

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)

AT ARUSHA

LABOUR REVISION NO. 48 OF 2021

(Arising from Labour Dispute No. CMA/ARS/ARS/152/2021)

HODI (HOTEL MANAGEMENT) CO LTD..... APPLICANT

VERSUS

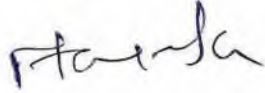
YOHANA LADISLAUS MALIMA & 211 OTHERS..... RESPONDENT

JUDGMENT

30.03.2022 & 28.04.2022

N.R. MWASEBA, J.

In the Commission for Mediation and Arbitration (CMA) of Arusha, Yohana Ladislaus Malima and 211 (the respondents herein) filed their labour dispute vide CMA/ARS/ARS/152/2021 against his employer Hodi (Hotel management) Co. Ltd (the applicant herein) for arrears since October, 2020.

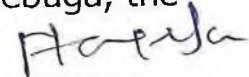
Prior to the hearing of the matter the respondent (applicant herein) raised points of preliminary objection to wit: 

- i. That the application or otherwise this labour dispute is bad in law for being time barred.
- ii. That the referred dispute is bad in law whereas the nature of the cause of action and reliefs sought are misconceived.
- iii. That this dispute is an abuse of legal process whereas Yohana Ladislaus Malima purporting to represent 211 employees of the respondent without having obtained the mandate to represent them.

Having considered the submissions from the parties, the CMA in its award ruling delivered on 8th June 2021 sustained the preliminary objection and proceeded to strike out the application No. CMA/ARS/ARS/152/2021 for being filed out of time instead of dismissing it.

Being dissatisfied with the CMA ruling particularly on the decision of striking out the application instead of it being dismissed the applicant preferred the present application praying for the following orders:

- a) That the Honorable Court be pleased to call for the records and examine the Ruling of the Commission for Mediation and Arbitration in labour Dispute No. CMA/ARS/ARS/152/2021 delivered on 8th June, 2021 by Honorable O. Mwebuga, the

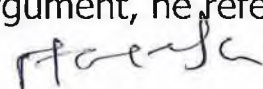


arbitrator in a view of satisfying itself as to the correctness thereof.

b) That the honourable court be pleased to revise and set aside the commission for mediation and arbitration (CMA) Ruling in Labour Dispute No. CMA/ARS/ARS/152/2021 delivered on 8th June, 2021 by honourable O. Mwobuga, Arbitrator for being improper, and incorrect.

The hearing of the application was conducted orally, and the applicant enjoyed the service of Mr. Paschal Kamala, learned counsel while the respondents were represented by Mr. Alex Michael, personal representative.

Arguing in support of the application, Mr Kamala adopted the affidavit sworn by Mr Richard Shanyangi, Principal Officer of the applicant to be part of their submission. He further told the court that they are challenging the decision of the CMA in its ruling where the Arbitrator struck out the application instead of dismissing it after the finding that it was time barred. He referred this court to **Section 3 of the Laws of Limitation Act**, which states that in case any suit is time barred the consequence is to be dismissed. To bolster his argument, he referred

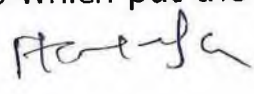


this court to the case of **Barclays Bank Tz Limited vs Phylisiah Hussein Mcheni**, Civil Appeal No. 19 of 2016 (CAT- Unreported). Thus, he prayed for the court to quash the decision of the arbitrator and order the application to be dismissed.

Opposing this revision, Mr Alex (PR) adopted his counter affidavit sworn by Mr. Leornald David to be part of his submission. He also prayed for this application to be dismissed as it was filed against the legal requirements as follows:

First, the applicant did not disclose all the names of the respondents whereby it would be difficult for the court to understand who are the other respondents, hence the application is void before the court.

Second, the applicant did not file notice of intention to seek revision at CMA as required by **Regulation No. 34 (1) of GN 47** of 2007. The aim of the said requirement is to allow CMA to prepare the proceedings ready for forwarding it to the labour court revision and since the respondents have never been served with the said notice he was taken by surprise and the same was supposed to be attached in his application to this court and they never did so which put the court in a hard time to decide the matter.



Third, paragraph 8 of the applicant's affidavit the applicant referred to an award and not the ruling as it was delivered by the CMA. Thus, the applicant is seeking revision of an award which was not delivered by the CMA. So, he prayed for the application to be dismissed as it is tainted with irregularities and the matter at CMA to proceed on merit.

In a brief rejoinder, Mr Kamala told the court that regarding the issue of the names of the respondents not appearing on the notice of application, chamber summons and an affidavit supporting the application, this court asks the personal representative about it and he informed the court that they were all present. That alone proves that they were aware of other respondents although their names were not listed. Further to that, since the matter originated at CMA and their records were brought before the court then the said records have the names of all the respondents. More so, even the heading of the ruling of CMA which they are challenging bears the same headings with no names of the 211 others.

