

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

LABOUR REVISION NO. 09 OF 2021

(Arising from the Award of the Commission for Mediation and Arbitration of Dodoma in the Labour Dispute No. CMA/DOM/102/2020 before Hon. Mtawa, dated on 18th September, 2020.)

EZEKIAH TOM OLUOCH APPLICANT

VERSUS

CHAMA CHA WALIMU TANZANIA RESPONDENT

RULING

30/11/2021 & 6/12/2021

KAGOMBA, J

EZEKIAH TOM OLUOCH; (the “applicant”) filed a revision application in this Court under Rule 24(1), 24(2) (a), (b), (c), (d), (e) & (f); 24(3) (a), (b), (c) & (d); 24 (11) (b); Rule 28 (1) (b), (c) & (d) and Rule 55 (1) of the Labour Court Rules, 2007 (GN No.106 of 2007) and Section 94 (1) (f) & (i) of the Employment and Labour Relations Act, 2004 (Act No.6 of 2006) moving this Court to call for records, proceedings and Award of the Commission for Mediation and Arbitration (CMA) at Dodoma (Hon. Mtawa, Mediator) dated on 18th September, 2020 to partly revise and set aside only parts of the Award which the Applicant was dissatisfied with and asked for revision. The applicant sought other orders including costs.

CHAMA CHA WALIMU TANZANIA (the “respondent”) through the service of Issaya Edward Nchimbi, learned advocate from Goldmark Attorneys, filed a notice of preliminary objection on the points of law to the effect that;

1. The Application is time barred
2. The Applicant's affidavit is defective as it contains prayers.

The Court set a date of hearing on which the preliminary objection was argued. Mr. Nchimbi represented the respondent while Mr. Oluoch appeared in person, without legal representation. Before submission on the preliminary objections, the Court had to determine two prayers put forth by the applicant; One, the preliminary objection be argued by way of written submissions as the applicant is a lay person and would need time to research and make his written submission. Two, if the procedure allows, both the application and the preliminary objection be argued simultaneously through written submissions.

Mr. Nchimbi objected to both prayers. He argued that the preliminary objection was filed on 18/5/2021, being six (6) months period to the date of hearing. He thus argued that the applicant has not been taken by surprise as he had enough time to prepare himself through researching and all other necessary preparations. Secondly, he argued that the last order of the Court clearly stated that the preliminary objection will be heard today. As such, he said, what the applicant plans to submit in writing is what he is supposed to submit today orally. Thirdly, he argued that the applicant has said he is a lay person, but records show that he has drafted and filed all the pleadings himself, therefore it was the learned advocate's belief that the applicant knows the law.

Mr. Nchimbi further argued fourthly, that if the matter is to be disposed orally it would save the time of the Court, unlike written submissions. Fifthly, he argued that the hearing won't take long and will not need any research as he intends to argue on only the first ground of preliminary objection, which challenges the application for being time barred.

On concurrent submissions for both the preliminary objection and the application, Mr. Nchimbi submitted that as per procedure, a preliminary objection should be determined first. He therefore prayed the Court to proceed with determination of the preliminary objection orally as per the last order of the Court.

Mr. Oluoch, on his part, reiterated his prayer for the preliminary objection to be disposed of by way of written submissions because he is a lay person. He argued that it is immaterial whether the preliminary objection is short or not but he needed time to prepare so long as the same is on a point of law.

Having heard the parties, I had in mind the submission by Mr. Nchimbi that he will argue only on the first ground that is based on time limitation. I thought that if it was true the application was time barred, that won't need a lot of time for research on top of the six-month period the applicant has had. I therefore ordered hearing to proceed orally as per last order of the Court.

Mr. Nchimbi kept his promise by submitting briefly and only on the first ground of preliminary objection which says that the application is time barred. He argued that the application filed in this Court by the applicant arises from the decision of CMA delivered on 18/9/2020. He further submitted that the applicant was aggrieved but had filed the application on 28/4/2021, being 103 days from the date the CMA decision was made, contrary to the provision of section 91 (1) (a) and (b) of the Employment and Labour Relation Act, [Cap 366 RE 2019] which states that an aggrieved party has to file his application for revision within six (6) weeks from the date of the decision. It was Mr. Nchimbi's prayer that since the application has been filed out of time, the same be dismissed. He also prayed for costs, arguing that the applicant knew that the application was time barred.

Mr. Oluoch responded by conceding that the decision of CMA was delivered since 18/9/2020. He however, narrated a sequence of events that culminated in his filing of the application, which he believed to be very much in time. He submitted that after the impugned CMA decision which he partly challenges, he filed his application for Revision No. 24 of 2020 timely. He submitted that the application took long time before the Court decided on it. That, on 8/4/2021, he applied to the Court to withdraw the said Revision No 24 of 2020 with a leave to refile. He had discovered that he cited wrong provisions of the law to move the Court, which was a reason he prayed to withdraw the said application so that he could refile to move the Court properly.

