHC 18588 the second school of thought was employed by my learned brother Morris, J. with a caution of people unscrupulously taking advantage of the system. He observed:

"Admittedly, I am adequately magnetized by the philosophy that the date of filing documents on-line should be considered to be filing date. Nevertheless, if a party manifestly undermines or takes advantage of such system at the expense of prejudicing the other; he should not be condoned by the court. The objective of paying the applicable fees timely and adequately calls for no overemphasis."

However, the circumstances displayed in this application are somewhat distinguished as there is no proof presented as to electronic filing and physical filing being done on 28.04.2023. None of the schools of thought as explained above are supportive of the respondent's arguments in the first issue.

As to the second issue on to whether the application was filed within time in view of **section 60 (1) and (2) of Interpretation of Laws Act**, I find the need to first reproduce the said provision for ease of reference:

60.-(1) *In computing time for the purposes of a written law-*

- (a)** *where a period of time is expressed to be at, on, or with a specified day, that day shall be included in the period;*
- (b)** *where a period of time is expressed to be reckoned from, or after, a specified day,*



that day shall not be included in the period;

- (c) where anything is to be done within a period of time before a specified day, the time shall not include that day;**
- (d) where a period of time is expressed to end at, on, or with a specified day or to continue to or until a specified day, that day shall be included in the period;**
- (e) where the time limited for the doing of a thing expires or falls upon an excluded day, the thing may be done on the next day that is not an excluded day;**
- (f) where there is a reference to a number of clear days or "at least" or "not less than" a number of days between two events, in calculating the number of days there shall be excluded the days on which the events happen;**
- (g) where there is a reference to a number of days not expressed to be clear days or "at least" or "not less than" a number of days between two events, in calculating the number of days there shall be excluded the day on which the first event happens and there shall be included the day on which the second event happens;**
- (h) where an act or proceeding is directed or allowed to be done or taken on a certain day, or on or before a certain day, then, if that day is an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day that is not an excluded day.**



(2) For the purposes of this section, "excluded day" means Saturday, Sunday or public holiday throughout or in that part of which is relevant to the event, act, thing or proceeding concerned.

According to section **91(1) (a) of the Employment and Labour Relations Act**, one may apply to set aside an arbitration award within six weeks after being served with the award. The provision specifically reads:

"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;"

Since the applicant was served the award on 20.03.2023, 42 days were to lapse on 01.05.2023. In view of **section 60 (1) (b) and (c) of the Interpretation of Laws Act**, as cited above, read together with **section 19 (1) of the Law of Limitation Act**, which reads: *"In computing the period of limitation for any proceeding, the day from which such period is to be computed shall be excluded;"* 01.05.2023 which was the last day within the 42 days, and also a public holiday, that is, "the workers' day" the same is therefore an excluded day. This issue was also discussed by the Court of Appeal in the case of **Barclays Bank (T) Ltd. vs. Jacob Muro** (supra) whereby it reasoned:



"... while both section 60 (2) of the ILA and Rule 4 (2) of the Rules provide for exclusion of non-working days (Saturday, Sunday and public holiday) if the last day of any prescribed period of limitation falls on any such day, none of the said provisions has the effect of excluding all weekends and public holidays falling within a particular period as suggested in the above holding."

Considering the authorities referred to above, it is clear that the last day fell on the next day, that is, on 02.05.2023, which was in fact the day the application at hand was filed. As such, I find the preliminary objection without merit and overrule it accordingly.

Dated and delivered at Moshi on this 28th day of August 2023.



L. M. MONGELLA

JUDGE

