

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. APPLICATION NO. 47 OF 2020**

(Originated from the CMA in Labour Dispute No. CMA/ARS/ARB/96/2017)

**EMMANUEL COSMAS MTINANGI.....1<sup>ST</sup> APPLICANT**

**SAMWEL JONAS NDISA.....2<sup>ND</sup> APPLICAT**

**VERSUS**

**ULTIMATE SECURITY TANZANIA LTD.....RESPONDENT**

**RULING**

3/11/2021 & 9/2/2022

**ROBERT, J:-**

Before me is an application for extension of time to lodge an application for revision against the decision of the Commission for Mediation and Arbitration (CMA) delivered on 13/11/2018. The application is supported by an affidavit sworn by Emmanuel Cosmas Mtinangi and Samwel Jonas Ndisa, the applicants herein and resisted by the respondent who filed his counter affidavit on 5<sup>th</sup> August, 2020 to that effect.

Prior to the hearing of the application counsel for the respondent filed a Notice of Preliminary Objection to the effect that:

- 1. The application is incompetent for being time barred.*
- 2. The application is incompetent for being accompanied by a defective application which contained improper citation of the Court.*

Parties were invited to address the Court on the points of objection before proceeding with the hearing of the application on merit in case the objections are not sustained. At the hearing of the preliminary objection, the applicants appeared in person unrepresented whereas the respondent was represented by Mr. Reginald Rogati Lasway, learned advocate. Parties proceeded to argue the matter by way of written submissions as ordered by Court.

Submitting on the first point of preliminary objection, Mr. Lasway argued that, the applicants had previously filed the same application which was struck out on 3/6/2020 with leave to refile within 14 days. Thus, the present application was supposed to be filed on or before 17/6/2020. Unfortunately, the applicants filed this application on 15/7/2020 which is 28 days after the time prescribed for filing an application. He maintained that, in order to honour time limitations, Court orders must be respected hence, the present application has to be dismissed for being filed out of time. To support his argument, he cited the case of **Eliatrisha E. Akyo and Johnson S. Mbagwa vs Julius Azael**, Misc. Land Application No. 37 of 2016 (unreported).

Responding to this ground, the applicants submitted that, they filed their application before the court on 15<sup>th</sup> June, 2020, which is two days before the expiration of fourteen days. Surprisingly, the registry stamp indicates that the application was filed on July, 2020 instead of June, 2020. Thus, they argued that, the said error was caused at the Court registry while registering their application. They maintained that, their notice of application indicates that they signed the application on 15/6/2020 and not 15/7/2020 which proves that the error was committed by the registry and not the applicants. In the end, they implored the Court to apply the principle of overriding objective which requires the court to have regard to substantial justice and do away with legal technicalities.

Having gone through the records of this matter, it is apparent that this application was received at the registry on 15/7/2020. The applicants' purported blame to the registry for stamping a different date on the application from the one they allegedly lodged their application is untenable and misplaced. I say so because, firstly, the documents signed by the registry officer and the registrar indicates that they both signed the application on July, 2020 which means if the application was mistakenly stamped on the month of July the documents signed by the registry officer and the registrar could have indicated a different date.

Secondly, the applicants shifted the blame to the registry office without any proof to their allegation. Mere submissions from the advocate without proof cannot be accepted in the eyes of the law. See the case of **Makoye Juma Ndemela & 9 others vs Al - Hushoom Investment (t) Ltd**, Misc. Application No. 331 OF 2019 (unreported) where it was decided that:

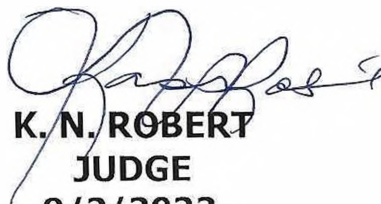
*"Unfortunately, it is the acts and omission of the applicant that has delayed the wheels of justice. Respondent should not be unfairly treated because of applicant counsel's negligence. To permit the applicant, another extension sought would neither be just, expeditious, economical, nor in the interests of justice. Application lacks sufficient cause."*

On the foregoing, this Court finds and holds that this application is time barred having been filed out of the prescribed time. That said, the first point of preliminary objection is hereby sustained.

Given that this application was filed out of the prescribed time, this Court finds no pressing need to deliberate on the remaining point of objection. Consequently, this application is dismissed for being filed out of time.

It is so ordered.



  
**K. N. ROBERT**  
**JUDGE**  
**9/2/2022**