

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

REVISION APPLICATION NO. 4503 OF 2024

*(Arising from an Award issued on 19/01/2024, Hon. Nyanguye, H.A, Arbitrator, in labour Complaint
No. CMA/PWN/MKR/05/2023/07/2023 at Mkuranga)*

ADSON BISEKO CHIMASA APPLICANT

VERSUS

**ARAB CONTRACTORS & ELSEWEDY
ELECTRIC..... RESPONDENT**

RULING

*Date of Last Order: 08/04/2024
Date of Ruling: 16/04/2024*

B. E. K. Mganga, J.

Brief facts of this application are that, Adson Biseko Chimasa, the herein applicant, had a one-year fixed term contract with Arab Contractors & Elsewedy Electric, the herein respondent. The said one-year fixed term contract of employment between the two commenced on 19th November 2022. It is undisputed by the parties that, in the said one-year fixed term contract, applicant was employed as motor vehicle driver at monthly salary of TZS 723,700/=. It is further undisputed by the parties that, at some point, applicant fell sick, as a result, on 12th January 2023, respondent gave him sick sheet so that he can attend

treatment in a referral hospital. It is said that, respondent opted to retrench her employees and applicant became one of them. It is said that, on 22nd January 2023 applicant resumed his work. It is undisputed by the parties that on 24th January 2023 respondent terminated employment of the applicant by way of retrenchment.

Applicant was aggrieved with termination of his employment as a result, he filed labour complaint No. CMA/PWN/MKR/05/2023/07/2023 before the Commission for Mediation and Arbitration complaining that respondent terminated his employment unfairly. On 19th January 2024, Hon. Nyanguye, H.A, Arbitrator, having heard evidence of the parties issued an award that termination was fair both substantively and procedurally and dismissed the complaint.

Further aggrieved, on 5th March 2024 applicant filed this application seeking the court to revise and set aside the said award. When the matter was scheduled for hearing, I asked the parties to address the court whether the application was filed within time or not.

Responding to the issue raised by the court, Mr. Michael Mgombozi, from TUPSE, a trade union for the applicant, submitted that on 19th January 2024, applicant was served with a copy of the award and that he filed this application on 4th March 2024. When probed by the court as to the date the application was uploaded in the Electronic Case

Management System, Mr. Mgombozi conceded that it was on 5th March 2024 and not on 4th March 2024. He further submitted that, applicant was supposed to file this application within 42 days from the date he was served with the award. He went on that, 42 days expired on 1st March 2024. Mr. Mgombozi submitted further that, applicant filed this application on 4th March 2024 because the 42nd day fell on 2nd March 2024 that was Saturday and that 3rd March 2024 was Sunday. He argued that, in terms of section 60(1)(a) and (b) and (2) of the Interpretation of Laws Act[Cap. 1 R.E. 2019], the date of receiving the award is reckoned and that, if the last date is weekend, it has also to be reckoned. He further cited Section 19(1) to (6) of the Law of Limitation [Cap. 89 R.E. 2019] to support his submissions. With those submissions, Mr. Mgombozi maintained that the application was filed within time and prayed the court to hear the parties on merit.

On the other hand, Ms. Joycelinda Mdeme, advocate for the respondent, responding to the same issue submitted that, in terms of section 91(1) (a) of Employment and Labour Relations Act[Cap. 366 R.E. 2019] applicant was supposed to file the application for revision within 42 days from the date the award was issued. She further submitted that, both parties were served with the award on 19th January 2024. She went on that, 42 days expired on 1st March 2024 that was Friday and a

working day. She further submitted that applicant filed this application on the 45th day without an order of extension of time. She concluded that, the application was filed out of time for three days hence it is time barred and prayed the court to strike it out.

It is undisputed by the parties that, the parties were served with the impugned award on 19th January 2024. It is also undisputed by the parties that applicant was supposed to file this revision application within 42 days from the date he was served with the award. It is my view that, the 42 days expired on 1st March 2024 counting from 20th January 2024 after excluding the day the award was served to the parties namely 19th January 2024. It was submitted by Mr. Mgombozi for the applicant that the 42nd day fell on Saturday hence it has to be reckoned. With due respect to him, the 42nd day fell on 1st March 2024 that was Friday and in fact, it was a working day hence it cannot be reckoned.

It was also submitted by Mr. Mgombozi for the applicant that the application was filed on 4th March 2024 that was Monday. I agree with him when he concede that the application was uploaded in the electronic case Management system on 5th March 2024 because that is what the system shows as the date of filing. Even if assuming that the 42nd day fell on Saturday of which it is not the case, applicant filed this application on 5th March 2024 that was Tuesday and not on 4th March

2024 that was Monday. I therefore agree with counsel for the respondent that applicant filed this application out of time and without an order for extension of time.

It was prayed by counsel for the respondent that the application be struck out for being time barred. With due respect, a time barred matter is liable to be dismissed and not to be struck out. See the case of *Barclays Bank Tanzania Limited vs Phylisiah Hussein Mcheni* (Civil Appeal 19 of 2016) [2021] TZCA 202 (17 May 2021). That said, I hereby dismiss this application for being time barred.

Dated in Dar es Salaam on this 16th April 2024.



B. E. K. Mganga

JUDGE

Ruling delivered on this 16th April 2024 in chambers in the presence of Adson Biseko Chimasa, the Applicant and Joycelinda Mdeme, Advocate for the respondent.



B. E. K. Mganga

JUDGE