

**IN THE HIGH COURT OF TANZANIA
(MOROGORO DISTRICT REGISTRY)
AT MOROGORO**

LABOUR REVISION NO. 05 OF 2021

*(Arising from MISC. APPL/CMA/MOR/38/2021 & Originating from Complaint No.
CMA/MOR/09/2020)*

**MAGOLE AGRICULTURE CO. LTD APPLICANT
VERSUS**

ALLETH NEMBURIS SIARA AND 6 OTHERS.....RESPONDENTS

R U L I N G

19/12/2022

CHABA, J.

This ruling arises out of a preliminary objection raised by the respondents against this application for revision. The applicant was aggrieved by the award of the Commission for Mediation and Arbitration for Morogoro (the CMA) in Complaint No. CMA/MOR/09/2020 which was entered *ex-parte* against her, on which she claims to have had no information whatsoever. Having noticed the existence of the dispute by an execution notice attached to one of her premises, she filed Misc. Application No. MISC./CMA/MOR/38/2021 which seems to have been *omnibus* as it included application for condonation and application for setting aside *ex-parte* award.



Before the matter could be set for hearing at the CMA, the respondents raised preliminary objections on three points of law (POs), to wit; **one** – the application was filed out of time, **two** – the application was incompetent for not having an affidavit and **three** – the application was accompanied with a defective affidavit. After hearing the points of law raised for objection, the CMA upheld all the grounds and thus dismissed both applications by the applicant.

In its ruling, the CMA not only reasoned on the points of law raised, but also went further to determine the main applications, both for condonation and for setting aside *ex-parte* award.

Discontented, the applicant filed this application before this court for revision. Again, this application encountered preliminary objections raised by the respondents that it is filed out of time. At the hearing of this application, the applicant was represented by Mr. George Ambrose, learned counsel while Mr. Kitua Kinja, learned counsel entered appearance for the respondents.

Parties consented to argue the preliminary objection on a point of law by way of written submissions. Both parties adhered to the Court's scheduling Orders.

Submitting in support of PO, respondents' counsel proposed to commence with the background of the dispute before the CMA which

was filed on 03/03/2020 in which the respondents sought compensation and allied reliefs for unfair termination. The matter proceeded *ex-parte* on the ground that the applicant did not show up. At the end of the day, an award was issued on 15/10/2020. Ten months later, the applicant emerged before the CMA with a prayer to set aside the *ex-parte* award, but it was dismissed on the ground of being filed out of time on 13/10/2021.

In this application as well, Mr. Kinja submitted that the applicant's application has been filed out of time contrary to section 91 (1) (a) of **The Employment and Labour Relations Act [Cap. 366 R. E, 2019]**. According to him, this application ought to be filed within six weeks, but the applicant opted to file after expiry of 53 weeks and 5 days. Citing the reliefs sought by the applicant, he rested this argument that the applicant is seeking to challenge the award in CMA/MOR/09/2020.

He underlined that since the application was filed out of time, then the applicant had to seek for an extension of time first in-appropriate forum. Otherwise, this court has no jurisdiction to entertain the application. He cited the decision of this Court in the case of **Paul Reginald Bramely Hii vs. Security Group Cash in Transit (T) Ltd**, Labour Revision No. 21/2013 (Unreported) which ruled that a delay even



of a single day is fatal, and the court will not have jurisdiction to entertain such matter unless extension of time has been applied for and granted.

Mr. Kinja continued to point out that the applicant is late for 377 days and thus obliged to account for each and every day delayed. Having laid his argument in the manner above, the learned counsel rested his submission by a prayer that this application as well be dismissed in total, compensation be ordered as concluded by the CMA.

The applicant's counsel in his reply to submission accepted to what the Court held in **Paul Reginald's** case to be as a correct position of the law in respect of cases filed out of time. He endeavoured to distinguish that case from his application beforehand by arguing that this one is within time as it was filed on the 12th day from 15/10/2021 when the applicant collected the copies of the ruling in MISC. APPL/CMA/MOR/38/2021, hence, in law, there was no need of applying for extension of time.

