

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

APPLICATION FOR REVISION NO. 5 OF 2022

(Coming from Labour Dispute No. MOS/CMA/M/211/2011)

THADEI ALOIS MAGWETI APPLICANT

VERSUS

MOSHI MUNICIPAL COUNCIL RESPONDENT

JUDGMENT

Last Order:27/10/2022

Judgment:22/11/2022

MASABO, J.:-

The applicant Thadei Alois Magweti was disgruntled by the an award of the Commission for Mediation and Arbitration of Moshi (CMA) in Labour Dispute No. MOS/CMA/M/211/2011 delivered on 05/07/2012 by G.P Migire – Arbitrator). He has lodged this application praying that this court examine the records and proceedings to satisfy itself as to its legality, propriety and correctness and thereafter set aside the said Award.

The factual background of the appeal is as follows; the Applicant was employed by the Respondent on 13/10/2003 as a Security Guard Category C staff of the Unified Local Government Service. After working for five years, he was transferred to a new duty station, on 27/06/2008. According to the

applicant, for the period between 2003 to 2007, he was made to work 12 hours per days per week hence he deserved an overtime pay. He thus prayed for the same together with other employees. His fellow employees were paid but he was never paid and no reason was given to that effect. He worked until 01/11/2012 when he retired upon attaining the compulsory retirement age of 60 years. Before his retirement he reminded his employer about the overtime payment which, in his view, had accrued to Tshs. 57,732,185/=. The employer did not honour the claim. Reinforcing his right, he decided to knock to the doors of the CMA praying to be paid the amount due. His claim ended barren after his claims were dismissed for being time barred hence the current revision.

During the hearing which proceeded by way of written submissions, the Applicant who appeared in person and unrepresented, gave a brief history regarding the nature of dispute between him and the respondent as briefly narrated above. He further asserted that, his only ground for revision is that the Arbitrator erred in law and fact in deciding that the Applicant did not deserve the overtime payment. Based on these facts he prays this court vary the Award, allow the application and Order the Respondent to pay him his dues and interest thereto.

Disputing the revision, Mr. Moses Muyungi, Learned State Attorney for the respondent submitted that the appeal is without merit as the applicant has never proved that he has genuine claims against the employer. All he has managed to prove is that, he was actually employed by the respondent and worked very diligently to the time of his retirement as per annexure "TAI

and TA2" which include a letter of appointment, confirmation letter and a letter of transfer. Mr. Muyungi ardently argued that the letter dated 27/06/2008 headed "YAH; KUBADILISHWA KITUO CHA KAZI" is very clear as it states the time which the applicant had to work, that is from 6:00pm to 06:00am which according to his cadre as a security guard, such time is within the scope of duties of the security forces and does not entitle him to claim overtime as there was no agreement to that effect.

It was the learned State Attorney further submission that, section 19 (3) of the **Employment and Labour Relations Act**, Cap 366, R.E. 2019 provides for criteria for paying overtime allowances, that is if the employee and employer have an agreement to do so. In that regard, he argued that since there was no evidence adduced by the applicant showing an agreement between him and the employer to work on overtime basis, his claims are unfounded. Besides, the applicant's assertion that employees, except him, were paid overtime is a hearsay hence incapable of supporting an award in his favour as it was not supported by any proof of the alleged payment. He neither mentioned the names of those employees nor attached payment vouchers to show that indeed such payments were made.

Summing up, he prayed that this court dismiss this application as it violates the requirement of the law that overtime allowances be claimed within sixty days (60) from when the claim arises as per **Rule 10(2) Labour Institution (Mediation and Arbitration) GN 64/2007**.

Having considered both parties' brief submission, the only issue for determination is whether the applicant worked overtime and whether his claim was merited.

On the first issue, the law as set out under section 19 (1) and (3) of the **Employment and Labour Relations Act** that;

"19.-(1) Subject to the provisions of this Sub-Part, an employer shall not require or permit an employee to work more than 12 hours in any day.

(2) N/A

(3) subject to this Sub-Part an employer shall not require or permit employee work overtime-

(a) Except in accordance with agreement."

From the record, the applicant's claim for overtime is for the period between 2003 to 2007 during which he was working at Bondeni Ward. According to him, during this period he was made to work from 6:00 pm to 6:00 a day including weekends and holidays as there was no substitute security guard. Supporting this claim is his oral testimony (PW1) and that of PW2 one prosper Kiwenge, a fellow security guard who testified that indeed the applicant was working from 6:00 pm to 6:00am 7 days a week. Much as the documentary evidence, T3, which required him to work for 12 hours is dated 2008, I have no reason to doubt PW1 and PW2 uncontroverted evidence that for the claimed period, the the applicant worked 12 hours per day, which meant that his work duration per week was in aggregate far above the standard working time per week. It is however true that, save for the letter for transfer to a new station in 2008 which required him to work for 12

hourse at the new station, the was no contact between the parties as to overtime work thus, they proceeded obblious of the law above.

Moving to the second question and assuming that the arrangemet for worktime was in good order, was the claim merited? In its ruling, the CMA dismissed the claim for being time barred and it relied upon the provision of Rule 10 (2) of the Labour Institution (Mediation and Arbitration) GN 64/2007 which provides that;

10.- (1) N/A

(2) All other disputes must be referred to the Commission within sixty days from the date when the dispute arised.

From the record and as stated earlier on, it is obvious that the cause of action between the parties arose in 2003 and proceeded through out 2004, 2005, 2006 and 2007. It is further revealed that, in this particulat time the applicant never made any formal claim to his emploter. As per his letter dated 2/2/2010; his first formal claim to the employer was made on this date. Later on, it landed at the CMA for the first time in 2011, approximately 7 years after the first acruel of the right and 4 years after the last acruel of right or cause of action. Going by the law above, it is obvious that the claim was miserably time barred.

I am fortified in my finding by the decision of this court in numerous decisions. In one case, **Benjamin M. Kim v Real Security Group &,Marine Service**, Revision No. 199/2011 LCCD 2013, the court held that:

Overtime allowance is part and parcel of employees salary. Therefore, it was supposed to be claimed as and when the claim arose. The claim arises when the salary is due for payment, the law requires that the claim be lodged within sixty days; see rule 10(2) of the Labour Institution (Mediation and Arbitration) GN 64/2007

In the second case, **Rwaichi John Mosha v Heaven Manase Mtui**, Revision No. 77/2012 LCCD 2013, it was held thus:


The overtime allowances must be claimed when the claim arises. The time limit per Labour Institution (Mediation and Arbitration) GN 64/2007 is sixty days.

Under the premises, I find no reason to fault the CMA as its finding is premised on the law as it currently stands. The application for revision is, therefore, found with no merit and is hereby dismissed. The CMA's Award is upheld. This being a labour dispute, I give no orders as costs.

It is so ordered.

Dated and delivered at Moshi this, day of November, 2022



X 

Signed by: J.L. MASABO

J.L. MASABO
JUDGE

22/11/2022