

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

**LABOUR DIVISION**

**AT MWANZA**

**LABOUR REVISION NO. 90 OF 2020**

(Arising from the Award of CMA in CMA/GTA/49/2018)

**GEITA GOLD MINING LIMITED.....APPLICANT**

**VERSUS**

**CHRISTIAN CHRISTOPHER.....RESPONDENT**

**RULING**

**Date of last order: 24/06/2021**

**Date of ruling: 2/07/2021**

**F. K. MANYANDA, J.**

This ruling is in respect of a preliminary objection raised by the Respondent on one ground of point of law that the application is time barred. The application is intended to move this Court to call for the record and revise the proceedings and the award in Labour Dispute No. CMA/GTA/49/2018 by the Honourable Stanslaus, Arbitrator, dated 09/10/2020 and set aside the same. The said application is made under the provisions of section 91(1)(a)(2)(b), 94(1)(b) and (i) of the Employment and Labour Relation Act [Cap.366 R. E 2019] (ELRA) and Rules 24 (1) and (2)(a),



(b), (c)(d) and (f)(3)(a), (b), (c) and (d) 28 (1) (c), (d) and (e) of the Labour Court Rules, 2007 GN. No. 106 of 2007.

When the application came for hearing, the Counsel for the Respondent Mr. Mathias Mwilwa, felt that the application is time barred because it was filed on 08/12/2020 while the award was given on 09/10/2020 Mr. Mwilwa was of the view that there are 59 days from 09/10/2020 to 08/12/2020 which exceeds 42 days by 17 days.

Under the provisions the application is brought the time limit is 6 weeks which is 42 days. The deadline was on 16/11/2020.

Moreover, Mr. Mwilwa argued that the grace period under Rule 56(1) of the Labour Court Rules, GN. No. 106 of 2007 was not utilized by applying for extension of time. The application deserves to be dismissed with costs.

In reply, Ms. Neema Josephat, learned Advocate apposed the objection arguing that section 91(1) of the ELRA requires that any person aggrieved by an award given under section 88(10) of the ELRA can file a revision for purpose of setting aside the award within six (6) weeks from the award date.

She conceded that the impugned award in CMA/GTA/49/2018 was given on 09/10/2020 and was received by one Gregory Lugumila on the same day 09/10/2020. This means under conventional filing system, the application which was filed on 08/12/2020 would be out of time. However, she quickly pointed out that the application was filed on 19/11/2020 at 16.53 Hours via JSDS, an e-filing system of the judiciary. She was of the views that the application was filed 34 days from the date of the award, therefore it is within the time limit. Moreover, she added that Rule 8(1) and (2) of the Labour Court Rules, GN. No. 106 of 2007 provides for modes of proving filing of documents where it deemed that the documents of the application were filed by hands on that date. She argued that the date stamped on the application documents was stamped after the same were printed, but were filed on line prior. She prayed the objection to be overruled.

In rejoinder, Mr. Mwilwa submitted that there is a distinction between filing of a document and admission of the filed document in the system. He was of the view that the Counsel for the Applicant ought to have tendered some print outs from filing computer system as evidence that the application was filed on 19/11/2020 at 1656:53.

I have dispassionately considered the rival arguments by the Counsel for the parties. Basically the Counsel are at par that this application seeks to challenge an award which was given on 09/10/2020. It is also not disputed that the law under section 91(1)(a) provides for applications of this nature to be filed within 6 weeks from the date of the impugned decision. This means, as rightly submitted of Mr. Mwilwa, the dead line for filing the application was on 16/11/2020.

The Counsel lock horns on the date of filing of the application. While Mr. Mwilwa contends that it was filed on 08/12/2020 and therefore out of time, Ms. Neema Josephat contends that it was filed on 19/11/2020 at 1656:53 and therefore within time limit.

The Counsel for the Applicant Ms. Neema relies on the provisions of Rule 8(1)(c) and 8(2)(c) of the Labour Court Rules GN. No.106 of 2007 which provide that a document is deemed to have been dully filed with the Registrar on the date which the document, if it was filed by taxing or e-mailing, on the date it was transmitted by fax or e-mail. Recognizing this provision Mr. Mwilwa argued in rejoinder that there is a distinction between

filing and acceptance of the filed documents by e-filing system. I think Mr. Mlwilwa had in mind with the provisions of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 GN. No. 148 of 2018 which was published on 13/04/2018, hence came into force on that date.

Rule 10 provides that any requirement for filing by electronic filing the same shall be satisfied by the filing of a single copy using the electronic filing system in accordance with the provisions of GN No. 148 of 2018.

It follows, therefore, that while Rule 8(1)(c) and 8(2)(c) of the LCR provides e-filing as an alternative to the conventional method, Rule 10(1) of the Judicature and Application of Laws (Electronic Filing) Rules provides the procedure on e-filing of documents.

Rule 8(2)(c) of LCR provides for a presumption of filing date that a document is deemed to have been dully filed on the date which the document was e-mailed.

Rule 10(7) of GN.No. 148 of 2018 have a similar presumption. That any document which is filed with the Registrar through electronic e-filing system, by an authorized user, is deemed to have been so filed.

The issue here is on proof of e-filing. Mr. Mwilwa was of the view that there ought to be produced a print out from the e-filing system in order to prove that the application was filed electronically on 16/11/2020.

I think there is substance in this argument. I say so because there is no evidence in this matter that this application was filed electronically, even after the Counsel for the Applicant becoming aware of the objection.

Apart from the logical reasoning advanced above, Rule 22(a) of GN No. 148 of 2018 provides for a requirement of acceptance of electronically filed document by the Registrar.

The acceptance is communicated to the filing person by notifications. Rule 23(1) of GN. No. 148 of 2018 require the Registrar to notify the filing person of his acceptance or rejection and time starts to run from the time

the Registrar gives such a notification. Such acceptance or rejection notifications are in two categories as provided by Rule 33(1) and (2) of GN No. 148 of 2018 which reads: -

*"33(1) where an authorized user submits a document to the Court through the electronic filing system, the system shall automatically generate and transmit to the authorized user a notification acknowledging such submission with date and time stamp.*

*(2) A notification, shall also be sent at the time the Court accepts or rejects any submitted document."*

Moreover, Rule 24(1) GN No. 148 of 2018 provides for exclusion of time from computation of time of filing where electronic filing is delayed due to malfunction of the electronic filing system for any reason.

It can be seen now that a notification of the Registrar is very important to prove not only that a document was filed but also that the same was accepted. In the circumstances of this matter it was equally very crucial for the Applicant to exhibit such a notification in order to prove that the application was filed on 16/11/2020 and that it was accepted.

In case of any delay as appearing in the arguments by the Counsel for the Applicant, Ms Neema, that she filed the application electronically on 16/11/2020 but the documents were lately stamped on 08/12/2020 would have been made apparent by the Registrar in his notifications.

It is on these reasons stated above that I subscribe to the argument for the preliminary objection that this application was filed beyond the limited period of 6 weeks by the provisions of section 91(1)(a) of the ELRA. It is therefore time barred.

In the upshot, I sustain the preliminary objection and I do hereby dismiss the application for been time barred. No order as to costs because this is a labour matter and it was not filed vexatiously or frivolously. Order accordingly.



  
**F. K. MANYANDA**  
**JUDGE**  
**2/07/2021**