

**IN THE COURT OF APPEAL OF TANZANIA**

**AT SUMBAWANGA**

**(CORAM: JUMA, C.J., WAMBALI, J.A. And MURUKE, J.A.)**

**CIVIL APPEAL NO. 143 OF 2021**

**CRDB BANK PLC.....APPELANT**

**VERSUS**

**LUSEKELO MWAKAPALA ..... RESPONDENT**

**(Appeal from the Judgment and Decree of the High Court of Tanzania at  
Sumbawanga)**

**(Mrango, J)**

**dated the 3<sup>rd</sup> day of October, 2019**

**in**

**Labour Revision No. 4 of 2019**

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**JUDGMENT OF THE COURT**

19<sup>th</sup> & 22<sup>nd</sup> September, 2023

**MURUKE, J.A.:**

This appeal arises from the decision of the High Court of Tanzania at Sumbawanga in Labour Revision No. 04 of 2019 (Mrango, J) which was decided in favour of the respondent.

As gathered from records of appeal, Lusekelo Mwakapala, the respondent, was the appellant's employee from 01/10/2003, when he was employed as a bank teller on permanent basis. While working in that position, announcements were made for suitable Bank employees to

contest for Departmental Manager's position. The respondent applied for the same and qualified for that position. Consequently, on 4<sup>th</sup> November, 2010, the respondent signed a three years fixed term contract with the appellant with effect from 1/11/2010 to 31/10/2013. His working station was CRDB Mpanda Branch at Mpanda, Katavi Region. The respondent continued to serve the appellant until 20/11/2013 when he was served with a notice of non-renewal of a contract dated 19/11/2013.

Aggrieved, the respondent referred his claims before the Commission for Mediation and Arbitration (the CMA) at Ilala, Dar es Salaam where his dispute was registered as MGOGORO WA KAZI NO. CMA/DSM/ILA/866/13. On 21/02/2014, the CMA struck out the dispute for want of territorial jurisdiction as the cause of action arose in Mpanda. The CMA ordered further that; the respondent was at liberty to file the dispute in a place where the cause of action arose within thirty (30) days from the date of the ruling if he wished to pursue the same.

Following the said direction, the respondent on 24/02/2014 filed a labour dispute No. RK/CMA/SMB/283/2014 at the CMA for Rukwa at Sumbawanga. At first instance, the dispute was heard exparte and the exparte award was issued on 08/05/2015 in favour of the respondent. However, the same was set aside by the same CMA and the parties were

heard interpartes in dispute No. CMA/MBY/283/2015 in which the award was partly in favour of the respondent.

The record of appeal reveals further that the respondent was dissatisfied with the award, he thus filed Revision Application No.04 of 2019 before the High Court Labour Division at Sumbawanga. Upon hearing the parties, the High Court decided in favour of the respondent. Being resentful with the decision, the appellant lodged this appeal raising seven (7) grounds of appeal namely;

- 1. The learned Judge erred on his failure to hold that Commission for Mediation and Arbitration (CMA) did not have jurisdiction to entertain Labour Dispute No. RK/CMA/SMB/283/2014 which was instituted 62 days out of time limited by Law without condonation.*
- 2. The learned Judge erred on his failure to quash and set aside the proceedings in the Application to set aside Ex-parte Award which were badly recorded instead of restoring the Ex-parte Award.*
- 3. The learned Judge erred on failure to hold that the Ex-parte Award was improperly procured.*
- 4. The learned Judge made a grave mistake on his failure to realize that what was before him was an application for Revision of the Award issued by Hon. A. Mwalongo (Arbitrator) dated 23/04/2019 and not a decision of Hon. O. Ngaruka (Mediator) dated 25/09/2015.*
- 5. The learned Judge having restored the Ex-parte Award issued by Hon. O. W. Ngaruka (Arbitrator) dated 08/05/2015 should have*

