

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LABOUR DIVISION)  
AT ARUSHA**

**REVISION APPLICATION NO. 72 OF 2018**  
*(Arising from Labour Dispute No. CMA/ARS/ARB/43/2018)*

**A.I.C.C SAVINGS AND CREDIT CO-OPERATIVE**

**SOCIETY (1982) LTD. .... APPLICANT**

**VERSUS**

**CLAUD PAUL TARIMO ..... 1<sup>ST</sup> RESPONDENT**  
**ANTHONY ZAKAYO MOLLEL ..... 2<sup>ND</sup> RESPONDENT**  
**NAMKUNDA MICHAEL ..... 3<sup>RD</sup> RESPONDENT**  
**FEDILIA ELIA MURO ..... 4<sup>TH</sup> RESPONDENT**  
**LUCIA ERNEST MILANZI ..... 5<sup>TH</sup> RESPONDENT**  
**BEATHA I. SWAI ..... 6<sup>TH</sup> RESPONDENT**  
**VICKY LAZARO MMASI ..... 7<sup>TH</sup> RESPONDENT**  
**IZACK ANAEL MBISE ..... 8<sup>TH</sup> RESPONDENT**  
**SENIORINA DIDASI MUNISHI ..... 9<sup>TH</sup> RESPONDENT**  
**RENALDA JOHN TARIMO ..... 10<sup>TH</sup> RESPONDENT**  
**JOSEPHINE JOHN MWINI ..... 11<sup>TH</sup> RESPONDENT**  
**ISAYA ZAKAYO MOLLEL ..... 12<sup>TH</sup> RESPONDENT**  
**HAPPY LAZARO URASSA ..... 13<sup>TH</sup> RESPONDENT**  
**ADSON KAVUTIE MOLLEL ..... 14<sup>TH</sup> RESPONDENT**  
**NEEMA JULIUS MMARI ..... 15<sup>TH</sup> RESPONDENT**  
**MARTHA LUAGA SWILA ..... 16<sup>TH</sup> RESPONDENT**  
**GRACE CHARLES NYAKI ..... 17<sup>TH</sup> RESPONDENT**  
**EVALINE JOHNNIAM MTUI ..... 18<sup>TH</sup> RESPONDENT**

<b>CHRISTINA WISO PHILIPO .....</b>	<b>19<sup>TH</sup> RESPONDENT</b>
<b>APLEY JOACHIM KILENGA .....</b>	<b>20<sup>TH</sup> RESPONDENT</b>
<b>MODESTA ALEXANDER MUSHI .....</b>	<b>21<sup>ST</sup> RESPONDENT</b>
<b>JACOBO ZACHARIA MAHANYU .....</b>	<b>22<sup>ND</sup> RESPONDENT</b>
<b>MERRY SUMUSONI KIULA .....</b>	<b>23<sup>RD</sup> RESPONDENT</b>

## **JUDGMENT**

*15<sup>th</sup> August & 20<sup>th</sup> October, 2020*

### **Masara, J**

The Applicant herein filed this Application under Section 91(1) (a) (b), Section 91 (2) (a) (b) and (c), Section 91(4) (a) (b) and Section 94 (1) (b) (i) of the Employment and Labour Relations Act, No. 6 of 2004 as amended and Rules 24(1), 24(2) (a), (b), (c), (d), (e) and (f), 24(3) (a), (b), (c) and (d), and Rule 28(1) (c), (d) and (e) of the Labour Court Rules, GN No. 106 of 2007, craving for this Court to be pleased to call for and examine the record of the proceedings and award in the Commission for Mediation and Arbitration at Arusha (the CMA) in Labour Dispute No. CMA/ARS/ARB/43/2018 delivered on 2<sup>nd</sup> day of May, 2018 by Mpapasingo, B. (Arbitrator) for the purposes of satisfying itself as to the regularity and propriety thereof and to revise the same. The application is supported with a sworn affidavit of **Alex Michael**, the Applicant's Personal Representative from Wesagi Employment Solutions. The Respondents opposed the Application and filed a counter affidavit attested by Salehe Baraka Salehe, learned advocate for the Respondents.