It was Mr. Oluoch's further submission that a new date for hearing of the application was set to be 13/4/2021, but he inadvertently noted down the

date in his diary as 14/4/2021. He therefore missed in Court on 13/4/2021 as he was on the road to Dodoma to attend hearing on 14/4/2021, which he wrongly believed to be the date set by the Court. Upon arrival at High Court Dodoma, he was told by a Court clerk that his case was called on 13/4/2021 and that the Court had decided on his prayer. He further submitted that upon being served with the Court proceedings of the date he missed in Court, he saw that the Court had agreed with his prayer to withdraw the application with leave to refile as he had clearly prayed to the Court. He said, it was for that reason he proceeded to refile the application No. 9 of 2021 on 28/4/2021 which is now pending for determination before this Court. He argued that from the date of the order by Hon. Mansoor, J. to withdraw the application on 13/4/2021 to 28/4/2021 when he refiled the application it was only 13 days. He therefore finds his application very much in time. He opposed Mr. Nchimbi's submission that the application is 103 days late, rather he submitted, after obtaining leave of the Court, as he thinks he did, the application is not time barred.

Rejoining, Mr. Nchimbi reiterated his submission in chief that the application is time barred. He conceded to the fact that the applicant filed Labour Revision No. 24 of 2020 challenging the CMA decision aforesaid. He also conceded that the applicant prayed to this Court, by letter which was received on 8/4/2021 for withdrawal of his application and for leave to refile. He argued however that the order by Hon. Mansoor, J. dated 13/4/2021 granted only one prayer to the applicant, which is a prayer to withdraw the application but refused to grant leave to refile it. Mr. Nchimbi argued further that the applicant had misdirected himself regarding the decision of the Court on his prayers.

Mr. Nchimbi further submitted that by the order of the Court dated 13/4/2021, which withdrew the application, it simply means that there never existed in this Court an application that challenged the decision of the CMA in the Labour dispute No. CMA/DOM/102/2020 between the parties. He clarified that the applicant was to follow proper procedure to file his application following delivery of that Court order on 13/4/2021. He therefore concluded by praying for dismissal of the application with costs.

Having considered the rival submissions on the preliminary objection raised, I had to peruse the original Court proceedings for the 13th day of April, 2021 before Hon. Mansoor, J. Since the proceedings of that date (i.e 13/4/2021) are so important in determining the issue raised by the applicant, that he prayed for withdraw of his filed application timely with a leave to refile, I deem it fit to reproduce the relevant part thereof as follows;

"Date 13/4/2021

Coram Hon. L. Mansoor, J

Applicant – Absent

Respondent – Robert Owino for Issah Edward Nchimbi,

Adv.

RMA – Matikila

Robert Owino, Advocate

Advocate Nchimbi received a letter from the applicant in which the applicant prays to withdraw this application. The Advocate does not have the objection to the prayers of withdrawal.

Order: The Court also have received a letter dated 7/4/2021 from the Applicant in which he prays to withdraw the application. This Court allows the prayer. Therefore, this application is marked withdrawn.

Sgd L. Mansoor, J

13/4/2021"

Such was the presentation of Advocate Robert Owino before the Court who informed the Court that advocate Nchimbi has received the letter from the applicant praying for withdrawal of the application. The words "with leave to refile" were skipped in the advocate's submission to the Court. Such was the advocate's input into the decision of the Court.

On my further perusal of the Court records, I have seen the document dated 7/4/2021 where the applicant who clearly said he is a "lay person and unrepresented" notified the Court that on the first day of hearing of the Labour Revision Application No. 24 of 2020, among other things, he shall pray for:

- "(i) The application to be struck out **with leave to refile** in order for the Honourable Court to properly be moved.*
- (ii) This Honourable Court to give guidance on how it should properly be moved if a party is dissatisfied with decision of Honourable mediator on preliminary issues such as jurisdiction and time limit". [Emphasis added]*

The above cited document was presented for filing on 8/4/2021 and was served upon the respondent. The motive for respondent's advocate not

to disclose the full extent of the applicant's prayers in the above document, having been duly served, shall continue to be questioned. As an officer of the Court, I think the advocate who held brief of Mr. Nchimbi should have been duly informed of the status of the matter including the prayers made by the applicant to the Court, and he should have assisted the Court to reach a justiciable decision on the said prayers.

Having said that, I think for purposes of determining the preliminary objection before me, I shall abide by the record that the learned Judge Mansoor, did not grant leave to the applicant to refile as the applicant prayed. Therefore, I reluctantly sustain the preliminary objection for a reason that, without express leave of the Court, the application is rendered time barred. I therefore dismiss it in terms of section 3 (1) of the Law of Limitation Act, [Cap 89 R.E 2019]. No order as to costs.

It is so ordered.

Dated at Dodoma this 06th Day of December, 2021




ABDI S. KAGOMBA
JUDGE