

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF IRINGA
LABOUR DIVISION**

LABOUR REVISION NO. 10 OF 2021

(Originating from the decision of the Commission for Mediation and
Arbitration for Iringa in Labour Dispute No. CMA/IR/67/2020)

SHAFAGRO LTD APPLICANT

VERSUS

1. ISSA SALUMU KAVIMBI
2. BALOZI CHARLES GEORGE
3. MOHAMED KIPOTO
4. MAULID ALI
5. TWAHIRU MWETA
6. AWADHI RAMADHANI
7. CONSTATINE MAUNGO
8. PETER MASINE
9. GIDION SANGA
10. SAID KINYANYANDU
11. FEDELIS CHUMBULA
12. ALEX NYANGALIMA
13. GRAYSON MVELA
14. RAMSON CHENGULA
15. PETER MKOVEKE

..... **RESPONDENTS**

RULING

Date of Last Order: 21/06/2022 &
Date of Ruling: 24/06/2022

S.M. KALUNDE, J.:

On 29th June, 2021, the applicant herein filed an application seeking to revise an award of the Commission for Mediation and Arbitration for Iringa (hereinafter "the CMA") in Labour Dispute No. CMA/IR/67/2020 (hereinafter "the

dispute"). On being served with the application the respondents filed a notice of opposition and a supporting counter affidavit. Together with the above documents the respondents filed a Notice of Preliminary on points of law that: **one**, the application is hopelessly time bared; and **two**, that the affidavit in support of the application is defective for non-compliance with rule 24(3) of **the Labour Court Rules, GN No. 106 of 2007**.

Leave was granted that the preliminary objections be argued by way of written submissions. In accordance with the order of the Court, the respondents were to file their submissions in chief by 29th March, 2022. The applicant on the other hand had to file their reply to the submission in chief by 05th April, 2022 followed by a rejoinder from the respondents by 12th April, 2022. When parties appeared before me on 21st June, 2022, for purposes of issuance of necessary orders, **Mr. Fredrick Kibakaya**, learned advocate appearing for the applicants prayed for extension of time to file his reply submissions. He argued that he approached the Court to file his submissions on time, but they were rejected. The counsel prayers were met with opposition from **Mr. Daudi Mapuga**, a representative of the respondents who alleged that the applicant was playing a delaying tactic against the right of the respondents.

Upon hearing the rival arguments, I refused to grant a prayer for extension of time to file reply submissions. I took that view as it became apparent to me that the applicants were dully served on time on 28th March, 2022. However, Mr. Kibakaya failed to advance any good reasons as why he could not file his submissions as scheduled by the Court. The decision refusing to extend time was based on a now settled rule that court orders were to be respected and binding on the parties. The rationale being to maintain the integrity and lifeline of the administration of justice.

I am also aware of the settled position of law that failure to file written submissions on the part of the learned counsel for the applicant was an omission which constitutes want of prosecution since an order for filing submissions is part of hearing. There is a plethora of authorities justifying this stance. They include: **Geofrey Chawe vs. Nathaniel K. Chawe**, Misc. Civil Application No. 22 of 1998; **Olam Tanzania Limited vs. Halawa Kwilabya**, DC Civil Appeal No. 17 of 1999; **P3525 COL. Idahya Maganga Gregory vs. The Judge Advocate General**, Court Martial Criminal Appeal No. 4 of 2002; **Hidaya Zuberi Vs Bongwe Mbwana**, PC Civil Appeal No 98 of 2003, DSM, and **Tanzania Electric Supply**

Company Ltd vs. Abubakar Adam, Civil Appeal No. 46 of 2008, (All unreported).

