

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

**LABOUR DIVISION**

**AT ARUSHA**

**REVISION APPLICATION NO. 115 OF 2021**

(C/F Original CMA/ARS/ ARB/205/2015)

**JOSEPH MICHAEL MERISELY MALLYA..... APPLICANT**

**VERSUS**

**NGORONGORO CONSERVATION**

**AREA AUTHORITY(NCAA).....RESPONDENT**

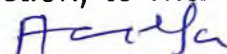
**RULING**

20.07.2022 & 30.08.2022

**MWASEBA, J.**

The Applicant, **Joseph Michael Marisely Mallya**, is requesting for this court to revise the decision of the Commission for Mediation and Arbitration (CMA) in labour dispute No. CMA/ARS/ARB/205/2015. The application is supported by an affidavit sworn by the applicant himself and resisted by a counter affidavit sworn by **Mr Jumanne Dede Masangwa**, Legal Service Manager for the respondent.

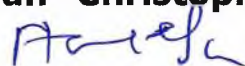
Prior to the hearing of the revision, the Learned State Attorney for the respondent raised two points of preliminary objection, to wit:



- i. That this application is hopelessly time barred.
- ii. That this application is pre-mature and unmaintainable in law for the applicant's failure to issue notice of intention to seek for revision of award contrary to Regulation 34 (1) of the Employment and Labour Relation (General) Regulations of 2007.

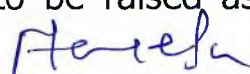
Before this court, Mr Matuba Nyerembe, Learned Counsel represented the Applicant while Mr Mkama Musalama and Ms Zamaradi Johannes, both Learned State Attorney appeared for the respondent. The raised preliminary objection was disposed of by way of written submission.

On the first point of preliminary objection, Mr Mkama argued that the application is hopelessly time barred. He submitted that the impugned award was delivered on 15<sup>th</sup> October, 2021 and the present revision was filed electronically on 29<sup>th</sup> day of November, 2021. Counting from 15<sup>th</sup> October, 2021 up to 29<sup>th</sup> November, 2021 the statutory time of six (6) weeks to file a revision had already lapsed. To buttress his point, **Rule 8 and 21 (1) of the Judicature and Application of Laws (Electronic Filing) Rules, 2018, and Section 91 (1) (a) of the Employment and Labour Relation Act, Cap 366 R.E 2019.** He also cited the case of **Geita Gold Mining Limited Vs Christian Christopher**, Labour



Revision No. 90 of 2020, (HC- Unreported) and **Dr. Ally Shabhay Vs Tanga Bohara Jameat** [1997] TLR 308. Thus, he prayed for the revision to be dismissed for being filed out of the prescribed time whereby the court also lacks jurisdiction to entertain and determine the matter.

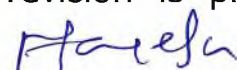
Opposing this point of objection, Mr Nyerembe Learned Counsel for the applicant submitted that the allegation that the application is time barred is baseless. It was his submission that the Award was issued by the Commission for Mediation and Arbitration of Arusha on 15<sup>th</sup> October, 2021 and this application was filed electronically on 25<sup>th</sup> November, 2021 at 17:47: 25 and was admitted on the same day. He further averred that as per interpretation of **Rule 21 (1) of the Judicature and Application of Laws (Electronic Filing)** Rules, 2018 the applicant's application for revision was filed on 25<sup>th</sup> November, 2021 since it was the date for which it was submitted in the system. Further to that the hard copies were received on 26<sup>th</sup> November, 2021 and the same were signed by the Registry Officer on the same day, thus the applicant was still within the time limit. More to that, since this point calls for evidence to prove if the application was filed on 29.11.2021 or 25.11.2021 then the same is not qualified to be raised as a point of



preliminary objection. See the case of **Karata Ernest and Others Vs. the Attorney General**, Civil Revision No. 10 of 2010 (CAT-Unreported).

On the second point of preliminary objection, the learned State Attorney argued that the application is premature and unmaintainable in law for the applicant's failure to issue notice of intention to seek for revision of award contrary to **Regulation 34 (1) of the Employment and Labour Relation (General) Regulations** of 2017. The said Regulation requires the applicant to file notice of intention to file revision at CMA, the regulation used the term "shall" which means a mandatory requirement thus the function so conferred must be performed. A case of **Unilever Tea Tanzania Limited Vs. Paul Basondole**, Labour Revision No. 14 of 2020 (HC-Unreported) was cited to support his argument. Based on his submission, he prayed for the entire application to be dismissed for being time barred and premature.

Responding to this point of objection, Mr. Nyerembe argued that this point does not qualify to be raised as a preliminary objection since it calls for evidence to prove if the said notice was filed or not. He added further that as long as **Rule 24 of the labour court Rules** G.N No. 106 of 2007 were complied with, then the revision is proper and

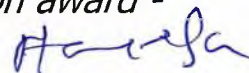


maintainable. He cited the case of **Gastor Leo Vs. Greenlight Planet (GLP) Tanzania Ltd**, Consolidated Labour Revision No. 77 and 78 of 2020 (HC- reported at Tanzlii), and **Felician Rutwaza Vs. World Vision Tanzania**, Civil Appeal No. 213 of 2019 to buttress his argument. Further to that he prayed for the court to invoke the principle of overriding objective which requires the court to deal with Substantive justice rather than technicalities, See the case of **Yakobo Magiga Gichere Vs. Penina Yusuph**, Civil Appeal No. 55 of 2017 (CAT-Unreported). In the end, he prayed for the objections to be devoid of merit and be overruled with costs.