In his submission, the learned counsel revisited the background of the matter which I will not denote herein extensively, but in nutshell he highlighted that the applicant had no information whatsoever concerning the Complaint NO. CMA/MOR/09/2020 which the CMA entered *ex-parte* award against her until 03/08/2021 when she noticed the execution

notice attached to her premises, in a farm visit. On 23/08/2021 she filed Application NO. MISC/CMA/MOR/38/2021 which had prayers for condonation and application for setting aside *ex-parte* award.

He continued to submit that, such an application was dismissed on 13/10/2021 and that the CMA instead of dealing with the preliminary objection only, it went further to determine the main applications, for condonation and setting aside *ex-parte* award which were not heard at all. Therefore, the ruling entered is illegal and tainted with irregularity for deciding the matter on merit in the preliminary objection when the merit of the matter was not heard. He argues that in that sense, the applicant cannot have an avenue unless this court interferes. He further accentuated that reckoning from 15/10/2021 when the ruling was availed to 27/10/2021 it is only 14 days. The application is not time barred. The learned counsel argued that this preliminary objection is misleading and time wasting. So, he prayed the court to dismiss the PO.

At the outset, I accept the gist of the statements of law offered by the parties in respect of time limitation in appeal or revision in labour matters and what it was expounded in **Paul Reginald Bramely Hii vs. Security Group Cash in Transit (T) Ltd** the provision of section 91 (1) of the **Employment and Labour Relations Act [Cap. 366 R. E,**



2019] being part and parcel of the proper legal authorities in the circumstance of this case.

Having considered the rival arguments advanced by both parties on the point of preliminary objection, seriously perusing all records of the CMA and scrutinizing the award and ruling entered in the two cases namely, MISC.APPL/CMA/MOR/38/2021 and Complaint No. CMA/MOR/09/2020, and having understood the nature of the contention between the parties, this court is in a position to rule whether the preliminary objection has merit or not.

In respect of the background of the dispute, parties are at one. Their point of departure is centered on one aspect, while the respondent considers that the applicant is seeking to challenge the award in Complaint No. CMA/MOR/09/2020 which was entered on 15/10/2020, the applicant is firm in her contemplation believing that she challenged the ruling in MISC.APPL/CMA/MOR/38/2021 which was entered on 13/10/2021 and the copies collected on 15/10/2021. On reviewing the record, I have observed the source of that contradictions emanates from the pleadings filed by the applicant.

There is no dispute that the application herein was filed on 27/10/2021. However, the applicant in his pleadings before this court cited the matter to originate from CMA/MOR/09/2020, reliefs and orders

sought were against CMA/MOR/09/2020 and not MISC.APPL/CMA/MOR/38/2021. On the face of it, the respondents were technically correct to reason on their own thinking. However, if the perception would be valid for the sake of developing the premises, there would be no issue of extension of time as the respondents suggests, since the award in CMA/MOR/09/2020 was sought to be challenged by the applicant before the CMA. I am settled that the applicant would not in law file an application for extension of time in order to set aside the *ex-parte* award while the CMA had already entertained the matter.

Looking at the matter in a broad perspective and deducing from the substance of the parties' pleadings and submissions, I am satisfied that the applicant is seeking to challenge the ruling in MISC.APPL/CMA/MOR/38/2021 which according to the applicant's arguments, was erroneously entered by determining the main applications while the same were not heard. A reasonable inference made by this court is that the applicant by error or omission failed to cite MISC. APPL/CMA/MOR/38/2021 as against which she sought to challenge, instead she cited CMA/MOR/09/2020.