In **P3525 COL. Idahya Maganga Gregory vs. The Judge Advocate General** (supra) at the Court Martial Appeal Court at Dar es Salaam the appellants submissions were filed, without leave of the Court, on 26/10/2006 instead of 25/10/2006. Having noted that the appellants counsel had lodged the submissions late without even bothering to apply for extension of time to file them if there was good cause for the delay, the Court (**Oriyo, J** as he then was) observed at page 3 of the typed ruling, thus:

"There is no dispute that court orders are made with the basic purpose of regulating proceedings. This Court had time and again expressed its distaste for disobedience of court orders by litigants"

Having observed as pointed out above, the Court stated:

"It is now settled in our jurisprudence that the practice of filling written submissions is tantamount to hearing and, therefore, failure to file the submissions as ordered is equivalent to non-appearance at a hearing or want of prosecution. The attendant consequence of failure to file written submissions [are] similar to those of failure to appear and prosecute or

defend, as the case may be. Court decisions on the subject are abound...similarly, courts have not been soft with the litigants who fail to comply with court orders, including failure to file written submissions within the time frame ordered. Needless to state here that submissions filed out of time and without leave of the court are not legally placed on records and are to be disregarded."

Being guided by the above binding and practical guidance, I will proceed to determine the preliminary objections exparte as against the applicant. In my determination, I propose to start with the first limb of the preliminary objections.

In support of the first limb of preliminary objection the respondents contended that the present application was filed out of time in contravention of section 91(1) and (2) of **the Employment and Labour Relations Act [CAP. 366 R.E. 2019]** (hereinafter "the ELRA"). The respondents contended that in accordance with the respective provision the limitation period to file an application for revision against the decision of the CMA was six (6) weeks from the date of receipt of the decision. It was submitted that the decision of the CMA was delivered on 13th May, 2021 and it was supplied to the applicants on the same day. According to the respondents, the deadline for filing the application was on 24th June, 2021. In

view of that, the respondents reasoned that, having filed the present application on 29th June, 2021, the applicants were way beyond the six weeks limitation period provided for under section 91(1) the ELRA. To support their argument, the respondent cited the case of **Richard Marwa vs. El - Hillal Minerals Limited**, Revision No. 16 of 2014 (unreported).

On my part, having passionately gone through the records and considered the submissions made by the respondents, the question for my determination is whether the present application was filed within the limitation period set out under section 91(1) of the ELRA. The respective section reads:

"91.- (1) Any party to an arbitration award made under section 88(10) who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for a decision to set aside the arbitration award-

- (a) **within six weeks of the date that the award was served on the applicant** unless the alleged defect involves improper procurement;*
- (b) if the alleged defect involves improper procurement, within six weeks of the date that the applicant discovers that fact."*

[Emphasis is mine]

The above provision was considered by the Court of Appeal in the case of **Agrey Sapali vs Mkuu Wa Chuo Must** (Civil Appeal 153 of 2015) [2016] TZCA 281 (11 April 2016 TANZLII) where having recited the substance of section 91(1) of the ELRA, the Court (**Mziray, J.A**) stated:

"It is true according to the cited provision hereinabove that the application to the Labour Court for a decision to set aside the arbitration award is to be made within six weeks."

Thus, as rightly submitted by the respondents, the time limit to apply to the Labour Court for a decision to set aside the arbitration award of the CMA is six (6) weeks from the date the award was served on the applicant.

Reverting to the present case the records show that the decision of the CMA was delivered on 13th May, 2021. Proof of receipt of the copies executed by both parties indicate that the applicant received their copy on 13th May, 2021 whilst the respondent obtained their copy on 17th May, 2021. That said, the clock started to run against the applicant from the 13th May, 2021. As rightly submitted by the respondents, counted from the 14th day of May, 2021 the six weeks for filing an application challenging the decision of the CMA expired on 24th June, 2021.

There is no dispute that the present application was lodged on 29th June, 2021, a span of almost five (5) days from the expiry of the time limit. By the time the applicant lodged the application, the application was already time barred. The available option for him was to file an application for extension of time instead of filing the application out of time and without leave of the Court.

For the foregoing reasons, I sustain the first ground of preliminary objection. Since this is sufficient to dispose the matter, in the interest of time, I will not indulge into the remaining point of preliminary objection. That said, the time barred application is hereby dismissed. This being a labour matter, no order for costs is made.

It is so ordered.

DATED at **IRINGA** this **24th** day of **JUNE, 2021**.




S.M. KALUNDE.

JUDGE