

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**AT TABORA**

**LABOUR REVISION NO. 10 OF 2019**

*(Originating from Labour Dispute No. CMA/TAB/68/2016)*

**ADAM IDD ISSAH ----- APPLICANT**

**VERSUS**

**TANZANIA TELECOMMUNICATIONS COMPANY LTD -----RESPONDENT**

**RULING**

*Date 12/11/2021 & 25/02/2022*

**BAHATI SALEMA J.:**

This ruling is according to an application for revision brought under Rule 24(1), (2)(a–f), (3)(a–e) of the Labour Court rules of 2007. The applicant is seeking revision of the arbitrator's award which was procured on 22/10/2019 at the Commission for Mediation and Arbitration for Tabora in Labour Dispute Number CMA/TAB/68/2016. The application is based on three grounds, which are stated in the applicant's notice of application as well as averred in the applicant's affidavit.

In the affidavit, the applicant paraded a total of 13 grounds upon which his application is based, to the same time, I will paraphrase them into three grounds as follows: -

1. That, the applicant was employed and worked for almost 9 years before he was terminated from employment on 1st April, 2016 and on 22nd April, 2016(twenty-one days later), he filed a Labour dispute at Commission for Mediation and Arbitration at Dar es salaam
2. In the course of the hearing at Dar es Salaam, on 29th September 2019 his application was dismissed for want of territorial jurisdiction. He then applied for condonation in CMA Tabora, an application that was never heard.
3. Later on, the applicant filed a labour dispute attached with what he referred to as Form No. 7 (Condonation Form), but the application was dismissed for being out of time.

Now the applicant has approached this court, praying for orders that: -

1. *This honourable court be pleased to call and revise the Arbitration proceedings in respect of Labour dispute No. CMA/TAB/68/2016 by Honourable Kayugwa, H (Arbitrator) delivered on 22/10/2019 at CMA – Tabora.*

2. *Consequent to the grant of relief no. 1 above, this honourable court be pleased to grant an order for extension of time to allow the applicant's dispute at CMA be heard out of time.*
3. *That, this Honourable Court be pleased to grant any other relief that it considers just and convenient to grant.*

A brief history leading to this application for revision is that; the applicant was once an employee of the respondent; on 8<sup>th</sup> to 11<sup>th</sup> March 2016 he was referred to the respondent's disciplinary committee for what was termed as a failure to adequately manage financial procedures, procurement, and implementation of network projects as Regional Manager of Tabora.

Upon hearing by the disciplinary committee, the applicant was found guilty of the said misconduct then terminated from employment effectively from 1st April, 2016. Dissatisfied with the decision of the respondent, he wrongly lodged a labour dispute before the Commission for Mediation and Arbitration (CMA) at Dar es salaam via an application that was dismissed. Then he turned to Tabora to file a fresh application which was also dismissed. Hence this application is for revision.

When the matter was called for hearing, the applicant was represented by Yesse Elias (personal representative), whereas the

respondent was represented by Ms. Mariam Matovolwa learned State Attorney.

Submitting in support of the application, Mr. Yesse Elias stated that, on 17/10/2016 the applicant filed an application before the CMA using forms 1 and 7 for condonation, but it took almost 4 years for the matter to be assigned an arbitrator. Later on, the applicant prayed to transfer the matter to CMA Dar es salaam but he was denied by both the CMA and the High Court.

The applicant is challenging the decision of the arbitrator based on claims that the matter was filed at CMA for the first time on 22/04/2016 21 days after his termination, not as ruled by the arbitrator that it was filed on 17/10/2016.

On the other hand, Ms. Matovolwa in her reply submitted that the applicant was a Regional Manager at Tabora and the dispute arose in Tabora. According to law, he was supposed to file a labour dispute at CMA Tabora because it had jurisdiction to hear the matter, but instead, he filed the matter at CMA Dar es salaam.

Furthermore, Ms. Matovolwa agrees with the arbitrator that the applicant's application was filed at CMA Tabora for the first time on 17/10/2016, 197 days after he was terminated. She contends that the

applicant ought to have applied for condonation as required by law before he could file a labour dispute.

Having time to go through both sides' submissions and have taken into consideration the record as a whole, and I have the following considered observations and findings:

From the outset the applicant wants this court to believe that once the application is filed in any CMA registry, it counts for all CMA registries all over the country. It is apparent on the record that, the applicant was terminated from employment from 1st April, 2016 but instead of filing labour dispute at CMA Tabora he went to Dar es salaam and opened a dispute there.

Also, the record reveals that this matter was filed in CMA Tabora for the first time on 17/10/2016, 197 days past the termination date.

***Rule 10 (1) of the Labour Institutions (Mediation and Arbitration)*** rules requires that, I quote: -

*"Disputes about the fairness of an employee's termination of employment must be referred to the commission within 30 days from the date of termination or the date that the employer made a final decision to terminate or uphold the decision to terminate."*

Moreover, Rule 29 of Labour Institution (Mediation and Arbitration) rules provide a mechanism upon which an application for condonation may be made once the applicant becomes aware that he is out of the limits set in Rule 10 above.

It is evident that prior to filing a labour dispute at CMA-Tabora on 17/10/2016 no application for condonation was ever made by the applicant as required by Rules 29 and 31 of the Labour Institution (Mediation and Arbitration) rules. The applicant's submission that he attached form No. 7 (condonation form) to the main application is out of practice and against the provisions of the law. If granted, this application would be in its proper channel. I agree with Ms. Matovolwa that, the applicant ought to have filed a separate application for condonation before the CMA.

In the circumstances, I agree with the arbitrator and respondent's State Attorney that, since there is no record of the hearing of the application for condonation, the CMA has no jurisdiction to entertain a matter that was preferred to it out of time. The applicant ought to have applied for condonation prior to the institution of the labour dispute before the CMA at Tabora. That being the result, the application is dismissed in its entirety for want of merit. The decision of the arbitrator in CMA/TAB/68/2016 is hereby upheld. Each party bears its costs.



**A. BAHATI SALEMA**

**JUDGE**

**25/02/2022**

Ruling delivered under my hand and seal of the court in the Chamber, this 25<sup>th</sup> day of February, 2022 in the presence of both parties.



**A. BAHATI SALEMA**

**JUDGE**

**25/02/2022**

Right to appeal is hereby explained.



**A. BAHATI SALEMA**

**JUDGE**

**25/02/2022**