

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

LABOUR REVISION NO. 02 OF 2021
(Originating from CMA/MZ/ILEM/332/2019)

**THE REGISTERED BOARD OF TRUSTEES OF
AIC CHURCH TANZANIA APPLICANT**

VERSUS

SESILIA RAMADHANI..... RESPONDENT

RULING

9th & 22nd April, 2021

RUMANYIKA, J.:

When the application for revision with respect to award of the Commission for Mediation and Arbitration for Mwanza (the CMA) dated 04/09/2020 it was, by way of audio conferencing called on 09/04/2021 for hearing, I had to hear the parties and determine "a time bar" preliminary point of objection (the p.o) formally raised on 23/02/2021 by Mr. D.F. Chebwa learned council for Sesilia Ramadhani (the respondent) and now taken by the learned counsel. Ms. Scholastica learned counsel appeared for The Registered Board of Trustees of AIC Church Tanzania (the applicants). Through their handsets, I heard the learned counsel through mobile numbers 0718438799 and 0759507148 respectively.

However, Ms. Scholastica learned counsel readily conceded to the p.o on the basis that it had been wrongly drawn by another advocate, she therefore prayed to withdraw the application with leave to re file it. That is all.

Mr. D.F. Chebwa learned counsel submitted that now that counsel for the applicants had conceded to the p.o, withdrawal of the application with leave to re file it would tantamount to pre-empting the p.o that the only remedy was for the court to dismiss the application (cases of **East African Development Bank V. Blueline Enterprises Ltd**, Civil Appeal No. 101 of 2009 and **Hashim Madongo & 2 Others V. Minister for Industries and Trade & 2 Others**, Civil Appeal No. 27 of 2009 (CA), both unreported. We pray that the application be dismissed with costs for being time bared. The learned counsel submitted.

Ms. Scholastica learned counsel submitted that incompetent /improperly field applications like one at hand were only liable to be struck out (not to be dismissed as prayed by counsel for the respondent) she cited the case of **Ngoni Matengo Corperative Marketing Union Ltd V. Ally Mohamed Othman** (1959) 1 EACA 577 where it was held that failure to properly draw a memorandum of appeal only rendered the appeal

incompetent therefore the same was liable to be struck out with costs. That is all.

The issue is whether the application is liable to be **dismissed** or **struck out** much as readily the respondent had conceded to "the time bar" p.o unlike in the case of **William Mwakitalu & 29 Others V. PPF**, Civil Appeal No. 185 of 2017 (CA) quietly cited by advocate Scholastica where end of the day, for the reason of improper time limit computation the time bar p.o was successfully contested. As said, in the instant matter the p.o was readily conceded by the respondent. The two cases therefore are distinguishable.

With regard to the two concepts; an incompetent matter and a time barred matter I would agree with Mr. D.F. Chebwa learned counsel that once a matter was, on the basis of time bar dismissed under Section 3(1) of the Law of Limitation Act Cap 89 R.E. 2019 the only remedy was for the aggrieved party to appeal or as the case may be apply for review (cases of **Blueline Enterprises Ltd** (supra) and **Hashim Madongo** (supra). I think once a matter is time barred it goes both to the roots of it also to the court's jurisdiction and therefore liable to be dismissed with costs unlike where the matter was in the case of the memorandum of appeal having

been improperly dated, attested, drawn or in case of the dates the the impugned judgment and decree at variance etc. (case of **Ngoni Matengo** (supra)). It would have been a different scenario if the applicant had prayed to withdraw the application before the p.o was filed.

I would increasingly hold and I don't think that Ms. Scholastica really meant it. The rule in the case of **Blueline Enterprises Ltd** (supra) yes, but in the present case one having had conceded to the p.o and therefore the time barred appeal dismissed, the applicant would not have a room to appeal, apply for review, for revision or something much there always should be no endless litigation in courts of law.

The p.o is sustained. The time barred application is dismissed with costs. It is so ordered.

Right of appeal explained.



S. M. RUMANYIKA

JUDGE

19/04/2021

The ruling delivered under my hand and seal of the court this
22/04/2021 in the absence of the parties.




S. M. RUMANYIKA
JUDGE

22/04/2021