*quashed and set aside all further proceedings including the Award issued by Hon. A. Mwalongo (Arbitrator) dated 23/4/2019.*

- 6. The learned Judge having restored Ex-parte Award dated 08/05/2015 erred on proceeding to deal with its merits when none of the parties invited the Court to revise it or confirm the same.*
- 7. The learned Judge erred on awarding various sums of money to the Respondent in the absence of any evidence tendered before him and was not at all a matter before him.*

On the date set for hearing Mr. Samuel Mathiya and Mr. Tumaini Msechu, both learned counsel represented the appellant, while Mr. Nesto Adamu Mkoba and Mr. Michael John Nyambo, both learned counsel represented the respondent.

Addressing the Court, Mr. Mathiya, first abandoned grounds 5 and 6 and prayed to argue grounds 1, 2, 3, 4 and 7. On ground one, he submitted that the respondent delayed to file his dispute at the CMA for Rukwa for 62 days. This was after the respondent first filed his dispute at a wrong jurisdiction that ended up being struck out. Indeed, he stated the dispute he filed was accompanied with the CMA Form No. 7 for condonation which the CMA did not adjudicate. More so, the CMA Form No. 7 was not accompanied with affidavit to explain the reasons for delay that led to noncompliance with Rule 29 of Labour Institution

(Mediation and Arbitration) Rules, GN.No.64 of 2007, (GN. No. 64 of 2007)

Mr. Mathiya argued further that though the appellant raised a preliminary point of objection at the CMA on propriety of the dispute on the argument that it was time barred, the same was overruled the reason being that, the CMA at Ilala directed the respondent to file his dispute within 30 days from the day the first dispute was struck out for lack of territorial jurisdiction. In his submission, the Arbitrator at Ilala had no jurisdiction to direct the Arbitrator of Sumbawanga or extend the time limit without following procedure. It is the issue of territorial jurisdiction. The appellant's counsel submitted that since the CMA had no jurisdiction to entertain the dispute filed out of time, the Court should allow the first ground of appeal, nullify the CMA and the High Court proceedings and set aside the award.

Responding to appellant's counsel submission on the first ground, Mr. Nyambo submitted that the respondent filed his dispute at the CMA at Ilala Dar es Salaam within 30 days. Unfortunately, the same was struck out and he was directed to file his dispute at the CMA for Rukwa at Sumbawanga within 30 days from the date the application was struck out.

On being prompted by the Court on the requirement of rule 22 of GN. No. 64 of 2007 as to whether the CMA at Ilala had power to issue such directive, he replied that the respondent wrongly filed dispute at the CMA Ilala which had no territorial jurisdiction. Nonetheless, he was of the firm view that the CMA at Ilala had power to give direction and that is why the respective order has not been appealed against as it was lawful. He thus prayed that the first ground be dismissed.

Having heard counsel for the parties on ground one, the crucial issue for our determination is whether the dispute at the CMA for Rukwa was instituted within time. Our deliberation will certainly touch on the issue of jurisdiction. It is worth noting that, the question of jurisdiction is crucial and must be determined by the court/tribunal at the earliest opportunity. Jurisdiction is everything without which a court has no power to determine the dispute before it. Where a Court has no jurisdiction there would be no basis for a continuation of proceedings. Generally, a court is barred to entertain a matter which it has no jurisdiction.

The centre of the dispute in this appeal emanates from the order of an Arbitrator in Dispute No. CMA//DSM/ILA/866/13, Hon. Kiwelu, L of the CMA at Ilala dated 21<sup>st</sup> February, 2014 which stated as follows:

*"Shauri hill linaondolewa mbele ya tume struck out. Kama mlalamikaji ana nia ya kuendelea na shauri lake basi, akafungue katika ofisi husika ya tume ambapo mgogoro umetokea ndani ya siku 30 toka tarehe ya kutolewa uamuzi".*

