

**IN THE HIGH COURT OF THE UNITED REPUBLIC TANZANIA**

**[LABOUR DIVISION]**

**AT ARUSHA**

**LABOUR REVISION NO. 20 OF 2019**

*(C/F Labour Dispute No. CMA/ARS/ARB/223/2016)*

**REHEMA RAMADHANI NDAKIMASI ..... APPLICANT**

***Versus***

**HITESHI ODEDRA BABOO ..... RESPONDENT**

**JUDGMENT**

*9<sup>th</sup> February, 2021 & 9<sup>th</sup> March, 2021*

**Masara, J.**

Ms Rehema Ramadhani Ndakimasi, the Applicant herein, brought a claim of unfair termination at the Commission for Mediation and Arbitration of Arusha (herein the CMA). She alleged to have been employed by the Respondent on 5<sup>th</sup> July, 2014 as a domestic employee (househelp) but her employment was terminated on 4<sup>th</sup> September, 2016. After hearing, the CMA while confirming that the Applicant was an employee of the Respondent, it decided that her employment was for specific task and that she could not claim anything as the task for which she was recruited ended. Her application was therefore dismissed. The Applicant was aggrieved. She filed Revision No. 28 of 2018. That Application was struck out whereby on 18<sup>th</sup> February, 2019, this Court, Maige, J allowed the Applicant to refile the Application within 30 days. The Applicant filed this Application on 12<sup>th</sup> April, 2019. The Application is supported by the Affidavit of the Applicant. The Respondent contested the Application by filing a counter affidavit accompanied by three points of objections couched as follows:

- a) The Applicant's Chamber Summons is incurably defective for lacking Applicant's Affidavit in support of the Chamber Summons;*
- b) The Applicant's Notice of Application is incurably defective for improper citation of Rule 24 of the Labour Court Rules, GN 106 of 2007; and*
- c) The Application is hopelessly time barred.*

Before the Court, the Applicant appeared in person, unrepresented, while the Respondent was represented by Mr. Fredrick Isaya Lucas, learned advocate. On 6<sup>th</sup> October, 2020, this Court directed that hearing of the preliminary objections be combined with the hearing of the main application and that the appeal be heard by way of written submissions. According to the record, both parties complied with the schedule set by the Court. As is the custom, I will first deal with the preliminary objections raised.

In his submissions, Mr. Lucas abandoned the first point of objection and made no efforts to expound on the second point. I will not belabour on them as well. On the third point of objection, the learned counsel contends that this Application was filed beyond the time prescribed. He urged the Court to dismiss the Application as the Applicant filed the Application 29 days past the days given to her by this Court without applying for extension of time.

Responding to the point of objection on limitation, the Applicant digressed and made reference to unnamed four objections. Her main contention was that this Court did not sanction the Respondent to submit on the objections and that the objections were new matter and were meant to delay the Court process. She then asked the Court to disregard the objections and apply the overriding objective principle to sanction the claims.

I have considered the thrust of the objection and the response thereof. The Applicant's justification for filing this application late can be deciphered from her affidavit deposed to support the application. Paragraph 7 thereof states as hereunder:


*"That, on 18.02.2019 via Revision No. 28 of 2018, Honourable Judge Maige granted me 30 days leave to file a proper Application after it is cleared (sic) with the legal defects pursuant to the law but due to the file be in the judge's office I failed to peruse it on time until I get it on 3/4/2019 and peruse (sic) it hence this application."*

What one gathers from the quoted paragraph is that the Applicant could not file this Application on time as the file was in the judge's office and that she had to peruse it first before filing the Application. I do not understand why it was necessary for the perusal to take place before filing an application which did not contain defects. The Applicant does not say that she was not supplied with the order of the Court on time and the reasons for such delay. I expected her to expound on the said paragraph but she opted to evade the point in her submissions. As this is not an application for extension of time, and considering that this Application was filed outside the days given to her by this Court, the Application cannot stand as it is obviously out of time. The Applicant should have asked the Court to enlarge the time after she realised that the days given to her had expired.

Consequently, I uphold the objection raised regarding limitation. I dismiss the Application accordingly for being filed beyond the time given to the Applicant. I see no reasons to delve into the merits of the Application because once the Application is found to have been filed outside the

prescribed time, the Court is rendered impotent to deal with the merits thereof. The Applicant may consider applying for extension of time to enable her application to be dealt on merits. That is if she considers that the reasons for the delay are justifiable. This being a labour dispute, I make no orders as to costs.

Order accordingly.



Y.B. Masara

**JUDGE**

March 9, 2021