It is also unfortunate that both counsels did not want to face this fact; the applicant's counsel did not make any admission that they made an error in citation and the respondents' counsel did not appreciate the

same as an error attributed to format. As observed above, the matter was not out of time since in both parties' contemplation, it is clear the decision being challenged is MISC. APPL/CMA/MOR/38/2021 which originates from CMA/MOR/09/2020 as the applicant sufficiently demonstrated. On the other hand, it is evident that the applicant miscrafted her pleadings in terms of format as hinted above.

It is only on the basis of technical typographical errors one can validly argue that the application is out of time. But taking from the spirit of the application itself, the application is substantively within time since the ruling in APPL/CMA/MOR/38/2021 was entered on the 13th day of October, 2021 and the copies were collected on 15/10/2021. The provision of **section 91 (1) (a) of the Employment and Labour Relations Act** (Supra) provides that: -

"Any party to an arbitration award made under section 88 (10) who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for a decision to set aside the arbitration award-

*(a) **within six weeks of the date that the award was served on the applicant unless the alleged defect involves improper procurement;**"*



It is on the strength of the facts and law above that this court took a position that the application is within time even though the said application namely, APPL/CMA/MOR/38/2021 was not properly cited as the one against which the revision is sought. In view of the above, the point of law raised as an objection is overruled.

The errors observed, although not directly linked to the issue of time limitation, But I think, I am duty bound to resolve the same. It is obvious that in a strict interpretation of the law, this court would not have any powers to revise the CMA ruling in MISC. APPL/CMA/MOR/38/2021 when it has not been clearly invited to. However, considering that the applicant's intention was clear on the decision he intended to challenge, the pertinent question is whether such error on format seriously amount to dismissal of the matter at hand or it can be condoned by applying the overriding objective rule.

In the case of **Alphonse Dionezio Boniphace vs. Shirika la Upendo na Sadaka**, Labour Revision 8 of 2021 [2022] TZHCLD 1, among others, this court had the view that errors on format of pleadings such as notice of application and other related documents under rule 24 of **the Labour Court Rules, 2007** would not be fatal and that this court, with the advent of overriding objective principle, must incline towards substantive justice. In this matter, the error committed by the



applicant is one of format and has been observed at a convenient stage. Despite the imputed confusion raised by the respondent's counsel, parties are clear on the centre of contention in this matter.

The Court of Appeal of Tanzania in the case of **Finca T. Ltd vs. Wildman Masika & Others**, Civil Appeal No. 173 of 2016 [2019] TZCA 94 it was encountered by a situation where the notice of appeal was erroneously drafted to reflect that the appellant was intending to appeal to "**High Court of Appeal of Tanzania**" instead of "**The Court of Appeal of Tanzania**". Having taken cognizance of the overriding objective principle, the Court proceeded to rule as follows: -

*"We have taken note of the submission ... that this is a mere typographical error which can be corrected by effecting amendment to the notice of appeal to remove the word **"High"** and remain with the words **"Court of Appeal of Tanzania."** On our part, we agree that the error is necessarily due to a typographical error which can be rectified by effecting amendment to the notice of appeal"*

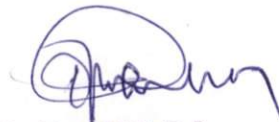
Placing reliance on the above observations by the Apex Court, it is my considered opinion that, although the error in this matter is slightly different from the above two cases, but on its nature, the error falls within the same genus, whose effect if any, would as well be of the



same nature. It follows therefore, that the overriding objective principle can apply without any prejudice to the parties.

In the final analysis, since the preliminary objection was caused by inappropriate citation of the case which resulted to the impugned ruling and on the basis of interest of justice, the applicant is ordered to rectify the pleadings so as to reflect properly the impugned decision and the originating case from which this application arose. By so doing, this will not only assist for propriety of court records, but also will facilitate basis for effectual court's orders where need arise. The application to proceed on merit. **Order accordingly.**

DATED at MOROGORO this 19th day of December, 2022.



M. J. CHABA

JUDGE

19/12/2022

