

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**REVISION APPLICATION NO. 27 OF 2022**

(C/F Execution No. 52 of 2019, Originated from CMA/ARS/MED/525/2016)

**BETWEEN**

**CHODAWU..... APPLICANT**

**AND**

**BOARD OF TRUTEES OF**

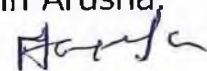
**TANZANIA NATIONAL PARK..... RESPONDENT**

**RULING**

1<sup>st</sup> & 29<sup>th</sup> June, 2022

**N.R. MWASEBA, J.**

The applicant, Chodawu, is seeking for revision of an order made by Hon. Deputy Registrar in Execution No. 52 of 2019 delivered on 8<sup>th</sup> day of December, 2021. The application is supported by an affidavit sworn by Mr. Jeremiah Meliari, Regional in charge of the Applicant in Arusha,

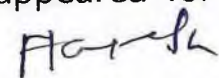


The application was strongly opposed by the respondent who filed counter affidavit sworn by Mr. Theophilo Alexander, assistant Conservation Commissioner of the respondent.

Prior to the hearing of the application, the learned state attorney for the respondent raised 6 points of preliminary objection as follows:

- i) That this application is incompetent and bad in law for being time barred.
- ii) That this Hon. Court lacks jurisdiction to entertain the matter.
- iii) That the application is incompetent and incurably defective for offending Rule 46 (1) (2) & (3) of the Labour Court Rules, Government Notice No. 06 of 2007.
- iv) That, the Application is incompetent and incurably defective for offending Rule 43 (1) (a) & (b) (3) of the Labour Court Rules, Government Notice No. 106 of 2007.
- v) That the affidavit in support of this application is incurably defective for containing defective verification clause.

At the hearing of the raised preliminary which was done orally, Mr Asubuhi Yoyo, learned advocate appeared for the applicant whilst Mr Mkama Msalama and George Dalali learned State Attorneys appeared for the respondent.



Supporting the application Mr. Mkama told the court that they will argue on the 1<sup>st</sup> and 2<sup>nd</sup> points of objection only and abandoned the 3<sup>rd</sup> to 5<sup>th</sup> points of objection. Submitting on the first point of objection, Mr Mkama stated that the applicant is seeking a revision on the decision of the Deputy Registrar which was delivered on 08.12.2021. And the time limitation for filing an application for revision on the matter of this nature is 60 days as per **Item 21 of Part III of the schedule of the Law of Limitation Act**, Cap 89 R.E 2019. He added that the law of limitation come to play since the Labour Court Rules, GN 06 of 2007 has not provided for any limitation for challenging the decision of deputy registrar. However, **Rule 55 of GN 106** of 2007 provides that where there is a lacuna in labour laws other laws may be applied. The case of **Seleman Athman Salehe & 7 Others Vs Joinven Investment (T) Limited**, Revision No. 813 of 2019, Labour Division DSM (Unreported) was cited to support his argument that the time limit for filing revision applications against the registrar is not provided in the labour laws so the court applied the Law of Limitation to be 60 days.

He submitted that 60 days from 8/12/2021 when the Deputy Registrar delivered her ruling was supposed to end on 6/2/2022 but this application was filed on 4/3/2022. So, the applicant filed his application out of time

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without seeking the leave of the court. He further stated that so long as the application is time barred it ought to be dismissed as per **Section 3(1) of the Law of Limitation Act**, Cap 89 R.E 2019

It was his further submission on the second point of objection that since the application was time barred this court lacks jurisdiction to entertain it. He referred this court to the case of **NBC LTD and Another Vs. Bruno Vitus Swalo**, Civil Appeal No. 331 of 2019, Court of Appeal sitting at Mbeya held that limitation period has an impact on jurisdiction so this application having been filed out of time it bars this court to have jurisdiction to determine it. So, he prayed for the application to be dismissed with no order as to costs since this is a labour matter.

Responding to the raised Preliminary Objection, Mr. Yoyo learned counsel told the court that the application is not time barred as it was filed electronically on 31.01.2022 which is within 60 days. He says the learned state attorney's submission is misconceived as they relied on papers when it was stamped while the application was electronically filed and was within the domain of court. He added that as per GN 58 of 2018 which deals with e-filing provides that a document will be duly filed when submitted through electronic filing system before midnight EAT.

