

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

REVIEW APPLICATION NO 03 OF 2020

(C/f Revision No. 47 of 2018 and CMA/ARS/MED/28/2014)

EPHRAHIM GENES MTUI.....APPLICANT

VERSUS

PRINCIPAL SECRETARY MINISTRY

FINANCE AND PLANNING..... 1st RESPONDENT

DISTRICT EXECUTIVE DIRECTOR BABATI

DISTRICT COUNCIL.....2nd RESPONDENT

RULING

Date of Last order: 7/9/2021

Date of Ruling: 2/11/2021

B. K. PHILLIP, J

This ruling is in respect of two points of preliminary objections raised by the learned State Attorney Mr Mkama Musalama, who appears for the respondent, to wit;

- (i) That this application is premature and not maintainable in law for contravening with Rule 27(1) of the Labour Court Rules, Government Notice No. 106 of 2017.

- (ii) That this application is hopelessly time barred.

A brief background to this matter is as follows; In the year 2018, the applicant herein lodged in this Court an application for revision of the decision of the Commission and Arbitration in CMA/ ARS/ MED/28/2014, vide Revision Application No. 47 of 2018. On 15th November 2019 this Court delivered its Judgment in respect of the aforesaid application, in which it dismissed it. The applicant being aggrieved by the aforesaid decision of this Court lodged the Application in hand praying for the following orders;

- (i) To Revise and set aside the whole Ruling of the High Court Labour Division Before (Judge. Masara) in Employment Labour Revision No. 47 of 2018.
- (ii) That the honourable Court be pleased to make any further orders it deems fit and just to grant.
- (iii) That costs follow the event.

Upon being served with this application, the learned State Attorney, Mkama Musalama raised the points of preliminary objection, the subject of this ruling. The applicant appears in person, unrepresented. The points of preliminary objection have been disposed of by way of written submissions.

With regard to the 1st point of preliminary objection the learned State Attorney, Mr Musalama submitted that this application is premature and not maintainable as it contravened the provisions of Rule 27(1) of the Labour Court Rules (GN No 106 of 2007) (herein after to be referred to as GN. No 106 of 2007) which provides that any person who desires to institute an application for review must file a written notice of review within (15) fifteen days from the date of the decision intended to be reviewed. He contended that the applicant has not filed a notice of review. Therefore this application is incompetent and deserves to be struck out.

As regards the second point of preliminary objection, Mr Musalama submitted that, this application is filed out of time. The law requires an application for review to be filed within fifteen (15) from the date of the ~~decision intended to be reviewed~~. To cement his argument he referred this court to the provisions of Rule 27 (7) of GN. No. 106 of 2007. The decision sought to be reviewed was delivered on 15th November, 2019 and this application was filed on 12th November 2020, beyond fifteen (15) days prescribed under Rule 27 (7) of GN. No. 106 of 2007 without the leave of the Court, contended Mr Musalama.

Furthermore, Mr Musalama submitted that the applicant was supposed to seek the leave of the Court before filing this application. He cited the case of **Julius Fanuel and another Vs World Vision Tanzania, Misc.Labour Application No.3 of 2020, High Court of Tanzania, Labour Division at Arusha** (unreported), **Dr Ally shabhay Vs Tanga Bohara Jameat (1997) TLR 308** and **Loswaki Village Council and another Vs Shibeh Abebe (2000) TLR No. 214**, to buttress his arguments. Moreover, Mr Mukama maintained that, the question of limitation of time is a fundamental issue as it touches the Court's jurisdiction to entertain the matter before it. He contended that this Court has no Jurisdiction to entertain a matter which is time barred. To cement his argument he cited the case of **Ridhiwani A. Juma Vs Ultimate Security (T) Ltd , Revision No. 449 of 2019, High Court of Tanzania , Labour Division at Dar es Salaam** (unreported) and **NBC Limited and another Vs Bruno Vitus Swalo, Civil Appeal No 331 of 2019, (unreported)** in which the Court of Appeal held as follows;

"It is that courts are enjoined not to entertain matters which are time barred limitation period has an impact on jurisdiction. Courts lack jurisdiction to entertain matters for which litigation period has expired"

In Conclusion of his submission Mr Musalama invited this Court to struck out this application.

On the other hand , the applicant submitted that this Court ordered the ruling in respect of the points of preliminary objections to be delivered on 1st June 2021, but the deputy Registrar of this Court changed the date of ruling and ordered him to file his reply to the submission made by the learned State Attorney. He contended that Mr Mukama filed his submission in chief out of time as per the Court order as he was supposed to file his submission in chief in support of the points of preliminary objections before 1st June 2021, but he filed the same on 1st June 2021 . Moreover, the applicant submitted that the stamp on the respondent's submission shows that the same was filed on 10th November 2021, but the Court clerk who received that submission indicated that he received it on 10th June 2021. On 1st of June 2021 he refused to be served with the respondent's written submission because it was filed out of time. His time for filing the reply thereto had expired as he was supposed to file the same before 25th May 2021. Relying on the case of **Geofrey Vs Peter Ngonyani Civil Appeal No.41 of 2014** (unreported) , the applicant invited this Court to dismiss both points of preliminary objection

on the ground that the learned State Attorney failed to file his written submission in support of the same as ordered by the Court.