It is from that order the respondent filed his Dispute No. RK/CMA/SMB/283/2014 at the CMA for Rukwa and Katavi Regions on 29/02/2014. However, as the appellant was of the view that the dispute was time barred, she raised a preliminary objection which was overruled by the arbitrator on 24/04/2014. Particularly, the arbitrator observed that:

*"In dealing with the first issue whether the matter is time barred or not, the commission has considered the small ruling by mediator L. Kiwelu from CMA Dar es Salaam zone dated 21/02/2014 whereby she dismissed the same because CMA Dar es Salaam lacked territorial jurisdiction over that matter. Mediator L. Kiwelu dismissed the case but granted one relief of filing the same within 30 days in terms of the law".*

The law governing time limit for reference of disputes at the CMA is GN. No. 64 of 2007. Specifically, Rule 10 (1) (2) provides as follows:

*"10 (1) Disputes about the fairness of an employee's termination of employment must be referred to the Commission within thirty days from the date of termination or the date that the employer made a final decision to terminate or uphold the decision to terminate.*

*(2) Any other disputes must be referred to the Commission within sixty days from the date when the dispute arised."*

From the cited provision, the nature of the dispute as it appears in the respondent's referral form, that is, CMA F1, was termination of employment. Thus, as per Rule 10(1), the dispute had to be referred at the CMA within thirty (30) days from the date of termination or when the employer made his last decision. Going by the records of appeal, the essence of this dispute is the appellant's decision not to renew the contract of employment with the respondent. The Notice of non-renewal dated 19/11/2013 was served on the respondent on 20/11/2013. It is not disputed that initially, the respondent timely filed a labour Dispute No. CMA/DSM/ILA/866/13 before the CMA at Ilala, Dar es salaam. However, the same was struck out for want of territorial jurisdiction on 21/02/2014, followed by the direction that the respondent had to file his dispute to the appropriate place of the CMA within 30 days. The



respondent thus on 24/02/2014 lodged a CMA F1 before the CMA for Rukwa at Sumbawanga which was attached with the CMA F7 concerning an application for condonation of late referral of dispute to the Commission. The record of appeal reveals further that prior to the mediation process the applicant raised a preliminary objection on the time limit which was overruled as intimated above. The issue thus to be determined by the Court is whether the condonation of 30 days granted to respondent by the mediator in CMA/DSM/ILA/866/13 was proper to warrant the jurisdiction of the CMA for Rukwa.

It is settled that as stated earlier on once the issue of time limitation is established, it has the effect of causing the jurisdiction of the court to cease. This stance has been pronounced by the Court in a number of cases, including, **Mose Zongori Kisere vs Richard Kisika Mugendi & Another**, (Civil Application No. 244/01 of 2019) [2022] TZCA 640 (18 October 2022 TANZLII) and **Njake Enterprises Ltd v. Blue Rock Ltd and another**, (Civil Appeal No. 69 of 2017) [2018] TZCA 304 (03 December 2018 TANZLII), among others.

Moreover, in the case of **Fanuel Mantiri Ng'unda v. Herman Mantiri Ng'unda and 20 Others**, [1995] T.L.R 155 as referred by the Court in **Commissioner General of Tanzania Revenue Authority v.**

**Milambo Ltd**, (Civil Appeal No. 62 of 2022) [2022] TZCA 348(14 June 2022 TANZLII) it was stated:

*"The question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature... The question of jurisdiction is so fundamental that courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position and the commencement of the trial,...it is risky and unsafe for the court to proceed with the trial of a case on the assumption that the court has jurisdiction to adjudicate upon the case."*

In the case at hand, we are of the view that that the CMA Ilala had no territorial jurisdiction to determine the dispute. Therefore, the mediator could not proceed to grant the respondent 30 days in which to file a dispute in a proper place as it transpired. The mediator's act of condoning the time limit was a material irregularity. The mediator's power at that stage was to strike out the dispute for want of territorial jurisdiction and advice the respondent to file the dispute in a proper place as he did. He could not thus extend the time as he was *functus officio*.

