

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

AT KIGOMA

(APPELLATE JURISDICTION)

LABOUR REVISION NO. 4 OF 2021

(Original from Labour Dispute No. CMA/KG/220/2021 for Mediation and Arbitration for Kigoma at Kigoma)

EDISSA D/O MELKION MITTI.....APPLICANT

VERSUS

PLAN INTERNATIONAL TANZANIA.....RESPONDENT

R U L I N G

3/2/2022 & 22/4/2022

L.M. MLACHA, J.

This is a ruling on a preliminary point of objection raised by the respondent, Plan International Tanzania, against the applicant, Edissa Melkion Mitti. It is going to examine the question whether electronic filing and registration of a case can make it legally before the court. The court will examine The Judicature and Application of Laws (Electronic Filing) Rules, GN 148 of 2018 and the Court Fees Rules 2018, GN 247 of 2018 and try to harmonize them. It will also examine two conflicting positions of the court on the point as reflected in the case of **Mohamed Hashil v. National Microfinance Bank (NMB Bank)**, High Court Dar es Salaam, Revision No. 106 of 2020 (A.E.

Mwipopo J.) and **Mohamed Bakundukize (Kendurumo) and 9 others v. Aloysius Benedictor Rutaihwa**, High Court Bukoba, Land Case Appeal No. 26 of 2020 (Mtulya, J.).

The preliminary objection which was lodged by the respondent reads;

'Pursuant to the provisions of section 91(1)(a) of the Employment and Labour Relations Act, Cap. 366 R.E. 2019 the Application pending before the Honourable Court is time barred'

Mr. Wilbert Kilenzi appeared for the applicant while the respondent was represented by Mr. Abdilah Hussein. With leave of court, the preliminary objection was heard by written submissions. Counsel made a research and filed useful submissions. I will refer to their submissions where need be in the course of my discussions.

It was the submission of the respondent that the appeal was filed contrary to section 91(1)(a) of the Employment and Labour Relations Act (ELRA) which require appeals against the decision of the CMA to be lodged within Six weeks or 42 days of the date that the award was served on the applicant unless the alleged defect involves improper procurement. Counsel went on to say that the decision was pronounced on 21/6/2022 and served to the appellant through her counsel Mosses Rwegoshora on the same day but

moved to file the revision on 3/8/2021. He submitted further that pursuant to section 60(1) of the Interpretation of Laws Act, Cap. 1 R.E. 2019 when the word '*within*' is used as was done in section 91(1)(a), the date when the decision was delivered is excluded in computing the time from which a certain act is required to be done. In that regard, counsel submitted, the 2/6/2021 when the ruling was delivered will not form part of the six weeks within which the applicant ought to have filed her application for revision. He went on to say that counting from 2/6/2021 when the decision was made and served to the applicant, up to 3/8/2021 when the application was filed in this court there is a period which is more than six weeks or 42 days. The period expired on 2/8/2021, he said. Counsel concluded that the application which was filed on 3/8/2021 was therefore late for one day and time barred. Based on **The Board of Trustees of African Inland Church Tanzania v. John Bunango**, Revision Application No. 101, High Court Labour Division Mwanza (unreported), **Tumaini Mafuru and 23 others v. Regional Manager Tanesco Shinyanga**, Revision Application No. 60 of 2018, High Court Shinyanga and **Nkwabi P. Mdehwa and another v. Barick Gold Mine Buzwagi**, Revision No. 246 of 2016, High Court Labour Division Dar

es Salaam he argued the court to dismiss the application under section 3(1) of the Law of Limitation Act, Cap. 89 R.E. 2019.

The counsel for the applicant agreed that the law required the applicant to file the revision within 42 days. He also accepted the modality of computing the days as provided by section 60(1)(c) of the Interpretation of Law Act. But relying on rule 21(1) of the Judicature and Application of Laws (Electronic Filing) Rules, he submitted that the applicant is not late because the application was lodged and registered electronically on 2/8/2021. He referred the court to the electronic print out which is attached to his submission showing that the case was registered on 2/8/2021 at 14:17:12. He referred the court to the case of **Mohamed Hashil** (supra) where it was held that a document which has been filed through electronic filing system is considered to be filed in court on the date it was filed. He said that the case of **The Board of Trustees of African Inland Church Tanzania** (supra), **Tumaini Mafuru and 23 others** (supra) and **Nkwabi P. Mdehwa and another** (supra) cited by the respondent are distinguishable in facts and circumstances of this case. He added that, they would have been relevant only if the case had been filed out of time. She argued the court to dismiss the objection.

In rejoinder it was submitted that the practice of the court requires on line filing to be supplemented by physical filing of a hard copy. And that, it is upon competition of physical filing that an application is deemed to have been properly filed. He referred the court to the decision of the Court of Appeal made in **Msasani Reminsula Hotels Ltd and Six others v. Barclays Bank Tanzania Limited** and two others, Civil Application No. 192 of 2006 (unreported) where it was held that, a document is lodged when the fees for lodging it is paid.

