

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(MOROGORO SUB REGISTRY)**  
**AT MOROGORO**

**LABOUR REVISION APPLICATION NO. 06 OF 2022**

*(Arising from Complaint No. CMA/MOR/140/2019, the decision and Award of  
Honourable Kayugwa H, Arbitrator dated 22<sup>nd</sup> November 2021)*

**RAMADHANI HASSAN MSOPHE .....APPLICANT**  
**VERSUS**  
**HOOD TRANSPORT CO LTD .....RESPONDENT**

**R U L I N G**

**5<sup>th</sup> & 7<sup>th</sup> Oct, 2022**

**CHABA, J.**

This ruling is in respect of preliminary objections on points of law raised by the respondent **HOOD TRANSPORT CO. LTD** through Mr. Benjamin Jonas, learned advocate, to the effect that:

- 1. That, the Revision Application has been filed outside the time prescribed statutory time without leave.*
- 2. That, the affidavit supporting the application is fatally defective as it offends the mandatory requirements of Rules 24 (3) (b) & (c),*
- 3. That, the application not filed in the appropriate Registry.*

When the application was called on for hearing, Mr. Boniphace E. Basesa, personal representative appeared for the applicant, whereas Mr. Benjamin Jonas, learned counsel entered an appearance for the or

respondent. Parties agreed to dispose of the raised preliminary objections on points of law by way of oral submissions.

Arguing in support of the first limb of preliminary objection, the learned counsel for the respondent submitted that the instant application was filed in court out of 42 days as prescribed by the law under section 91 (1) of the Employment and Labour Relation Act [Cap. 366 R. E 2019] (the ELRA). According to the court record, the CMA Award was delivered on 22<sup>nd</sup> November, 2021, and the applicant was served with a copy of the CMA Award on the 28<sup>th</sup> December, 2021 and filed the application on 28<sup>th</sup> February 2022. The learned counsel submitted further that this application was lodged in court on 28<sup>th</sup> February 2022 but out of time contrary to the time prescribed by the law, as per section 91 (1) of the ELRA. He underlined that the period begins to run against the applicant from the time he received the CMA Award. To support his submission, he referred the court to the case of **Jones Rugakingira vs. Hubert Kairuki Memorial University**, Labour Revision No 247 of 2021 at pages 3 where it was stated that every application filed upon expiry of 60 days deserves to be dismissed.

With regards to the second limb of preliminary objection, Mr. Benjamini highlighted that the affidavit supporting the application contravenes mandatory requirements in particular rule 24 (3) (b) and (c) of the Labour Court Rules, 2007 GN No. 106 of 2007 whereby the provisions provide for the relevant forms in which an affidavit filed in Labour Court must appear and/or look alike. To reinforce his stand, the learned counsel referred this court to the case of **Reli Assets Holding Co. Ltd vs. Japhet Casmil & 1500 Others**, Revision No. 10 of 2014 at page 22 where the court categorically stated that the requirement



under rule 24 (3) (b) and (c) is mandatory and must be complied with. He underlined that the affidavit supporting the instant application does not set out the material facts in chronological order nor contain a statement of legal issues that arises from those material facts. Further, does not comply with the above-mentioned rules. He submitted that the affidavit is defective and incapable of supporting the applicant's application.

As regard to the 3<sup>rd</sup> point, the learned counsel prayed to withdraw and urged the court to dismiss the application on the ground of being incompetent.

In reply, the personal representative to the applicant conceded that this application truly filed out of time. Giving the reasons thereof, Mr Basesa submitted that due to the advancement of technology and introduction of e-filings, the applicant filed the same on 10<sup>th</sup> February 2022 and the hard copy was supposed to be approved by the Deputy Registrar. He further conceded that the application was filed on 28<sup>th</sup> February 2022. He finally prayed for a court's sympathy.

On the second limb of preliminary objection, Mr. Basesa once again conceded that the applicant contravened the law, though he averred that the learned advocate for the respondent did not specify exactly what provision of the law was contravened. He referred this court to The Constitution of the United Republic of Tanzania, Article 107 A (2) (e), and prayed the court to dismiss the preliminary objection and allow and/or grant the applicant leave to refile his application.

