

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MUSOMA
AT MUSOMA**

LABOUR REVISION NO 10 OF 2021

GERALD R. MGENDI1ST APPLICANT
ABDU MALONGO.....2ND APPLICANT
ABDALLAH SENGWA MADALLALI.....3RD APPLICANT

VERSUS

**NATIONAL INSURANCE CORPORATION OF
TANZANIA.....RESPONDENT**

(Arising from CMA/MUS/199/2020 at the Commission for Mediation and Arbitration Musoma)

RULING

524th Nov. 2021 & 28th Febuary, 2022

Kahyoza, J.:

Gerald R. Mgendi, Abdu Malongo and **Abdallah Sengwa Madallali** were employees of **National Insurance Corporation of Tanzania** (NIC). Their employment contract came to an end in circumstance, which raised legal quagmire. On one hand, **Gerald R. Mgendi, Abdu Malongo** and **Abdallah Sengwa Madallali** claimed that **NIC** unfairly terminated their services. On the other hand, **NIC** argued the employment contract of **Gerald R. Mgendi, Abdu Malongo** and **Abdallah Sengwa Madallali** came to an end since it was a time bound contract.

Aggrieved, **Gerald R. Mgendi, Abdu Malongo** and **Abdallah Sengwa Madallali** (the applicants) commenced a labour dispute before

the Commission for Mediation and Arbitration (the **CMA**). The **CMA** dismissed the labour dispute after upholding the preliminary objection **NIC** raised that the applicants instituted pre-maturely. Still aggrieved, the applicants instituted revision proceedings before this Court. Before this Court heard the revision proceedings, **NIC** raised a preliminary objection that: -

1. the Application is bad in law for it has been filed contrary to section 91(1) of the Employment and Labour Relations Act, [Cap. 366 R.E. 2019] (the ELRA);
2. the Application is bad in law has it has been filed out of time contrary to section 91(1) (a) of ELRA; and
3. the Application is bad in law for failure to describe the names of the other applicants.

The preliminary objection was argued by written submissions. The respondent enjoyed the services of Mr. Marko Anthony Nsimba, learned advocate and the applicants fended for themselves. The record shows that **NIC** filed written submission in support of the preliminary while the applicants resolved not reply.

The preliminary objection raised two issues as follows:-

1. Whether the application is incurably defective for being made under the wrong provision of the law;
2. whether the application is bad in law for being time barred?

I will commence with the second issue which touches on the jurisdiction of this court. It is settled that an objection on account of time

limit is one of the preliminary objection's which courts have held to be on pure point of law which touches on the jurisdiction of the court and whose determination does not require ascertainment of facts or evidence. See the CAT the case of **Moto Matoko Magaba v. Ophir Energy Plc**, Civ. Appeal No. 119/2021, (CAT unreported).

Is the application bad in law for being time barred?

Mr. Nsimba, NIC's advocate submitted that the application was time. He argued that the applicants filed the current application on the 12th May, 2021 to challenge the decision of the Mediator (the CMA) made on the 30th March, 2021. He added the applicants filed the application for revision after 44 days from the date they collected the judgment of the CMA, which was contrary to the law. He argued that the applicants were required to file the application within six weeks, which is 42 days. In support of his contention, cited that provisions the section 91(1) (a) of the ELRA. Section 91(1) (a) of the ELRA stipulates that-

91.-(1) Any party to an arbitration award made under section 88(8) 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.

NIC's advocate referred this Court to the cases of **Off-Grid Electronic Tanzania v. Kristian Johansen**, Rev. Appl. No. 24/2019 HC

(unreported) where Masara, J. held that *in order to decide whether the application was filed out of time, the Court was to ascertain the date the Award was served on the party seeking to challenge the award.* It is undisputed that in determining the preliminary objection, the court needs to consider the plaint and its annexures without any further facts or evidence to be ascertained in determining as whether the suit is time barred. See the case of **Moto Matoko Magaba v. Ophlr Energy Plc**, (supra) cited by NIC's advocate.

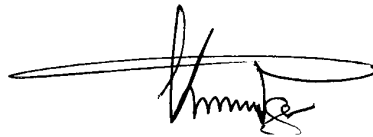
Undeniably, the law requires an application for revision to be filed within six weeks, that 42 days from the date the CMA served upon the aggrieved party a copy of its award. The record shows that the CMA (the mediator) made a decision on the 18th March, 2020 and served a copy of the Award upon the applicants on **30th March, 2021**. Thus, six weeks started counting from 31st April, 2021. It is unequivocal that the applicants instituted the application for revision **on 25th May, 2021**. The issue is whether 42 days had expired when the applicants filed the application for revision. NIC's advocate submitted that the applicants filed the current application after 44 days without condonation for delay. As already pointed out, the applicants did not reply to NIC's advocate submission that the application was filed out of time.

I passionately considered the question whether 42 days had expired from **30th March, 2021** to **25th May, 2021**, which are dates when the CMA served applicants with a copy of the Award and when they instituted the instant application, respectively. I concluded that 56 days elapsed. Thus, the applicants instituted application for revision after expiry of 56

days from the date the CMA gave them a copy of the Award. Visibly, the applicants filed the application out of time.

In the upshot, I find the second limb of the preliminary objection laudable. Consequently, I uphold it and dismiss the application for being time barred.

It is ordered accordingly.

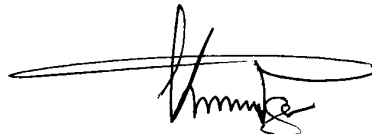


J. R. Kahyoza

JUDGE

28/2/2022

Court: Ruling delivered in the virtual presence of Mr. Marko Nsimba advocate together with Mr. Christopher Bulendu for the Respondent and in the absence of the applicants. B/C Ms. Neema virtually present.



J. R. Kahyoza

JUDGE

28/2/2022