The Applicant was the Respondent at the CMA whereby the Respondents were the Applicants. The Respondents were before December 31, 2017 employed by the Applicants on fixed terms, the last one being for a period of six months which ran from January 1, 2017 to June 30<sup>th</sup> 2017. From July 1 to December 31, 2017, when their employment was terminated, they had not signed any agreement. Their main duty was cleaning, landscaping and gardening services at the Arusha International Conference Centre (AICC) landed properties. On 30<sup>th</sup> November, 2017 they were notified that their employments will not be renewed following the decision of the AICC Board of Management not to continue with the services of the Applicant. A joint meeting was convened to convey the message. Terminal benefits were said to have been paid to all the Respondents. The Respondents were not satisfied with the benefits paid to them and hence preferred a labour dispute before the CMA. On 2<sup>nd</sup> May, 2018 the CMA delivered its Award in favour of the Respondents. The Respondents were paid various sums, calculated using their last monthly pay for a duration of six months. The total amount of the Award was Tshs. 22,320,000/=. According to the affidavit in support of the Application, a copy of the Award was served upon the Applicant on 5<sup>th</sup> July 2018. The Applicant felt aggrieved, hence this Application.

At the hearing, the Applicant appeared represented by Mr. Alex Michael, personal representative, while the Respondents enjoyed the services of Mr. Salehe Salehe, learned advocate. The Application was heard *viva voce*.

Submitting in support of the Application, Mr. Michael prayed to adopt the contents of the affidavit in support of the Application. He contended that the Arbitrator was wrong not to consider the whole evidence, particularly relevant exhibits which contained reasons that led to the termination of the Respondents. He referred to Annexure P3 which contains a letter dated 30/7/2017 from AICC extending the service of the Applicant for only 6 months and the one dated 30/11/2017 which confirmed that the contract was to effectively end on 31/12/2017. That the Applicant communicated the information by meeting all the Respondents and that their services would not be required as the Applicant will have no work to offer them. Mr. Michael was therefore of the view that there was justification for termination contrary to what was decided by the Arbitrator.

Mr. Michael had yet another arsenal against the proceedings and decision of the CMA. He argued that the representation of the Respondents at the CMA was defective in that their representative, Anthony Zakayo Mollel, who testified for all the 23 Respondents, did not have authority to do so. That his representation was against Rule 5(2) and (3) of the Labour Institutions (Mediation and Arbitration) Rules, GN. 64 of 2007 as there was no written authority tendered to authorise him to testify on behalf of the rest of the Respondents. He cited this Court's decisions in ***21<sup>st</sup> Century Textile Ltd Vs. Octavian Udole and Others***, 2013 Labour Court Digest at page 85 and ***Hashimu Jongo & 41 Others Vs. Attorney General and TRA***, Misc. Civil Application No. 41 of 2004 (unreported), to cement his arguments.

In reply, Mr. Salehe, likewise, sought to adopt the contents of the counter affidavit. He commenced his submissions by raising a legal point; to wit, that this Application was filed beyond the required 42 days. His assertion was premised on the fact that the Award was given on 2/5/2018 but the Application was filed on 1/8/2018. That there are no reasons advanced why the same was filed beyond the prescribed time and no application for extension of time was preferred. He prayed that the same be struck out for being incompetent.

Mr. Salehe did submit, in the alternative, that the Application lacks merits in that there was no evidence to substantiate the claims that non-renewal of the Respondents' employment contracts was due to failure of the Applicant to get tender from AICC. That the Applicant had a duty to justify the decision to terminate the Respondents. The learned counsel further argued that the six months contracts given to the Respondents were illegal as per Rule 11 of the Employment and Labour Relations (General) Regulations, GN. No. 47 of 2017 which came into effect on 25<sup>th</sup> March, 2017. Mr. Salehe supported the CMA Award as the Applicant failed to justify the termination of the Respondents and the fact that the Applicant was duty bound to give contracts of not less than one year to the Respondents.

Regarding the procedure for representation of the Respondents at the CMA, it was Mr. Salehe's contention that Mr. Michael raised the point without having included the same in the Affidavit supporting the Application or requested for a supplementary affidavit. He labelled it as a statement from

"the bar". Mr. Salehe asked the Court to disregard the point as the same is an afterthought, considering that it is not part of the pleadings. Mr. Salehe concluded his submission by asking the Court to dismiss the Application and in addition award severance pay to the Respondents.

