

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)
AT ARUSHA**

APPLICATION FOR LABOUR REVISION NO. 131 OF 2021

*(C/F Award of the Commission for Mediation and Arbitration at Arusha Labour Dispute No.
CMA/ARS/ARS/252/21/122/21)*

EMMANUEL SAITABAU MUNGAAPPLICANT

VERSUS

UHAI MILLING CO. LTD.....RESPONDENT

JUDGMENT

22/8/2022 & 24/10/2022

GWAE, J

The applicant, Emmanuel Saitabau Munga filed a complaint before the Commission for Mediation and Arbitration of Arusha at Arusha (CMA) against the respondent, Uhai Milling Co. Ltd. He however lost the case as the CMA Arbitrator found the applicant to have not proved that, he was employed by the respondent and that, his complaint before the Commission was time barred.

It is perhaps pertinent to have brief facts of the case recapitulated herein; that, the applicant's version before the Commission is that, he was employed by the respondent as a Public Relations and Marketing Officer on the 31st of 2018 at the agreed payment of Tshs. 850,000/=and that, he was never being paid his monthly salaries since his employment making salary arrears in the sum of Tshs. 28,000, 000/ being allegedly unpaid salaries for 34 months' period save payment at the tune of Tshs. 500,000/= being an advance for his 1st monthly salary. On the other hand, the respondent's version is that, the applicant was never her employee.

Aggrieved by the CMA award procured on 30th November 2021, the applicant has filed this application for revision under provisions of section 91 and 94 of the Employment and Labour Relations Act, Cap 366 Revised Edition, 2019 and Rule 24 of the Labour Court Rules, GN. No.106 OF 2007. He is seeking for the following reliefs;

1. That, this court be pleased to call for and examine the record of the proceedings of the Commission for Mediation and Arbitration of Arusha at Arusha and revise the proceedings and set aside the arbitration award issued in Labour Dispute No. CMA/ ARS/ ARB/ 252/21/122/21

2. Any other order that this court may deem fit and just to grant

The grounds upon which the applicant relies in this application are set forthwith in his sworn affidavit as herein under;

- a. That, the arbitrator erred in law and fact for failure to analyze and determine issue as to whether the applicant herein was the respondent's employee
- b. That, the arbitrator erred in law and fact for failure for reaching a contradictory finding regarding the issue as to whether the applicant was the respondent's employee
- c. That, the arbitrator erred in law and fact for failure for holding that the applicant was supposed to deal accordingly with one **Allbless Shoo** who was the third party without ordering the same to be joined to the suit and while there was ample evidence that the applicant was the respondent's employee
- d. That, the arbitrator erred in law and fact for for shifting the burden of proof of non-payment of salaries to the applicant regardless a number of exhibits (Reminder letters) tendered to that effect

- e. That, the arbitrator erred in law and fact for deviating from the agreed issues then formulating and argue on her newly raised issues which were never in dispute as to how the applicant survived for the whole time if he was not paid salaries
- f. That, the arbitrator erred in law and fact for failure by relying her decision based on her own presumptions of fact rather than relying on the evidence tendered by the parties to the dispute
- g. That, the arbitrator erred in law and fact for basing on the facts which were never disputed as to the availability of works to be dined upon the respondent office regardless of the fact that the same was never disputed by the respondent
- h. That, the arbitrator erred in law and fact for by formulating evidence of her own by feeding the words in the mouth of the applicant's witness contrary to what was testified by the applicant's witness
- i. That, the arbitrator erred in law and fact for raising and basing on the presumption that the matter was time barred

while there was ample evidence to prove that, the applicant was kept on being promised to be paid his salaries and up to the time of the dispute the applicant was still attending the respondent's office on daily routine

On 18th day of July 2022 when the parties' advocates namely; Mr. Peter Njau and Mr. Frank Wilbert appeared before me representing the applicant and respondent respectively, leave to dispose of this application for revision was sought and granted. Subsequent to the grant of leave, the parties filed their submissions in conformity with the court's order. I shall however not reproduce the parties' submissions as I am to closely consider the same while determining grounds of this application as herein.