Regarding the issue of notice it is a matter of fact and not a point of law, and they are not supposed to bring evidence at this stage. Further to that, the personal representative of the respondent was required to

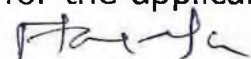
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file a PO in a proper manner rather than submitting his objection during his submission. He added that there is no law which requires an application for revision to be attached with a notice to seek revision, leave alone to serve the same to the respondents therefore an argument that they were taken by surprise is just a statement from the bar.

As for the issue of an affidavit to refer to an award instead of a ruling it was just a typo error due to the fact that in the notice of application and chamber summons, they prayed for the court to call for record and examine the correctness of the CMA ruling. In the end, he prayed for the application to be granted as it is not tainted with irregularities.

Having heard the submissions of both parties, this court will now determine the merit of this application.

Before determining the main application, there were some issues raised by the respondents when they were submitting before the court. The first issue was regarding the failure of the applicant to write all the names of the respondents in his application. This issue will be answered in negative due to the fact that the same heading appeared in the CMA's Ruling and its proceedings and it was the same heading which was adopted by the applicant herein. Further to that, the respondent failed to cite a specific provision which made it mandatory for the applicant to



write all the names of the respondents, therefore, since such an error do not go to the substance of the matter, it is thus a curable error. Further, the law is not concerned with minor matters as long as their representative admitted knowing all the respondents and they were all present, the said objection is purely a matter of technicalities and hence cannot be condoned by this court.

As it was held in **Fatma Karume vs the Attorney General & Another**, Civil Appeal No. 02 of 2020 (Unreported) that the law is not concerned with minor matters, this court should not be held with this point and proceed to determine the matter on merit.

As for the second issue of notice of intention to seek revision as required by **Regulation No. 34 (1) of GN 47 of 2017**. It is true that the law requires a party who wish to file revision to this court to file a notice of intention to seek revision (CMA F10) in the Commission. This court is aware that the said form is important and in other circumstances it could lead the application incompetent. However, in our present case the applicant alleged that they did file a notice to seek revision at CMA and that since the objection was not raised in a proper way, it was difficult for them to bring proof of that notice. Further to that, on 30. 09.2021 the respondents filed Notice of Opposition, and counter affidavit which

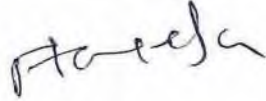
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prove they were aware of this application thus, they were not taken by surprise.

Additionally, this court noted that on 30.07.2021 the respondents raised one point of preliminary objection and abandoned it with no explanation, so, the court will take note that they were not interested with their PO that is why they proceeded with the determination of the main application.

Regarding the word "revision" instead of "ruling" as it appears under paragraph 8 of the applicant's affidavit, I think it was just a typographical error since the Notice of Application and chamber summons both referred to a CMA ruling and not revision as depicted from the affidavit supporting the application.

For the said reasons this court find no merit on the raised objections and I will proceed with the determination of the application on merit.

The applicant's complaint based on the act of the Arbitrator to strike out the application which was time barred instead of it being dismissed. The time limit for referring disputes before CMA is governed by **Rule 10 (1) (2) of GN 64**. The relevant provision that covers the applicant's claim is **Rule 10 (2) of GN 64** and it provides that: 

"All other disputes must be referred to the commission within sixty days from the date when the dispute arises."

From the above provision, any party having other claims apart from unfair termination must refer the dispute to the CMA within 60 days from the date the cause of action arose. At CMA the Arbitrator find the respondent's claim to be time barred after being filed out of the prescribed time. However, instead of dismissing the claim the Hon. Arbitrator struck it out.

The remedy for a time barred matter is well spelt in a number of authorities. As it was by Mruke, J. in **Aizack Adam Malya vs Willy Mlinga**, Revision No. 443 of 2019 (Reported at Tanzlii) that:

"It is my view that the law of limitation does not apply in labour matters in a circumstance which has been specifically provided in labour laws. The labour laws are very clear that a dispute shall be referred within sixty days from the date cause of action arose. Therefore, I find no need to fault the arbitrator's decision that the dispute at CMA was time barred, thus, dismiss the application for want of merits."

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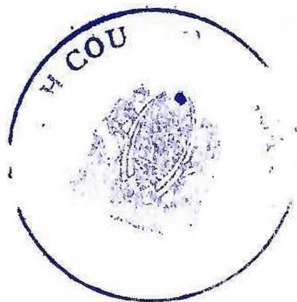
Based on the cited decision, it was wrong for the arbitrator to strike out the application which was time barred while its effect is to dismiss it.

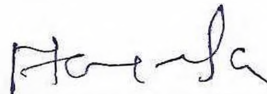
Thus, I hereby invoke the revisional powers and proceed to quash the order of striking out the application and hereby order that the CMA application be dismissed with no order as to costs for it being a labour matter.

For the foregone reasons, I find merit on this application and is hereby allowed.

It is so ordered.

DATED at ARUSHA this 28th day of April, 2022.




N.R. MWASEBA

JUDGE

28.04.2022