In a rejoinder, Mr. Michael agreed with Mr. Salehe that the impugned CMA decision was made on 2/5/2018 but that the same was supplied to the Applicant on 5/7/2018. He also contended that the reasons for delaying to get a copy was due to the fact that the Respondents took a copy which was supposed to be served upon the Applicant. Mr. Michael submitted that the delay should be attributable to the Respondents, thus days should be counted from 5<sup>th</sup> July 2018 and not from 2<sup>nd</sup> May, 2018.

Retorting on the issue of representation, Mr. Michael, while admitting that the affidavit does not contain the allegation about it, quickly stated that the issue of representation is a legal issue that the Court needs to address even *suo motu*. On severance pay, Mr. Alex stated that the same should not be awarded as the CMA dealt with the matter and the respondents did not include it as a claim in their counter affidavit and, further, the Respondents contracts were for a duration that would not attract severance pay.

Having considered the affidavit in support of the application, the counter affidavit and the oral submissions in Court, issues for determination are whether the application should fail for being filed beyond the prescribed time, whether CMA's award should be nullified for lack of proper

representation of the Respondents and whether the Award should be revised and set aside for the reasons advanced by the Applicant.

I should state, at the outset, that I agree with Mr. Michael regarding the claim for severance pay. The type and duration of contracts that the Respondents served do not ordinarily attract severance pay. This is in addition to the fact that the Respondents did not indicate dissatisfaction with the Award.

Turning to the first issue, it is not in dispute that the Award, subject of this revision, was pronounced on 2<sup>nd</sup> May 2018. The Applicant, in the counter affidavit and before this Court, alleges to have obtained the same on July 5, 2018. That is more than two months after the same was pronounced. The Applicant state that a copy meant to be served on the Applicant was taken by the Respondents, thus delaying them from getting a copy thereof for their actions. Both in the counter affidavit of the Respondents and in the submissions in Court, the Respondents do not agree with the Applicant's assertions on when they got a copy of the Award. The Award of the CMA stipulates that whoever was not satisfied by it had 42 days within which to apply to the High Court for revision. The Award does not state whether all parties attended on that day and the proceedings of the day of the pronouncement are not attached. The only record available is of the last date of hearing whereby the Award was slated for 6<sup>th</sup> April, 2014. Apparently, it was not pronounced on that date.

As rightly submitted by representatives of the parties herein, section 91(1)(a) of the Employment and Labour Relations Act provides that the time to file revision is six weeks after the award is served on the Applicant unless the alleged defect involves improper procurement. In order to decide whether the application was filed out of time, the Court has to ascertain the date the Award was served on the party seeking to challenge the Award. The onus to prove that the Award was not served on the date of pronouncement lies with the Applicants. Unfortunately, that proof does not feature in both the affidavit in support of the Application or in the oral submissions in Court. The Applicant annexed a copy which has the words **"received 5/7/2018"**. The stamp thereof is that of the Applicant. It is not shown from whom it was received. In my considered view, the mark *received* in the annexed copy should have been supplemented by cogent proof, either from the CMA (by way of an affidavit or otherwise) or from the Respondents. Further, considering that by the time the Award was received 42 days had elapsed, the best course of action was for the Applicants to file an application for extension of time, citing delay in receiving a copy of the Award as the main reason for the delay.

As already stated, the CMA record is silent whether any of the parties attended on the date of the ruling, that is on 2<sup>nd</sup> May, 2018. However, at page 5 of the ruling, the Mediator clearly stated that the ruling was signed on the date it was delivered. The suggestion is that a copy thereof was ready for collection from the date it was delivered. The record reads:

*"Tuzo hii imetolewa na kuthibitishwa nami hapa Arusha leo Tarehe 02 Mei, 2018"*.



From the above wordings, it is apparent that the Applicant could collect a copy of the Award the day it was delivered. The contention by the Applicant's representative that they were served with the ruling two months after it was given because their copy was fraudulently taken by the Respondents is unsubstantiated. The Court, in the absence of any proof of the date the record was served to the Applicants and by whom, is left with only one option; that is, the Award of the CMA was made available to the parties on the date it was delivered.

