

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT DODOMA

LABOUR REVISION NO. 02 OF 2021

(Original from the Decision of hon. Matalis, R. Mediator in Labour Dispute No. CMA/DOM 135/2020 dated 16th of December, 2020)

PIUS JOHN KANDAGA APPLICANT

VERSUS

**YAPI MERKEZI INSAAT VE
SANAYI ANONYM SIRKETIRESPONDENT**

RULING

07/11/2021 & 9/11/2021

KAGOMBA, J

PIUS JOHN KANDAGA (the “applicant”) being aggrieved by the decision of Commission for Mediation and Arbitration (CMA) for Dodoma in Labour Dispute No. CMA/DOM/135/2020 by Hon. Matalis, R. Mediator, made on 16/12/2020, filed his application for Revision to this Court seeking, among other things, an order that the court be pleased to call records of proceedings of CMA and revise it and set aside the said decision. The respondent is M/s Yapi Merkez Insaat Ve Sanayi Anonym Sirket, who has hitherto been the applicant’s employer.

A brief background of this matter as gathered from the applicant’s affidavit is that the applicant was terminated from his employment by respondent on 3/10/2020 for alleged breach of employer’s disciplinary code as well as allegation of stealing 376 litres of the diesel. Being aggrieved by the termination, the applicant referred the matter to CMA. On 16/12/2020, CMA

delivered an *ex parte* ruling (award) holding that the respondent illegally breach the employment contract with the applicant. In so holding, the CMA also held that the applicant had a fixed term contract, which the applicant holds that such decision was reached without any strong piece of evidence from the respondent to prove it. He thus prayed this Court to set aside the award and instead award the applicant 36-month salary claims to the tune of Tsh, 30,757,875.12.

This application for revision was met by a Preliminary Objection on point of law, raised by the respondent, that;

1. The instant application is hopelessly time barred in terms of section 91(1) (a) of the Employment and Labour Relations Act, [Cap 336 R.E 2018] and well – established principle governing labour laws.
2. The application is incompetent for offending mandatory provision of rules 24 (2) (e) of the Labour Court Rules, GN No. 106/2007.

For the above reasons, the respondent notified the Court that he will move the court to strike out the Application. On the date of hearing, Mr. Stanley Kalanje, Legal Officer of the Respondent, appeared for the respondent while the applicant appeared in person.

Despite raising two points of law in the Notice of Preliminary objection filed, Mr. Kalanje argued on only the first ground. He informed the court that the application for revision has been filed by the Applicant out of the time prescribed by the law. He submitted that according to the provision of

section 91 (1) (a) of the Employment and Labour Relations Act, [Cap 336 RE 2018], the time period for filing application for revision is six (6) weeks.

He argued that the decision of the CMA was delivered on 16/12/2020 and as per records of this Court, the application was filed on 2/2/2021 while the deadline for filing such an application was 29/1/2021, thus the application was out of time. He submitted further that the applicant did not file an application for extension of time to get time enlargement. He therefore prayed the application be dismissed with costs.

On his part, the applicant conceded that the Ruling was delivered on 16/12/2020 and that 29/1/2021 was the final day for filing his application for revision. He told the court, however, that he filed his application on 28/1/2021 being one day before the set deadline.

He elaborated that when he gave his application to one Ms. Valeria, a Registry clerk at this Court's registry, he was told that the registration system was down. He submitted that the said Court clerk assured him that the date on record in the application will be the date the applicant actually presented his application, which was 28/1/2021, but to his surprise the date for filing is fixed as 2/2/2021. He further said that the application was placed for hearing before Hon. Mansoor, J on 25/5/2021 where the respondent did not enter appearance only to be informed later by Ms. Valeria, by phone, that a Preliminary Objection Notice has been filed. He reiterated that the Index record shows that his application was dated and signed on 28/1/2021 and he does not know why it was written that the same was filed on 2/2/2021.

Rejoining, Mr. Kalanje submitted that the Registry record shows that the application was filed on 2/2/2021 and was signed by the Registry Officer on that date. He further submitted that the Deputy Registrar signed the chamber summons on 3/2/2021. He thus argued that since the Court's records show that the application was filed on 2/2/2021, the allegation that there was a system breakdown, which has not been proved, be disregarded by the Court for lack of basis. He reiterated his prayer that the application be struck out for being filed out of limitation time set by the law.

I have considered the submission of both parties. There is no dispute that according to the records of the Court the application was filed on 2/2/2021, being out of time set under section 91 (1) (a) of the Employment and Labour Relations Act, [Cap 336 R.E 2018]. The only reason adduced by the applicant for this incidence is that he was told by Registry clerk, one Valeria, that the system was down, and therefore the application cannot be registered on 28/1/2021 when the applicant alleges he had presented the same for filing. He told the Court that the Registry clerk assured her that the same date of 28/1/2021 would appear in the record, but never to be the case.

As correctly argued by Mr. Kalanje, such allegations linking the Registry clerk needed to be proved. The applicant has not proved his allegations. As such the same are disregarded. In doing so, I am fortified by the Ruling of the Court of Appeal in **AIRTEL TANZANIA LIMITED Vs. MINISTERLIGHT ELECTRICIA INSALLATION. CO LTD & ANOTHER**, Civil Application No. 37/01 of 2020 where the Court of Appeal referred to the case of **ISSACK SEBEGELE v. TANZANIA PORTLAND CEMENT**, Civil Application No. 25

of 2002 when the Court of Appeal considered applicant's claim for the delay towards a Court's clerk, as is the case in this application, and stated that;

*"Evidence in support of the applicant's claim against the Court clerk was necessary. The name of the said Court's clerk should have been indicated in one of the paragraphs of the affidavit of the learned counsel and that **the Application should have been accompanied with the affidavit of Court Registry Officer duly sworn to that effect**". [Emphasis added].*

In this instant application, the name of the Court Clerk has been mentioned, though not fully. However, the Court would need to hear from her as to whether what the applicant alleges is true or not.

There is yet one more serious omission; the applicant has not filed an application for extension of time to file his revision. Such is a serious procedural omission that deprives even further the jurisdiction of this Court to entertain the application in hand.

In the final analysis the Preliminary Objection is sustained. The application is time barred and is therefore struck out accordingly.

No order as to costs.




ABDI S. KAGOMBA
JUDGE
10/11/2021