As hinted above, there are two conflicting positions of this court on this aspect. There is the position taken by my brother A.E. Mwipopo J, in **Mohamed Hashil** (supra) by my sister Bahati J, in **Kitumbo Security Company Ltd v. Vimajo & Sons Limited** High Court Tabora Civil Appeal No. 12 of 2020 that the case is deemed to have been dully filed when it is received and registered electronically and the position taken by my brother Mtulya J, in **Emaniel Bakundukize (Kendurumo)** (supra) that the case is filed in court when the hard copies are received and fees paid as per the exchequer receipt. The exchequer receipt is the evidence that fees were duly paid.

I have no problem with the position that a civil case is said to be dully filed and properly before the court when fees are paid and evidenced by an exchequer receipt. That has been the position for many years. But, I think that this position is no longer the position in the event of the coming into force of the new laws, **The Judicature and Application of Laws (Electronic Filing) Rules, GN 148 of 2018** and **The Court Fees Rules 2018, GN 247 of 2018**. These laws reflect a change to the new era of the 4th Industrial Revolution or simply the digital era. GN 247 of 2018 has set new scales of court fees. They are simplified and user friendly. GN 148 of 2018 has set up a new scheme on how to receive and treat court documents. We are no longer receiving court documents manually. We receive them electronically following a procedure contained under the law. Once a case is received, the person is given direction by the system on how to pay court fees which are assessed and sent to him electronically. The assessment is made by the registry officer using scales contained under GN 247 of 2018. He will pay fees wherever he is. The system will give notification that fees has been paid. The deputy registrar will register the case electronically at this stage without even seeing the party. Everything is done remotely, electronically.

This is an era of the digital revolution. And, it is this revolution which moved the Chief Justice to make the Electronic Filing Rules, GN 148 of 2018. They apply to all proceedings in all courts save for proceedings in primary courts.

Part III contains the procedure for electronic filing of documents. It starts from rule 8 to 27. Rule 8 direct all pleadings, petitions, applications, appeals and such other documents to be filed electronically in accordance with these Rules. Rule 9 recognize the electronic case file as one of the official records of court. Rule 10 provides for the procedure of electronic filing. Sub rule (5) and (6) provide that any document which is filed through the electronic filing system shall be deemed to have been intensionally so filed. Rule 21(1) provides that a document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time on the date it is submitted.

So, going by the rules, it is mandatory to file documents electronically and that when so filed, it will be considered to have been filed in court.

Now when is it paid for? I think here is where the controversy lies for a document is not properly before the court if fees have not been paid. The procedure requires fees to be paid before the case is electronically

registered. I needed to ascertain this aspect. When I asked my deputy registrar (Mr. Mariki) and Mr. Frank Moshi, the Deputy Registrar, Musoma to see what they do, they all told me that a case is sent electronically and received by the deputy registrar who check whether it is admissible or not. He may accept it or return it for some clarification. If the case is accepted, the electronic file passes to the registry officer who assesses the fees and sends a control number to the plaintiff/applicant. He will pay the fees on line. The system will send a notification that fees has been paid. It is after receiving a notification that the fees have been paid when the deputy registrar will make an entry that the case has been registered. The party will then come to court on the same day or another day depending on the distance between him and the court to bring the hard copies and collect the Exchequer receipt. The hard copies will be received by the clerk who will mark them and place them to the assigned judge.

It follows that, in my opinion, the exchequer receipt is no longer the evidence proving that court fees have been paid. It is just a formality for auditing purposes. Proof of payment of fees is in the electronic systems and can be printed as was done in this case.

But, it is worth noting that the present case being an employment matter, did not call for the payment of court fees making the need for cross checking useless.

Finally, can it be said that the present revision was filed out of time? I think the answer is in the negative for there is undisputed evidence that the revision was registered electronically on 2/8/2021, well within six weeks or 42 days. The hard copies were presented on 3/8/2021 but as I have said, this has nothing to do with the registration date nowadays. In other words, the fact that the hard copies were presented for filing on 3/8/2021 does not mean that the case was received on the date for we are no longer living in the era of hard copy filing. We are living and guided by The Judicature and Application of Laws (Electronic Filing) Rules, GN 148 of 2018 which demands electronic filing. We are in the 4th industrial revaluation, the digital revolution, a revolution that has fundamentally changed the way we live, work and relate to one another; a fusion of advances in artificial intelligence (AI), robotics, the internet of things (IOT), genetic engineering, quantum computing and more. (See Klaus Schwab, the founder and executive chairman of The World Economic Forum in his paper dated 14.6.2016). We

must change our mind set to fit with the current situation or else our courts will be left behind and fail to deliver services.

That said, the objection is found to be devoid of merits and dismissed. It is ordered so.



A handwritten signature in blue ink, appearing to be "L.M. Mlacha".

L.M. Mlacha

Judge

22/04/2022

Court: Ruling delivered in the presence of Ms. Dotto Banga for Kilenzi and absence of the Respondents. Respondents be notified.



A handwritten signature in blue ink, identical to the one above.

L.M. Mlacha

Judge

22/04/2022