This Court is aware of the Court of Appeal's decision in ***Serengeti Breweries Ltd Vs. Joseph Boniphace***, Civil Appeal No. 150 of 2015 (unreported) in which the Court of Appeal implored the Legislature to amend labour laws so as to be certain as to when the Award is said to have been served on the Applicant. Part of that decision states:

*"However, there is no rule in the Labour Institutions (Mediation and Arbitration Guidelines) Rules (supra) which prescribes the duty and the manner in which the arbitrator or CMA shall serve the award to the parties. This is the inadequacy in the employment laws as pointed out by Mr. Mtafya. We are of a considered view that, this uncertainty is not conducive for the timely adjudication of labour disputes. As such, we hereby direct that, the respective labour legislation be amended to require the arbitrator to notify parties on the date of delivery of the award and **the arbitrator be required to serve the award to the disputing parties so as to enable them to pursue their rights in case they are aggrieved.**" (emphasis added)*

Like in the above cited decision, the CMA record does not show when the parties were served with the ruling. However, as pointed out earlier, it shows that it was signed the date it was delivered on 2<sup>nd</sup> May 2018, which makes

the Court to believe that it was ready for collection on the same date. Whether the delay in collecting it was attributable to the Applicant or Respondents, that cannot be ascertained. The contention by Mr. Michael that the same was availed to them on 5<sup>th</sup> July, 2018 would have succeeded had it been supported with cogent proof thereof.

The issue of time limit is crucial in administration of justice. It makes litigants pursue their claims within specified periods, and not at their own whims. In ***Commercial Bank of Africa (T) Ltd Vs. Agnes Mgongo***, Labour Revision No. 2 of 2015 DSM, Nyerere, J., while quoting the Court of Appeal decision in ***Tanzania Fish Processors Ltd Vs. Christopher Luhangula***, Civil Appeal No. 161/1994, held as follows:

*"The question of limitation of time is (a) fundamental issue involving jurisdiction. It goes to the very root of dealing with civil claims, limitation is a material point to speedy administration of justice. **Limitation is there to ensure that a party does not come to court when he chooses.**"*(emphasis added)

As elaborated above, the Applicant and/or their representative was aware of the matter before the CMA as they had attended the last day of the hearing and the matter scheduled for delivery of the Award. Even if they did not attend the day the Award was issued, they should not have waited for about 8 weeks to collect a copy of the Award, a source of which is not indicated. This Court in a number of decisions has held that applications filed out of the prescribed time provided under section 91(1)(a) of the Act are time barred and have to suffer the wrath of dismissal. See ***Hassan Kivina and John Deogratias Kaseng'hwa Vs. Ernest Albert Mwita Chegere***,

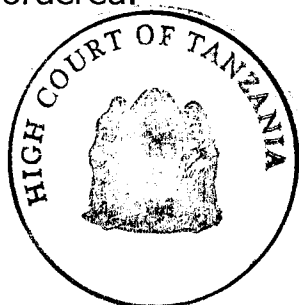
Labour Revision No. 13 of 2014 and ***Barrick North Mara Gold Mine Vs. Seleman Zephania Sweya***, Labour Revision No. 265.

For the reasons and authorities stated above, and having noted that this application was filed outside the six weeks prescribed by law and since the delay was not substantiated, the application is hereby found to be time barred. The first issue is therefore answered in the affirmative.

Having so held on the first issue, I find no reasons to deal with the rest of the issues, as limitation of litigation takes precedent over those other issues. Such other issues may be canvassed once the Applicant is allowed, in an appropriate application, to prefer the Application outside the prescribed period.

Consequently, the Application is hereby dismissed for being time barred, the same having been filed twelve weeks after the Award was delivered contrary to Section 91(1) (a) of the Employment and Labour Relations Act. Implementation of the Award to proceed as promulgated by the CMA. This being a labour dispute, each party to bear their own costs.

It is so ordered.



  
Y. B. Masara  
**JUDGE**

20<sup>th</sup> October, 2020