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Further, he submitted that the raised preliminary objection is not pegged on a pure point of law as it does not meet the test provided in **Mukisa Biscuits Manufacturing Company Ltd Vs West End Distributors Ltd**, (1969) 1 EALR No. 696 since it calls for evidence to prove the same. He insisted that this application was uploaded on 31/1/2022 which is within 60 days and he prays for this court to take judicial note by checking the system and the law. The fact that what happened from 31<sup>st</sup> January, 2022 to 4<sup>th</sup> March, 2022 when the application was physically filed is a matter of evidence which cannot be proved now as this is a preliminary objection. He added that during that time the court went for vacations which is known to all. He further contended that all what has been submitted by the counsels for the respondent are devoid of merit.

On the second point of objection, he submitted that this court has been moved in the chamber summons by **Rule 28 (1) (d) and (e) of the Labour Court Rules** which confers this honourable court revisionary powers of any decision or order given by any authority implementing the labour laws. He referred this court to the case of **George Mapunda and Another Vs. DAWASCO**, Misc Labour Revision No.1 of 2014 which elaborated the jurisdiction of the High Court with regard to the decision of the Registrar.

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In his brief rejoinder Mr. Mkama reiterated what he submitted in chief and went on to object the fact that the application was filed electronically on 31<sup>st</sup> January, 2022. He said the document is counted to be filed when it has been received and stamped by the hon Deputy Registrar. That if the document has to be paid for, its when the said payment has been effected. Since in labour laws there is no payments, a document will be duly filed after the applicant submitted a hard copy and not the day they are filed electronically.

He argued further that the raised points of preliminary objection are a pure point of law since it needs no evidence so the cases of **Mukisa Biscuits** (supra) and **George Mapunda** (supra) are distinguishable from the facts of this case. He prayed for the court to dismiss the application as it was prayed before.

Having heard the submissions from both parties and examined records of this matter, the pertinent issue for determination is whether the raised preliminary objection has merit.

As well stated by the learned state Attorneys the time limitation for filing this kind of applications is within 60 days. They referred this court to **Item 21 of Part III of the schedule of the Law of Limitation Act**, Cap 89 R.E 2019 which provides that:

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Item 21 of part III of **the schedule of the Law of Limitation Act**, cap 89 R.E 2019,

*"Application under the Civil Procedure Code, the Magistrates' Courts Act or other written law for which no period of limitation is provided in this Act or any other written law-sixty days."*

They further referred this court to the case of Seleman **Athman Salehe & 7 Others Vs Joinven Investment (T) Limited**, Revision No. 813 of 2019, Labour Division DSM (Unreported) which clarified the above provision and held that the time limit for filing revision applications against the deputy registrar is not provided in the labour laws so the court applied the Law of Limitation to be 60 days.

The fact that the limitation of time to file this application is within 60 days is not in dispute. The dispute is when exactly the said application was filed. The counsel for the applicant says he filed the same electronically on 31<sup>st</sup> January, 2022 while the learned state attorneys for the respondent says the application was filed on 4/3/2022. Both of them asked the court to go through the court system to find out when the said application was filed electronically. I decided to go to the system and found out that the application was filed on 4/3/2022 as it is shown in the print out document. The same date is shown in the pleadings that it was presented for filing

*H. A. A.*

on 4/3/2022. So, it is not right that the applicant filed this case on 31<sup>st</sup> January 2022. Rule 21(1) of **the Judicature and Application of Laws (Electronic filing) Rules**, GN 58 of 2018 provides that:

*"A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the date it is submitted, unless specific time is set by the court or it is rejected."*

Being guided by the above provision, the application at hand was duly filed electronically on 4<sup>th</sup> day of March, 2022 as it is stipulated in the print out. The decision of the deputy registrar which is subject for this application was delivered on 8<sup>th</sup> December, 2021. Counting from that date to 4<sup>th</sup> March, 2022 it is almost 86 days. Therefore, I concur with the learned state attorneys that this case is hopelessly time barred.

This point of objection sufficed to dispose of this application as per Section 3.-(1) of the Law of Limitation Act, (supra)

*"Subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, shall be*

*Flora*




*dismissed whether or not limitation has been set up as a defence."*

In the upshot, this court finds that the preliminary objection has merit and therefore it is sustained. Consequently, the application is hereby dismissed for being time bared. This being a labour dispute I give no order as to costs.

Ordered accordingly.

**DATED at ARUSHA** this 29<sup>th</sup> day of June, 2022.



  
**N.R. MWASEBA**

**JUDGE**

**29.06.2022**