In his rejoinder Mr Musalama submitted that, on 27th April 2021 this Court ordered to dispose of the points of preliminary objection by way of written submission and issued the following orders;

- Submission in chief to be filed on or before 11th May 2021.
- Reply thereto by the applicant to be filed on or before 25th May 2021.
- Rejoinder if any to be filed on or before 1st June 2021.
- mention on 1st June 2021

Further, Mr Mukama submitted that he filed his submission in chief in support of the points of preliminary objections on 10th May 2021. The same was duly received and signed by the court clerk, but out of oversight the court clerk indicated in the stamp endorsing receipt of the same that it was filed 10th November 2021 instead of 10th May 2021. Mr Mukama maintained that the aforesaid error is due to accidental slip of a pen and is curable under section 96 of the Civil Procedure Code (Cap 33 R.E. 2019). He was of the view that the case of **Godfrey Kimbe** (supra) is

distinguishable from the facts of this case, thus it cannot be applicable in this application.

Mr Mukama , conceded that he served the applicant with the submission in chief on 1st June 2021 as he failed to serve him the same earlier. On the 1st of June 2021, the Court extended the applicant's time for filing his reply to the submission in chief for fourteen days (14) and the rejoinder thereto was ordered to be filed within seven (7) days thereafter, contended Mr Musalama.

I have dispassionately analyzed the submissions made by both sides. Let me start with the applicant's contention that the learned State Attorney Mr Mukama filed his submission out of time. It has to be noted that failure to file submissions in time is tantamount to failure to prosecute the case/ application (See the case of **National Insurance Corporation of (T) and another Vs Shengena LTD, Civil Application No. 20 of 2007,[CA]** (unreported). In this matter the Court's record shows that the submission in chief was filed on 10th May 2021. The Court's stamp on the first page of the submission reads that the same was received in 10th May 2021. I am not in position to say what happened to the copies of the submission that were supplied to the parties as both the applicant and Mr

Mukama submitted that the Court's stamp on their copies of the submission in chief reads that the same was filed on 10th November 2021. All in all, I am supposed to work on what is in the Court's. Whatever the case, I am in agreement with Mr Mukama that the error on the date indicated on the copy of the written submission served to the applicant is accidental slip of a pen. It is not fatal, bearing in mind that the Court's record shows the submission in chief was filed in time and by the time the submission in chief was filed we had not yet reached to a month of November. Logic dictates that submission in chief was filed on 10th May 2021 not 10th November, 2021. I think such kind of discrepancy is not fatal. In addition, as correctly submitted by Mr Musalama, the Court's records reveal that on the 1st of June 2021 when this matter was called for ~~mention the applicant applied for extension of time to file his reply to the~~ respondents' submission. The prayer was granted. The Court ordered the applicant to file his reply on or before 15th June 2021 and rejoinder if any was ordered to be filed on or before 22nd June 2021.

From the foregoing it is the finding of this Court that the applicant's concern is unfounded and lacks merits. No any prejudice was occasioned to him as he was granted extension of time to file his reply, but he opted not

to file it. In the upshot, I am in agreement with Mr Musalama that the case of **Geofrey Kimbe** (supra) cited by the applicant is distinguishable from this application because the learned State Attorney filed his submission timely as ordered by the Court.

Coming to the merits of the application, an application for review of a decision of this Court is preceded by a notice of review which has to be filed pursuant to Rule 27 (1) of the Labour Court Rules, GN. No 106 of 2007. The rule provides as follows;

S. 27 (1) "Any review shall be instituted by filing a written notice of review to the registrar within fifteen (15) days from the date the decision be reviewed was delivered."

Upon receipt of notice of review, the registrar is supposed to supply to the party a copy of the decision sought. According to section 27 (7) of GN. No 106/2007, on receipt of a copy of the decision intended to be reviewed, the applicant has to file a concise memorandum of review stating the grounds for review sought without narrative or arguments.

In this application it is not in dispute that the decision intended to be reviewed was delivered on 15th November 2019. Fifteen (15) days from the date of delivery of the judgment intended to be reviewed expired on 29th

November 2019. This application was filed on 12th November 2020 and no notice of review had been filed by the applicant. The applicant has not applied for extension of time to file the same. It is so clear that the applicant has not complied with the requirement of the law elaborated herein above.

From the foregoing, since no notice of review was filed by the applicant I am inclined to agree with Mr Mukama that this application has been filed in contravention of the provisions of Rule 27(1) of the Labour Court Rules, GN.No. 106 of 2007, therefore, it is incompetent as an application for review is instituted by filing a notice of review within fifteen days from the date of the decision intended to be reviewed. With what I have said herein above, the 2nd point of preliminary objection falls redundant as there is no ~~application~~ application for review worthy the name. Thus, the 1st point of preliminary objection is hereby upheld. This application is struck out.

Dated this 2nd November 2021




B.K.PHILLIP
JUDGE