

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

MISC. LABOUR APPLICATION NO. 25 OF 2018

MARIAM ENOCK CHACHA.....APPLICANT

Versus

ACACIA BULYANHULU GOLD MINE.....RESPONDENT

Date of Last Order: 15/04/2020

Date of Ruling: 29/04/2020

REASONS FOR RULING OF THE COURT

C. P. MKEHA, J

On April 15th, 2020 I heard preliminary points of objection raised by Mr. Faustin Marongo learned advocate for the respondent. I upheld the 1st, 3rd and 4th grounds/points of objection. I dismissed the application promising to give reasons on this day. I now give the said reasons. Whereas Mr. Marongo learned advocate represented the respondent, Mr. Mahuma learned advocate represented the applicant.

Mr. Marongo learned advocate submitted in respect of the first point of objection that the present application is time barred. It was submitted that, whereas the ruling sought to be reviewed was delivered on 9th November, 2018, the present application was filed on 24/12/2018. According to the learned advocate, in terms of Rule 27(1) of the Labour Court Rules, the application was supposed to be instituted within fifteen (15) days from delivery of the decision sought to be reviewed. It was submitted on behalf of the respondent that, in terms of section 3 of the Law of Limitation Act, the application ought to be dismissed.

The learned advocate for the respondent went on to submit in respect of the second objection that, even if the applicant was within time, the application was incompetent for being made under wrong provisions of the law i.e under Rule 26(1)(2)(a), (b) and (c) of the Labour Court Rules. According to the learned advocate, the cited Rule does not apply in respect of an application for review of the High Court's decision. According to the learned advocate, the proper Rule to be cited ought to be Rule 27(2) of the Labour Court Rules. The learned advocate submitted that, Rule 26 is applicable for review of other bodies' decisions other than the High Court.

The case of **Antony J. Tesha Vs Anitha Tesha, Civil Appeal No.10 of 2003**, CAT at Arusha, was cited.

The learned advocate for the respondent submitted in respect of the 4th point of objection that, the applicant had failed to abide with Rule 27(5) and (7) of the Labour Court Rules. According to the learned applicant, the present application was not initiated through the use of Form No.6 prescribed for that purpose. Instead, the applicant initiated the present application by filing a chamber summons and an affidavit. In view of Mr. Marongo learned advocate, that was wrong in law.

In his reply, Mr. Mahuma learned advocate submitted that time started to run when copies of decree and judgment were obtained. Reference was made to the case of **J. A. Dias Vs Ahmed Salum Swedan (1960) EA 984**. The learned advocate maintained that, since copies of decree and judgment were obtained on 11th December, 2018, it was within time when the applicant filed the present application on 24/12/2018.

On the other hand Mr. Mahuma conceded that indeed, the application was incompetent for being preferred under a wrong provision of the law and in a wrong way rather than that permitted by the Labour Court Rules. He

however urged the court to strike out the application without costs. He also asked for leave to refile the application.

In his brief rejoinder, the learned advocate for the respondent submitted that, the case of **J. A Dias Vs Ahmed Salum Swedan** (supra) is not applicable against express provisions of the law. The learned advocate was against the so called, leave to refile. The case of **Olam Uganda Limited (suing through its attorney United Youth Shipping Limited) Vs Tanzania Harbours Authority**, Civil Appeal No.57 of 2002, CAT, Dar es Salaam, was cited.

There is no denial that, while the decision sought to be reviewed was delivered on 9th November, 2018, the present application was filed on 24th December, 2018. That was beyond 15 days prescribed under Rule 27(1) of the Labour Court Rules. Mr. Mahuma learned advocate for the applicant was of the firm stand that, time for filing notice of review started running on 11th December, 2018 when his client obtained copies of decision sought to be reviewed. That is with respect, entirely wrong. Giving of notice of review does not require having in one's hands, copies of decision sought to be reviewed. Particulars required to be filled on Form No.6, that is made under Rule 27(5) of the Labour Court Rules, do not require much from

copies of decision and decree sought to be reviewed. It is for that reason, in such cases, for purposes of filing notice of review to the registrar, time starts running on delivery of the decision sought to be reviewed. That is what Rule 27(1) of the Labour Court Rules, 2007 insists. The first point of preliminary objection is held to be meritorious. The present application was actually filed out of time without seeking extension of time to do so. This holding suffices to dispose of the present application.

However, for purposes of clarity I find it necessary to say a word or two on the proper enabling provision in filing application of this kind. As correctly submitted by the learned advocate for the respondent the proper provision is Rule 27(2)(c) of the Labour Court Rules. This was also conceded to by Mr. Mahuma learned advocate for the applicant.

The manner in which an application of this nature is to be initiated is provided under Rule 27(1), 2(c), (5) and (7) of the Labour Court Rules. Again, the learned advocate for the applicant had no hesitation in conceding that, an application for review ought to be initiated in the manner instructed under the Rule cited herein above. Thus, the 2nd and 4th points of objection are also held to be meritorious. It was for those reasons, I upheld the 1st, 2nd and 4th points of preliminary objection.

Because of my holding that the present application was filed out of time, under section 3 of the Law of Limitation Act the same deserves being dismissed. The same is dismissed. Since the end result has been dismissal of the application, Mr. Mahuma's prayer for leave of refiling the present application is held to be unsustainable. Each party to bear own costs.

Dated at **SHINYANGA** this **29th** day of April, 2020.



C. P. MKEHA
JUDGE
29/04/2020

Court: Reasons for decision explained in the presence of the applicant.