In rejoinder, the respondent's counsel reiterated what he submitted in chief and stressed that the case of Jones Rugakingira (Supra) held inter-alia that the only remedy available is to dismiss the matter.



Concerning the argument that the matter was filed on 10<sup>th</sup> February 2022 and 42 days expired on 7<sup>th</sup> February 2022 he insisted that the application entered the door of this court out of time. He concluded by stating that this application has no merits and it deserves to be dismissed.

Having considered the party's oral submissions in line with the points of preliminary objections raised by the learned advocate for the respondent and upon going through the application and other relevant documents initiated by the present application, the question for consideration and determination is whether the points of preliminary objections have merits.

Starting with the first limb of the P.O, the court record shows that the decision of the CMA was delivered on 22<sup>nd</sup> November 2022 and was duly served with a copy of an Award on 28<sup>th</sup> December 2022. It means that time started to run from the 28<sup>th</sup> of February 2022 when the applicant received the copy of an Award. The Court of Appeal in the case of **Registered Trustees of Marian Faith Healing Centre @ Wanamaombi vs The Registered Trustees of the Catholic Church Sumbawanga Diocese**, Civil Appeal No. 64 of 2007 (unreported), was once faced with a similar situation. In the course of deliberation, the Court held inter-alia that:

*"... the period between 2/5/2003 and 15/12/2003 when the appellants eventually obtained a copy of the decree ought to have been excluded in computing time."*

As stated above, it is crucial to note that in this application exclusion of time for requesting a copy of an Award from the CMA from 22<sup>nd</sup> November, 2022 up to 28<sup>th</sup> December, 2022 was inevitable. Since



the record is clear that the applicant was supplied with the copy of an award on 28<sup>th</sup> December, 2022, and afterward filed his appeal on 28<sup>th</sup> February, 2022, thus counting from 28<sup>th</sup> December, 2021 up to 28<sup>th</sup> February 2022 is almost 60 days. By calculation, it is obvious that six (6) weeks which is equal to forty-two (42) days as provided under section 91 (1) of the ELRA ended on 8<sup>th</sup> February, 2022. On this facet, I agree with the learned counsel for the respondent that this application was filed out of time.

Considering the second limb of the preliminary objection, both sides are in agreement that the applicant's affidavit supporting the application is defective as the same contravenes the provision of the law under rule 24 (3) (b) and (c) of the Labour Court Rules, 2007 GN No. 106 of 2007. As correctly highlighted by the learned counsel for the respondent, an affidavit that does not comply with the rule is incurably defective and the same cannot be cured by overriding objective principle. This position of the law was underscored in the case of **Kusenza L. Mbogo vs. Caspian Ltd**, Revision No. 942 of 2019 HC, Labour Division at DSM and **Hamza Omary Abeid vs. Promining Services**, Labour Revision No. 54 of 2019 HC Labour Division at Mwanza.

From the above observations, and to the extent of my findings, I find that the preliminary objections on points of law raised by Mr. Benjamin Jonas, learned counsel for respondent have merits. As to the way forward, I have paid attention to the arguments advanced by the learned counsel for the respondent and the surrounding circumstance of this application.

In the final event, I declare that this application is incompetent before the court and it is hereby struck out with leave to refile within twenty-one (21) days from the date of this ruling. As the matter involves Labour dispute, each party to bear its own costs. **Order accordingly.**

**DATED at MOROGORO** this 7<sup>th</sup> day of October, 2022.



**M. J. Chaba**

**Judge**

**7/10/2022**

**Court:**

Ruling delivered at my hand and Seal of the Court in Chambers this 7<sup>th</sup> day of October, 2022 in the presence of the applicant and Mr. Bonifance Basesa, personal representative, and Mr. Benjamin Jonas, learned counsel for respondent.



**M. J. Chaba**

**Judge**

**7/10/2022**

Rights of the parties fully explained.



**M. J. Chaba**

**Judge**

**7/10/2022**