In the same vein, the mediator at the CMA for Rukwa wrongly overruled the preliminary objection raised by the appellant by relying on the order of the mediator at the CMA at Ilala which was made out of context. That was totally wrong as the condonation relied was granted by a mediator who had no jurisdiction to do so. Therefore, since the dispute was referred before the CMA for Rukwa about 62 days from the date of the cause of action, and no condonation application was determined in dispute No. RK/CMA/SMB/283/2014 despite the respondent having filed a CMA F7, then the dispute was time barred. Thus, the CMA for Rukwa had no jurisdiction to determine the dispute. In the event, since the dispute was filed out of time without proper order of condonation, it is our settled view that the CMA improperly entertained the parties dispute. As a matter of procedure, the CMA was required to determine the application for condonation before going into determining the dispute as according to the record of appeal the respondent had filed CMA F7 though he did not fully comply with Rule 10 and 29 (1) and 4(d) of GN. No.64 of 2007 as the affidavit in support of the request was not attached to explain the reason for the delay. In short, there was no sufficient material for the CMA to rely on and order condonation. Therefore, the CMA for Rukwa was not in the position to determine the condonation. It is common Knowledge that an application

for condonation is governed by Rule 29(1) of GN. No. 64 of 2007 which provides:

*"Subject to Rule 10, this Rule shall apply to any of the following: -*

- (a) Condonation, joinder, substitution, variation of setting aside an award jurisdiction dispute"*
- (b) Jurisdiction dispute.*
- (c) other applications in terms of these Rules."*

Moreover, Rule 29 (2) provides that an application shall be brought by notice to all persons who have an interest in the application. More importantly, Rule 29(4)(d) provides further that, the application shall be supported by an affidavit setting clearly and concisely grounds for condonation in accordance with rule 10 where the application is filed out of time.

From the foregoing, having thoroughly scrutinized the record of appeal and considered the counsel arguments, we are satisfied that since the dispute arose on 19/11/2013 and the respondent lodged the dispute on 24/02/2014 at the CMA for Rukwa which is beyond the 30 days prescribed under Rule 10(1) of GN. 64 of 2007, the same was time barred and thus the CMA had no jurisdiction. It follows that the proceedings of the CMA in Dispute No. RK/CMA/SMB/283/214 and those of the High Court in Labour Revision No. 04 of 2019 were a nullity.

In the event, we allow the first ground of appeal. Besides, since the remaining grounds of appeal were preferred in alternative, we do not deem it appropriate to determine them in view of the decision we have reached in the first ground. Accordingly, we allow the appeal.

Consequently, we nullify the CMA proceedings and those of the High Court and set aside the award. Considering the nature of the appeal, we make no order as to costs.

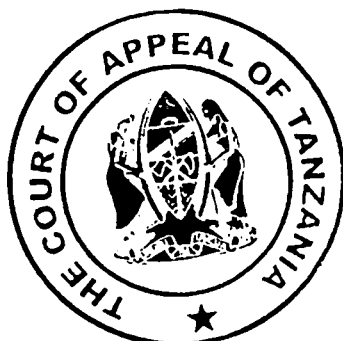
**DATED at SUMBAWANGA this 22<sup>nd</sup> day of September, 2023.**


I. H. JUMA  
**CHIEF JUSTICE**

F. L. K. WAMBALI  
**JUSTICE OF APPEAL**

Z. G. MURUKE  
**JUSTICE OF APPEAL**

The Judgment delivered this 22<sup>nd</sup> day of September, 2023 via video conference from Sumbawanga High Court connecting to Dar es Salaam in the presence of the Mr. Tumaini Msechu, learned counsel for the Appellant and Mr. Nesto Mkoba, learned counsel for the Respondent is hereby certified as a true copy of the original.



  
E. G. MRANGU  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**