IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB - REGISTRY OF MWANZA

AT MWANZA

LABOUR REVISION NO. 07 OF 2022

(Originating from CMA/MZ/ILEM/330/2020/83/2021)

NILE HEALTHCARE LTD t/a UHURU ..... APPLICANT

VERSUS

FILBERT JOHN MPOGORO ..... RESPONDENT

RULING

Nov.1st & 11th, 2022

Morris, J

The Applicant's move to have the award of the Commission for Mediation and Arbitration (CMA) revised is not meeting a smooth take off. After being served with the application herein, the Respondent filed both the counter affidavit and notice of preliminary objection (PO). The PO contains three points of law, namely;

i) The application is time barred.

ii) The application is incompetent for not being presented in the prescribed format.

iii) The jurat of attestation is defective.

When the matter came for hearing, the Respondent appeared in person – unrepresented; while the Applicant enjoyed services of Ms. Mary

Merchiory, learned Advocate. Parties obtained the Court's leave to argue the objection through written submissions. They complied with the set schedule. The Respondent submits that the application was filed beyond the six-week statutory time. The same is, thus, out of time. According to him, CMA award is dated December 20th, 2021 while the application herein was filed on February 1st, 2022: one clear day of delay. He cites section 91(1)(a) and (b) of the **Employment Labour Relations Act**, No.6 of 2004 and the case of **Oceanic Bay Hotel v Real Insurance (T) Ltd.** [2013] EA 214 to buttress his point. His insistence in referring to this case is inherent in its holding that even a one-day delay needs to be accounted for to warrant leave for extension of time.

The Applicant's Counsel disagrees with the above assertion. She maintains that the application is competent for having been preferred in time per rule 21(1) of the **Judicature and Application of Laws (Electronic Filing) Rules**, 2018. It is her further submissions that the application was filed online on January 30th, 2022. To her, the cited rule is couched in the permissive tone that the submission day of the document online becomes the day of filing. **Mohamed Hashil v NMB Bank Ltd.**, Labour Revision No. 106 of 2020, High Court (Dar es Salaam -unreported) is cited as an authority for this position of the law about e-filing system.

She, henceforward, finds no merit in the Respondent's otherwise-argument in this connection.

As for the defect in format, the Respondent submits that rule 24(3) of the **Labour Court Rules**, GN 106 of 2007; in its obligatory term, provides the ideal structure of the affidavit which should support the application for revision. He claims that the application before this Court is not compliant for lacking the minimum contents stipulated in the law. He concludes that the application is supported by a fatally defective affidavit. He invites the court to the holding of **John Wenzagi v K.K. Security**, Revision No.465 of 2018 High Court (Dar es Salaam -unreported).

The Applicant joins issues with him in this regard. It is counter-submitted that the Respondent is being vague in the way he argues this point. To the Applicant, the latter does not specify, which of the mandatory items to be contained in the affidavit, is missing or omitted in the affidavit filed in support of the application. It is prayed that this point should be overruled too.

Now the final point of objection. The Respondent attacks the *jurat* of attestation in the Applicant's affidavit as having flouted sections 5 and 10 of the **Oaths and Statutory Declarations Act**, Cap 34 R.E. 2019. According to him, every jurat of attestation must comply with the legal format stipulated under Cap 34 R.E. 2019. For consequences of the

defective *jurat* of attestation, the Respondent cites **Changshun Liu v Daud Mussa & Ors. v Emirates Airlines v Dinan & An.**, Misc. Appl. No. 387 of 2017, High Court (Dar es Salaam – unreported); **Mohamed Abdul Hussein v Pita Kempamp Ltd.** [2005] TLR 383; and **DP Shapriya & Co. Ltd. v Bish International** [2002]1 EA 47. The Applicant is rather very brief in countering this point. Ms. Merchiory submits that the format desired by the Respondent is not clearly spelt out.

Naturally, while the Respondent's obvious prayer is for dismissal of the application at hand, the palpable prayer for Applicant is for the Court to overrule the entire preliminary objection. Hence, this ruling.

I have keenly followed up the two contentious submissions above. It is clear that the Court is being invited to determine the competence of the application on the basis of the time bar, format of application and exactness of *jurat* of attestation. I will start with the time line. Time limitation is a serious legal principle which goes to the root of courts' jurisdiction. It thus deserves serious consideration. See, for instance, **Barclays Bank Tanzania Limited v Phylisiah Hussein Mcheni**, Court of Appeal (Dar Es Salaam), Civil Appeal No. 19 of 2016 (unreported).

Further, in **John Cornel v. A. Grevo (T) Ltd**, High Court Civil Case No. 70 of 1998 (unreported) it was insisted that the "law of limitation, on actions, knows no sympathy or equity. It is a merciless sword that cuts

across and deep into ail those who get caught in its web". Principally, both cases support the Latin maxim that *vigiiantibus non dormientibus jura-subveniunt;* implying that, the law assists the vigilant and not one who sleeps over his rights. Hence, parties to a case must comply with time-frames.