For the reason which shall be apparent hereinafter, I shall start with the last ground (i) of the applicant's application for revision. It is trite law that, whenever there is contentious issue on jurisdiction or limitation of time in instituting any matter before a court of law or any quasi-judicial body, the court or quasi-judicial body has to determine such issue first before going into merit of the case. As the Commission arbitrator is found to have found the complaint before it was time barred and since the applicant is found to be dissatisfied with such arbitration finding. It is therefore necessary for the

court to start with it as doing otherwise it is tantamount to a wastage of precious time of the court.

It is the argument of the applicant that the dispute was not time barred as the respondent kept on promising him to pay his salaries till when the dispute was lodged and that the issue of limitation of time was not among the framed issues. It was on the other hand the argument of the respondent that, the matter was time barred as per the applicant's own evidence that he received his first monthly salary advance in 2018 from there onwards he was never being paid his monthly salaries till the date of referring his complaints to the Commission 30th June 2021.

The applicant primarily challenges the arbitrator's findings especially in ground (i) that, the dispute before the Commission was not time barred. A carefully reading from the award has revealed that, the issue of time of limitation was raised by the Hon. Arbitrator while composing the Awards. The basis of the Arbitrator's finding was that, since the last payment of the applicant's salaries was in 2018 whereas the dispute was filed on 30th June 2021, therefore the dispute before the commission was time barred and the same were not procedurally preferred.

It should be noted that, the issue of time of limitation relating to the applicant's dispute was raised by the Arbitrator without giving the parties an opportunity to address the Commission as complained by the applicant though on the hand he is found asserting that, the time could not start running against him due to dishonored promises to pay by the respondent. It is with no doubt that the parties herein were denied their rights to be heard on the issue as to whether the complaint before the Commission was time barred or not.

It is well-established principle that, the right to be heard is a constitutional and universal right which should be observed by everyone. My holding is guided by the principle propounded in the case of **Abbas Sherally and another vs. Abdukl S. H. M. Fazaiboy**, Civil Application No. 33 of 2002 (unreported) where the Court of Appeal authoritatively held that;

"The right of a party to be heard before adverse action is taken against such party has been stated and emphasized by the courts in numerous decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified even if the same decision would have been reached had the party been heard, because the violation is considered to be a breach of natural justice".

Moreover, the case of **Mbaki and others vs. Macharia and another** (2005) 2 EA 206 (CAK) has also discussed the importance of the right to be heard and it was stated as follows;

"The right to be heard is a valued right. It would offend all notions of justice if the rights of a party were to be prejudiced or affected without the party being afforded an opportunity to be heard. (Matiba v Attorney-General [1995-1998] 1 EA 192 followed".

(See Article 13 (6) (a) of the United Republic of Tanzania, 1977 as amended from time to time and judicial precedents in **Nuridin Musa Wailu vs. The Republic**, Criminal Appeal No. 164 of 2004 and **Abbas Sherali and another vs. Abdulk S. H. M. Fazaiboy**, Civil Application No. 33 of 2002 (both unreported-CAT).

Guided by the above principle of law, therefore, the denial of the right to be heard before an adverse action (s) being taken against any party in a judicial proceeding is the last resort that a court of law can do. Similarly, in this case where the process leading to denying the parties the fundamental right of being heard plainly appears to be flawed, it follows that, the finding

of the Commission on limitation of time of the applicant's dispute cannot not be left to stand unreversed.


In the circumstances, this ground of right to be heard, suffices to dispose of the application. As such, I am not bound to be curtailed determining other grounds for the sought revision as doing so may preempt the arbitral award in case the issue of limitation of time will not be decided against the applicant.

Consequently, the finding of the Commissioner that, the applicant's dispute was filed out of time and therefore contravening Regulation 11 (2) of the Labour Institutions (Mediation and Arbitration) Guidelines GN No. 64 of 2007 is quashed and set aside. The matter be expeditiously remitted to the Commission and the parties be given an opportunity to address the Commission on the issue of limitation of time. If the issue of limitation of time does not dispose of the dispute, the matter will be determined on merit. Each party shall bear his costs of this application.

It is so ordered.

DATED at **ARUSHA** this 31st day of October, 2022




M. R. GWAE
JUDGE