I have carefully gone through the submissions made by both learned counsels for and against the raised points of objection. The issue for determination is whether the raised points of preliminary objection have merit.

Starting with the first point of objection that this application is time barred, **Section 91 (a) & (b) of ELRA** provides that:

*"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 -*

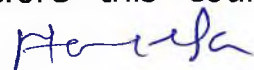


*(a) within six weeks of the date that the award was served on the applicant unless the alleged defect involves improper procurement;*

*(b) if the alleged defect involves improper procurement, within six weeks of the date that the applicant discovers that fact."*

According to the records, the CMA award was delivered on 15<sup>th</sup> day of October, 2021 and the present application was filed before this court on 26<sup>th</sup> day of November, 2021. Counting from 15<sup>th</sup> day of October 2021 up to 26<sup>th</sup> day of November, 2021 makes a total of 42 days. So, the application was filed on the last day of the statutory time to file a revision. Therefore, I concur with the counsel for the applicant that the application was filed within the prescribed time. For that reason, I find no merit in this point of objection.

Coming to the second point of preliminary objection, the respondent alleged that the application is premature and unmaintainable in law for the applicant's failure to issue notice of intention to seek for revision of award contrary to **Regulation 34 (1) of the Employment and Labour Relation (General) Regulations** of 2007. Before discussing this provision, I wish to expound briefly as to whether the above-mentioned Regulations are applicable before this court. The said



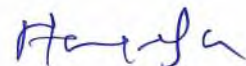
Regulations are made under **Section 98 of the Employment and Labour Relations Act**, Cap 366 R.E 2019 which stipulates that:

*(1) The Minister may, in consultation with the Council, make regulations and prescribe forms for the purpose of carrying out or giving effect to the principles and provisions of this Act.*

This provision gives powers to the Minister responsible for labour to make regulations in respect of different matters as listed under **Section 98 (2) of the Employment and Labour Relations Act**. Exercising his powers under this provision, the Minister made the **Employment and Labour Relation (General) Regulations. Regulation 34 (1) of the Regulations** which is subject to the preliminary objection at hand provides that:

*"The forms set out in the Third Schedule to these Regulations shall be used in all matters to which they refer. "*

Those forms which are listed in the third schedule under **Regulation 34 (1) of the Regulations** are: Referral of a dispute to the Commission for Mediation and Arbitration (CMA F.1), Application for condonation of late referral of a dispute to the Commission for Mediation and Arbitration (CMA F.2), Summons before the Commission for Mediation and





Arbitration (CMA F.3), summons for the witness to appear before the arbitration hearing (CMA F.4), Agreement by parties to extend time for mediation (CMA F.5), Certificate of settlement/non settlement (CMA F.6), Settlement agreement under mediation (CMA F. 7), Notice to refer a dispute to arbitration (CMA F.8), and Notice of intention to seek for revision of award (CMA F.10).

All the listed forms which are alleged to be coached in mandatory way are CMA forms as it is shown in the brackets of each form above. They are forms which are applicable at the CMA from the institution of the dispute to its finality. And the last form which is CMA Form No 10 which is subject to this preliminary objection is about the notice of intention to seek for revision of award. The same is filed at the CMA as well. For easy reference I wish to reproduce it hereunder:

CMA F.10

NOTICE OF INTENTION TO SEEK FOR REVISION OF AWARD

(Made under Regulation 34(1))

LABOUR DISPUTE No: .....

BETWEEN

..... APPLICANT

AND

..... RESPONDENT

TAKE NOTICE that the Applicant/Respondent being dissatisfied with the Commission's award in the above mentioned Labour Dispute issued on ..... by Honourable ..... DO HEREBY intend to seek





Revision/Review to the High Court of Tanzania (Labour Division) against the said award.

Please forward as expeditiously as possible certified copies of proceedings and award to the:

High Court of Tanzania,  
(Labour Division)  
..... (Place).

Dated at ..... this ..... day of .....

.....

Applicant

Presented for filing this ..... day of ..... (year)

.....

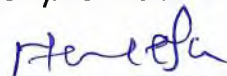
Registry Clerk

Copy: Respondent

Looking at its content, it goes without saying that CMA F.10 is aimed at giving the CMA notice to forward the certified copies to the Labour court. I wonder how do CMA forms apply to the proceedings at this court. It should be kept in mind that the labour court has powers to call for lower court/ tribunal/commission records in case of appeal or revision. See **Rule 28 (1) of the Labour Court Rules**.

The law is very clear on the practice and procedure applicable at the labour court. **Section 55 (1) of the Labour Institution Act**, Cap 300 R.E 2019 stipulates that:

*"The Chief Justice, after consultation with the Minister, shall make rules to govern the practice and procedure of the Labour Court."*



The Chief Justice exercising his powers under the above provision promulgated the Labour Court Rules, 2007. The rules are very clear on the institution of the application for revision of an award of the Commission at the Labour Court. In this, I concur with Mr Nyerembe that their revision application is filed in accordance with **Rule 24 of the labour court Rules** which stipulate on how the application should be filed and the required documents to be filed are well indicated. The CMA F.1 which is a notice of intention to seek for revision of award is not among the listed documents under the said provision. The same rule has been duly complied with by the applicant. Thus, the application is properly filed before this court and the 2<sup>nd</sup> point of preliminary objection has no merit too.

In the end, the preliminary objection raised by the respondent's State Attorney has no merit and is hereby overruled. The application should proceed on merit.

Ordered accordingly.

**DATED** at **ARUSHA** this 30<sup>th</sup> day of August, 2022.



  
**N.R. MWASEBA**

**JUDGE**

**30.08.2022**