

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MUSOMA DISTRICT REGISTRY**

AT MUSOMA

CONSOLIDATED LABOUR APPLICATIONS NO. 25 AND 27 OF 2021

*(Arising from the decision of the Commission for Mediation and Arbitration for Mara at
Musoma in Labour dispute No. CMA/MUS/102/2021)*

BETWEEN

HAPPINESS KARUGABA APPLICANT

VERSUS

MSPH TANZANIA LLC (ICAP)..... RESPONDENT

RULING

31st March & 9th May, 2022.

A. A. MBAGWA, J.

This ruling is in respect of consolidated Labour Applications No. 25 and 27 of 2021.

The application was brought under section 91(1)(a), 2(b) and (c), 4 (4)(a) and (b) and section 94(1)(b) (i) of the Employment and Labour Relations Act, Rule 24(1), (2), (3) and Rule 28(1) of the Labour Court Rules. The application is supported by affidavit of Happiness Karugaba, the applicant.

The applicant prays the Court to call for and examine records in respect of the Labour Dispute No. CMA/MUS/102/2021 in order to satisfy itself as to

the legality, propriety, rationality, logical and correctness and consequently set aside the ruling of the CMA on the grounds;

- a) That the Arbitrator failed to find that the Dispute No. CMA/MUS/102/2021 was not time barred
- b) That the Arbitrator failed to find that the leave to refile and an extension of time had been granted by the other arbitrator in a Labour Dispute No. CMA/MUS/77/2021
- c) That the Arbitrator failed to find that the case of **Emmanuel Eliazry vs Ezironk K. Nyabakari**, Land Appeal No. 56 of 2018, HC (Land Division) at Dar es Salaam is distinguishable

The brief background of this matter may be recounted as follows;

The applicant, Happiness Karugaba filed a Labour Dispute No. CMA/MUS/77/2021 in the Commission for Mediation and Arbitration at Musoma against the respondent, MSPH Tanzania LLC (ICAP). The respondent raised a preliminary objection to the effect that the dispute contained a defective CMA Form No. 1. The applicant conceded to the objection raised. Consequently, the CMA (SOLEKA H- Arbitrator) upheld the objection and struck out the dispute. However, the Arbitrator consequentially

granted the applicant leave to refile the same within fourteen (14) days if she so wished. The said ruling was delivered on 16th June, 2021.

Following the ruling of the CMA dated 16th June, 2021, on 25th June, 2021, the applicant filed CMA/MUS/102/2021 which was almost nine (9) days after the ruling. Dismally, despite being aware of the order dated 16/06/2021, the respondent raised a preliminary objection to the effect that the dispute was time barred. The CMA (Mollel, B.L – Arbitrator) sustained the objection hence struck out the dispute.

The applicant was aggrieved by the decision of the CMA hence this application. Whereas the applicant filed Application no. 25 of 2021 to challenge the CMA decision by holding that the matter was time barred, the respondent filed, Application No. 27 of 2021 to challenge the consequential order of striking out after the CMA had found the matter to be time barred. The respondent was opined that the CMA ought to dismiss the matter instead of striking out. As such, the applications namely, Application No. 25 and 27 were consolidated

When the matter was called on for hearing the applicant was represented by Marwa Samwel, learned advocate whilst the respondent had the service of Frank Kashumba, learned advocate

Submitting in support of the application, Marwa Samwel said that the genesis of this Application is CMA/MUS/77/2021 which was struck out on 16/06/2021 and the CMA granted 14 days for the applicant to refile the dispute. Consequently, the applicant filed CMA/MUS/102/2021 on 25/06/2021. The dispute was thus filed within 14 days granted by CMA, the applicants counsel submitted.

Mr. Samwel continually submitted that the respondent raised preliminary objection that the dispute was filed out of time despite the fact that the CMA had granted 14 days for the applicant to refile the dispute. As such, the Arbitrator erroneously sustained preliminary objection, Mr. Samwel submitted. He was therefore of the view that the Arbitrator Mollel erred to ignore the ruling of her fellow Arbitrator Soleka. To bolster his point, Mr. Samwel referred to the case of **Joseph Magata vs Vodacom (T) Limited**, Civil Appeal No. 220 of 2019, CAT Dare es Salaam in which the Court of Appeal ruled that the matter was competent before the court as it was filed

within the time granted by the Court. Further, Mr. Samwel invited the Court to the decision of this Court in **Mathias John Mwimbilizye & 3 others vs M/S G.M. Dewji and Company Limited**, Revision No. 703 of 2019, HC Labour Division in a bid to convince the Court that the striking order is an appropriate order where the matter has not been heard on merits. Finally, Mr. Samwel prayed this Court to revise the dispute, set aside the ruling by Mollel and restore CMA/MUS/102/2021.

In reply, Mr. Frank Kashumba conceded to the application. In a very professional manner, Mr. Kashumba told the Court that upon digesting the arguments by the applicant's counsel, he was at one with the applicant's counsel that Mollel- Arbitrator erred to hold that the matter was time barred whereas the order by Soleka- Arbitator had not been challenged. He concluded that the CMA/MUS/102/2021 was filed within time.

I have heard the submissions of both parties. I have also keenly gone through the record. There is no gainsaying that Soleka- Arbitrator on 16th June, 2021 granted applicant leave to refile the dispute within fourteen (14) days. It is further undisputed that applicant filed Labour Dispute No.

CMA/MUS/102/2021 on 25th June, 2021 hence it was well within fourteen days granted by the CMA.

The case of **Emmanuel Eliazry vs Ezironk K. Nyabakari** (supra) which was relied on by the Mollel- Arbitrator was distinguishable from the circumstances of this case. In **Emmanuel Eliazry** only leave to file was granted whereas in Labour Dispute No. CMA/MUS/77/2021, the Arbitrator granted both leave to refile and extension of fourteen days from the date of ruling.

That said and done, I find the application meritorious. Consequently, I quash and set aside the ruling by Mollel-Arbitrator dated 12th November, 2021. The CMA/MUS/102/2021 is restored and should proceed from where it had reached before the ruling by Mollel dated of 12th November, 2021.

No order as to costs.

It is so ordered.




A. A. Mbagwa

JUDGE

09/05/2022

Court: The ruling has been delivered via teleconference in the presence of Marwa Samwel the applicant's counsel and in absence of respondent this 9th day of May, 2022.



A. A. Mbagwa

JUDGE

09/05/2022