

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

AT MUSOMA

LABOUR APPLICATION NO. 26 OF 2021

*(Arising from the decision of the Commission for Mediation and Arbitration for Mara at
Musoma in Labour Dispute No. CMA/MUS/103/2021)*

BETWEEN

MSPH TANZANIA LLC (ICAP) APPLICANT

VERSUS

HAPPINESS KARUGABA RESPONDENT

RULING

16th & 16th May, 2022.

A. A. MBAGWA, J.

This application emanates from the award (ruling) of the Commission for Mediation and Arbitration at Musoma in Labour Dispute No. CMA/MUS/103/2021.

The application was brought under Rules 24(1), (2)(a)(b)(c)(d)(e) and (f), 24(3)(a)(b)(c)(d), 28(1)(b)(c)(d)(e), 28(2), 55(1) and 55(2) of the Labour Court Rules and sections 91(1)(a), 2(c) and 94(1)(b)(i) of the Employment and Labour Relations Act.

The application is supported by affidavit of Godfrey Hoya, the applicant's Director of Administration and Finance. In contrast, the application is opposed through a counter affidavit sworn by Julius Mushobozi, the respondent's representative.

The applicant prays the Court the following:

1. That, this Honorable Court be pleased to revise, quash and set aside a ruling of the Commission for Mediation and Arbitration at Musoma in Labour Dispute No. CMA/MUS/103/2021 delivered by Mollel, B.L. Arbitrator on 12/11/2021.
2. That, time barred dispute should be dismissed.

The factual background of the matter may be briefly recounted as follows;

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

to the effect that the respondent, if she so wished, could refile the matter within fourteen (14) days from the date of ruling i.e. 16th June, 2021.

Following the ruling of the Commission dated 16/06/2021, the respondent refiled CMA/MUS/103/2021 on 25th June, 2021 which was almost nine (9) days after the ruling. Despite of the ruling dated 16/06/2021, the applicant 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 consequential order of striking out hence brought the instant application.

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

Submitting in support of the application, the applicant's counsel said that the applicant raised objection to the effect that the dispute was time barred. He contended that the objection was sustained in a ruling delivered on 12/11/2021 by Hon. Mollel - Arbitrator. He lamented that having sustained the objection, the Arbitrator proceeded to strike out the matter instead of

dismissing it. In a bid to support his contention, the applicant's counsel sought reliance on the decision of the Court of Appeal in **Barclays Bank Tanzania Limited vs Phylisiah Hussein Mcheni**, Civil Appeal No. 19 of 2016, CAT at Dar es Salaam.

Based on his submission, Mr. Kashumba prayed the Court to revise the ruling and substitute a consequential order of striking out with dismissal

In reply, Mr. Marwa Samweli invited this Court to take note that the matter at hand originated from CMA/MUS/77/2021 and that this is reflected at page No. 3 of the ruling by Mollel- Arbitrator in CMA/MUS/103/2021. He said that in CMA/MUS/77/2021 two reliefs were granted namely, leave to refile and extension of 14 days if the respondent was still interested. He continued to aver that the matter was decided on 16/06/2021 and the dispute CMA/MUS/103/2021 was refiled on 25/06/2021 whereas the 14 day period was to expire on 30/06/2021. As such, the Dispute No. CMA/MUS/103/2021 was filed within time, Marwa Samwel submitted.

The counsel submitted that where there is an order for extension of time, such order remains in force unless it is set aside by the superior court. To bolster his argument, he cited refer to the case of **Joseph Magata vs**

Vodacom Tanzania Limited, Civil Appeal No. 220 of 2019, at page 3 where it was held that the same court cannot ignore its order.

Based on this decision, the respondent's counsel submitted that the CMA/MUS/103/2021 was filed in time. As such, the Hon. Arbitrator had no power to either dismiss or strike out the dispute. Since the revision is already before the Court, he prayed the Court to invoke its powers to quash and set aside the decision of Mollel, arbitrator and order CMA/MUS/103/2021 to continue for hearing.

Lastly, Mer. Marwa Samwel submitted that he was at one with the applicant's counsel that where the dispute is found to be time barred the appropriate consequential order is dismissal. However, he parted company with the applicant's counsel in that the dispute was not time barred.

In rejoinder, Mr. Kashumba said that there is already a ruling by CMA which ruled that the Dispute CMA/MUS/103/2021 was out time. He said that if the respondent was not satisfied with the decision, he ought to challenge it. He was thus opined that since the respondent did not challenge it means the decision was correct.

I have heard the submissions of both parties. I have also keenly gone through the record.

To start with the issue of striking out instead of dismissal, I entirely with agree with the applicant's counsel that where the matter is found to time barred, the court or tribunal trying the matter should dismiss it.

Nonetheless, this Court in terms of Rule 28 of the Labour Court Rules is mandated to invoke revisional powers with the view to satisfy itself on the correctness of the proceedings. There is no gainsaying that Soleka-Arbitrator on 16th June, 2021 granted respondent leave to refile the dispute within fourteen (14) days. It is further undisputed that respondent filed Labour Disputes No. CMA/MUS/103/2021 on 25th June, 2021 hence it was well within fourteen days granted by the CMA.

The case of **Emmanuel Eliazry vs Ezironk K. Nyabakari**, Land Appeal No. 56 of 2018 HC (Land Division) at Dar es Salaam which was relied on by the Mollel- Arbitrator was distinguishable from the circumstances of this case. In **Emmanuel Eliazry (supra)** 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. As such, it

is my considered findings that the Arbitrator (Mollel) was wrong to rule that Labour Dispute No. CMA/MUS/103/2021 was time barred

That said and done, in terms of section 91 of the Employment and Labour Relations Act and Rule 28 of the Labour Court Rules, I quash and set aside the ruling by Mollel-Arbitrator dated 12th November, 2021. Accordingly, I direct that Labour Dispute No. CMA/MUS/103/2021 should continue from where it had reached before it was struck out.

No order as to costs.

It is so ordered.




A. A. Mbagwa

JUDGE

16/05/2022

Court: The ruling has been delivered via teleconference in the presence of Frank Kashumba, applicant's counsel and Marwa Samwel, respondent's counsel this 16th day of May, 2022.


A. A. Mbagwa

JUDGE

16/05/2022