

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MBEYA DISTRICT REGISTRY

(LABOUR DIVISION)

AT MBEYA

LABOUR REVISION NO. 4 OF 2021

*(Originating from Complaint No. CMA/MBY/Mby/37/2020/AR.20 of the Commission
for Mediation and Arbitration for Mbeya at Mbeya.)*

BETWEEN

ELIWAZA SAMWELAPPLICANT

VERSUS

ACCESS BANK (T) LIMITEDRESPONDENT

RULING

A. A. MBAGWA J.

This ruling emanates from preliminary objection raised by the respondent to the effect that the application is time barred. The issue being a point of law this court had to dispose it first before hearing the application in merits.

The brief account of the matter may be told as follows; The applicant was employed by the respondent in 2017 as a Junior Loan Officer under a fixed term employment contract. In 2018 the applicant was promoted to Mini-Micro Junior Loan Officer under unspecified employment contract and on 3/3/2020 he was terminated for underperforming her duties. Unpleased with her termination of employment, the applicant filed a

complaint with the Commission for Mediation and Arbitration for Mbeya which was dismissed for devoid of merits. Aggrieved with the decision the applicant filed the present application in this court. However, the application encountered preliminary objection, the subject of this ruling.

When the matter came for hearing the applicant was represented by Steward Ngwale whereas the respondent has legal service of Isack Temu, both learned advocates. Parties agreed to dispose of the preliminary objection by way of written submission. I commend both parties as they duly complied with the schedule.

Submitting in support of the preliminary objection, Mr. Isack Temu submitted that the award of the Commission for Mediation and Arbitration from which this application arises was served to the applicant and respondent on 31st December, 2020 but the application for revision was filed on 18th February, 2021 physically in court and electronically on 23rd November, 2021 beyond six weeks provided for under section 91(1)(a)(b) of the Employment and Labour Relation Act [Cap 366 R: E 2019]. Mr. Temu added that the application for revision was to be submitted electronically as per Judicature and Application of Laws (Electronic Filing) Rule, 2018 G.N NO. 148 of 2018 where rule 21(1) provides that the document is deemed filed when submitted through

electronic system before midnight. He went further to argue that the applicant was late for five days when presented the documents physically and for ten days when she filed the documents through electronic system.

In reply, Mr. Ngwale conceded to the preliminary objection though noting that the applicant was served with the award on 5th January, 2021 and not 31st December, 2020. He added that the delay was just for two days. Mr. Ngwale was of the view that the applicant being a layperson presented her application physically on 15th February, 2021 and was informed by Saanane, the registry officer that there was network problem hence advised the applicant to come after two days but the applicant, being a layperson, was not aware that she was running out of time. He prayed to be given lenience for the delay arguing that it was technical on the part of the applicant.

Having heard the rival submissions, I entirely agree with both counsels that the instant application for revision is time barred. There is no dispute that the arbitrator handed down the impugned decision on 31st December, 2020, and copies were served to parties on 7th January, 2021 as per records from Commission for Mediation and Arbitration and not 31st December, 2021 or 5th January, 2021 as submitted. Application for

revision was submitted electronically on 23rd February, 2021 and physically in court on 19th February, 2021 not 18th February as submitted by both counsels. By way of computation from 7th January to 19th February, 2021 when the application was physically presented and endorsed by registry officer there is span of forty three (43) days. Currently the law namely, Judicature and Application of Laws (Electronic Filing) Rule, 2018 requires suits to be filed electronically. There is no dispute that it was filed in the system on 23rd February, 2021. Counting from the date it was served to the applicant to the date it was electronic filed, forty seven (47) days had elapsed. Therefore, in terms of section 91(1)(1)(a)(b) of the Employment and Labour Relation Act [Cap 366 R; E 2019] the application for revision was supposed to be lodged in this Court within six weeks from the date when the award was served to the applicant or when she discovered the defects. As such, the application was filed out of time for five (5) days.

The applicant's counsel tried to justify her delay on the grounds that **one**, that the applicant presented in time but she encountered network problem, **two** that the applicant is a layperson who was not aware of the procedural rules. The reasons put forward by the applicant's advocate cannot cure the anomaly and in fact it is not a proper forum to

raise the same. It is a cardinal law that a delay even of a single day cannot be condoned without following a proper procedure. Consequently, I am not prepared to condone the same for the law of limitation knows no sympathy as it was held in the case of **John Cornel v. A. Grevo (T) Ltd**, Civil Case No. 70 of 1998 (unreported) which was quoted with approval in **Barclays Bank Tanzania Limited vs Phylisiah Hussein Mcheni**, Civil Appeal No. 19 of 2016, CAT at Dar Es Salaam (Unreported) where Kalegeya J (as he then was) made this statement;

'However unfortunate it may be for the plaintiff, the Law of Limitation, on actions, knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web.'

On the reason advanced above, I am inclined to hold that the application is time barred.

In the upshot, I sustain the preliminary objection and consequently strike out the application. This being a labour dispute there is no order as to costs.

It is so ordered.

Right of appeal fully explained.


A. A. Mbagwa

JUDGE

27/04/2022

Court: Ruling delivered before E. R. Marley, Ag. Deputy Registrar in the presence of the Ms. Upendo Lukumany for the applicant and in the absence of the respondent this 27th April 2022.




E. R. Marley
AG. DEPUTY REGISTRAR
27/04/2022