In this matter, it is undisputed that the application was filed online. Further noted, is the fact that the physical application documents bear the date of filing as February 1st, 2022. On the face of this record, the application was filed on the 43rd day of the CMA award pronouncement. *Prima facie,* it is a day-stale initiative. Technically, e-filing involves digitized documents getting out of the party's mandate after submitting them online. Consequently, the Court's registry takes over. So, for how long the Court will take before generating the requisite control number for the party to pay (where applicable), is determinable on case-to-case basis.

I will also swiftly comment that the objective of introducing e-filing system was, *inter alia*, for the court system to keep pace with development of ICT; save time of the parties; lessen costs (especially for transport to and from the registry); and to ease the burdens associated with physical/manual filing of court papers. To a large extent, the system is working to the advantage of all stakeholders involved.

I have taken time to verify the time trail of this matter. From the Court Registry record, the application was submitted by Kevin Mutatina on January 30th, 2022 at 20:28:48. Thereafter, normal/internal court procedures for admission and notification to parties followed. Therefore, the date affixed on the court's stamp (01.02.2022) signifies the completion of initio admission processes. And as remarked earlier on, such processes have nothing to do with the Applicant herein.

The Court is also up and alive to the long-set position of law that the date of payment of the applicable fees takes precedence in so far as determination of the day of filing is concerned. However, in this matter, such principle is inapplicable because labour matters are not subject of payment of filing fees. Thus, this point of objection is overruled.

In my determinate view, the second and third points of objection can be, and are hereby determined jointly. The gist of these points is that the application herein is incompetent for want of perfect format and *jurat* of attestation. Going through the submissions of the Respondent, one hardly finds a specific aspect in the impugned application which the Respondent succinctly mentions as missing. All that he keeps reiterating is that the application did not comply with the law. That is, it is not stated what compulsory things are, for example, omitted or wrongly added in the application to render it non-compliant. Further, the *jurat* is allegedly

defective but the Respondent, once again, is indirect regarding what is not included and/or what is wrongly inserted in the impugned jurat.

It is a long-settled principle of law that the preliminary objections should not be on surprise basis to opposing party. I can also add that a PO, in its ideal sense, should be concisely clear to enable the opposite party to prepare to counter it or make a founded decision to concede to it. Further, the clear the PO the precise the court's ruling thereof.

The above imprecision on the Respondent's part notwithstanding, I have keenly gone through the entire application and affidavit sworn by Dr. Derick David Nyasebwa on 28th January 2022. The objective of the intense perusal was to establish the basis of the Respondent's allegations, as blur as they may seem to be. Starting with the application, the Court notes that parties' names and description of parties (especially the Applicant's) are unclearly contained in paragraphs 2 and 3 of the affidavit. The chronology of events, though shoddy, is accounted vide paragraphs 4 and 5. Paragraph 6 is dedicated to the statement of legal issues accruing from facts. The reliefs sought are indirectly presented. Paragraph 7, which purports to state the envisaged reliefs, is merely cross-referring to the whole application. That is, "it is in the interest of justice to grant this application." From this account, it is evident that the import of rule 24(3) of the **Labour Court Rules**, is not strictly adhered to by the Applicant.

The rule enjoins the applicant to attach the affidavit with **clear and concise** details.

Furthermore, turning to the *jurat* of attestation, it can be observed that the *jurat* on the subject affidavit is not complying to the format given under the Schedule of the **Oaths and Statutory Declarations Act**, Cap 34 R.E. 2019. However, important contents are contained therein. So, there is a defect on form than inherent substance. In my considered view, the subject defect, if it were not in the affidavit which is a sworn evidence- thereby requiring a strict form of compliance in the interest of authenticity and credibility of the depositions; would have been curable under the doctrine of Overriding Objective [Article 107A of the **Constitution of the United Republic of Tanzania**, Cap 2; and **Yakobo Magoiga Gichere v Peninah Yusuph**, Court of Appeal (Mwanza) Civil Appeal No. 55 of 2017 (unreported)].

The uniqueness in the way of handling affidavits is also traceable in **D.T. Dobie (T) Ltd v Phatom Modern Transport (1985) Ltd**. Court of Appeal (Dar es Salaam), Civil Appl. No. 141/01(unreported); **OTTU v AG and others,** High Court (Dar es Salaam), Misc. Civil Appl. No. 15/97 (unreported); **SGS Societe General de Survillace SA v TRA** High Court (Dar es salaam), Civil Appl. No. 8/99 (unreported); and **Omari Ally Omary v Idd Mohamed and others**,

High Court (Dar es Salaam) Civil Revision No. 90/03 (unreported). Accordingly, the 2nd and 3rd points of PO are merited.

In view of the conclusions and reasons I have reached at and given above, the application is supported by the affidavit with substantial defects. It is, thus, incompetent. It is accordingly struck out. Each party will bear own costs.

It is accordingly ordered.

C.K.K. Morris
Judge
November 11th, 2022

Judgement delivered in the presence of Dr. Filbert John Mpogoro, the Respondent, and in the absence of the Applicant.

C.K.K. Morris
Judge
November 11th, 2022