

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM**

REVISION APPLICATION NO. 344 OF 2022

(Arising from the decision of the Commission for Mediation and Arbitration of Dar es Salaam at Kinondoni dated 25th day of August 2022 in Labour Dispute No. CMA/DSM/KIN/195/21)

MARIAM NGWARE..... APPLICANT

VERSUS

OXFAM GB..... RESPONDENT

RULING

K. T. R. MTEULE, J.

29th March 2023 & 25th April 2023

This ruling is in respect of a preliminary objection raised by the respondent against an application for revision against the decision of the Commission for Mediation and Arbitration. The Applicant herein is praying for the orders of the Court in the following terms: -

- i. That the Honourable Court may be pleased to call for record and revise the award of the Commission for Mediation and Arbitration at Kinondoni (Hon. Makanyaga, A.A, Arbitrator) in respect of Labour Dispute No. CMA/DSM/KIN/195/21 dated 26th August 2022.
- ii. That the Honourable Court may be pleased to determine the dispute in the manner it considers appropriate and find that the calculation used to calculate severance pay was wrong as per the Employment Contract which specify its calculation.

iii. Any other reliefs that the Hon. Court may deem fit to grant.

The Application is supported by an affidavit sworn by Ms. Mariam Ngware, who is the Applicant. Opposing the application, the respondent filed a counter affidavit sworn by Ms. Rosemary Andrew Nyatega who is Principal Officer of the applicant. The preliminary objection is to the effect that; - **the application for revision has been filed out of time.**

The preliminary objections was argued by way of written submissions. The Respondent was represented by Advocate Mr. Juventus Katikiro, while the Applicant was represented by Advocate Mr. Burton Mayage.

Supporting the preliminary objection Advocate Katikiro submitted that it is not disputed that the impugned award with **Reference No. CMA/DSM/KIN/195/121** was issued on **25th August 2022**, parties served with the award on **26th August 2022** and the present application for revision filed on **11th October 2022**, which means there were **47** days counted from the date of the service of the award to the date of filing of this Application for revision. In his view this contravenes **Section 91 (1)(a) of the Employment and Labour Relations Act, Cap 366 R.E 2019** which requires application for revision to be filed within **42** days from the date of service of the award. According to Advocate Katikiro, the Application

ought to have been filed on **7th October 2022** and not **11th October 2022**.

Advocate Katikiro drew the attention of the Court to the date of signing of the affidavit and the pleadings for revision which were signed by the applicant one day after the required time has lapsed, which is 7th October 2022, and according to him, there was a delay of one day.

Mr. Katikiro submitted that since the applicant's application was endorsed to have been filed on the 43rd day, instead of 42nd days as prescribed by the law, this is contrary to **Rule 3 and 5(1) of the Court Fees Rules, G.N. No.247 of 2018** which states that documents are deemed to have been filed when the appropriate fees is paid. Supporting his position, he cited the case of **Maliselino B. Mbipi v. Ostina Martine Hyera, Misc. Application No. 08 of 2022, High Court of Tanzania, at Songea**, (unreported). According to him, it was stated in this case that submission and admission of a document electronically is not conclusive proof of filing. In his view, a party who delays to pay appropriate fees on time must seek extension of time in terms of **Rule 24 of the electronic filing Rules**.

Opposing the application, Mr. Mayage submitted that the applicant dully filed this **Labour Revision No. 344 of 2022** within a time as

required by the law because it was filed electronically on **07th October 2022** and it was given **reference No. 43314372**, then the hard copy was filed on **11th October 2022**. He averred that according to **Rule 21 (1) of Judicature and Application of Laws (electronic Filing) Rules 2018, G.N. No. 148 of 2018**, a document shall be considered to have been filed if it is submitted through electronic filing system before midnight, east African time, on the date it is supposed to be submitted, unless specific time is set by the court or it is rejected. To support this position, he cited the case of **Muhammed Sashil v. National Microfinance Bank Ltd (NMB BANK), Revision No. 106 of 2020**, at the High Court of Tanzania, Labour Division at Dar es salaam, at page 3 (unreported).

Regarding the allegation that the applicant filed her application after the lapse of one day, Mr. Mayage submitted that the applicant herein filed her application on time because the award was received on **26th August, 2022** and the application for Revision filed on **07th October, 2022**, which means that the applicant filed her application on the 42nd day from when the award was served upon the Applicant as per **section 19 (1) of the Law of Limitation Act, Cap 89, R.E 2019**. According to **Advocate Mayage**, the section provides that in computing the period of limitation for any proceedings the day from which such period is to be computed shall be excluded. Bolstering his

stand, he cited the case of **Ebrahimaji Charitable Health Center v. Mashaka Kawimba**, Revision No. 264 of 2017, High Court of Tanzania, Labour Division at Dar es salaam, at page 2,3,4 and 5 (unreported).

It was further submission by Advocate Mr. Burton Mayage that the case of **Maliselino B. Mbipi vs. Ostina Martine Hyere, High Court of Tanzania (Songea District Registry) at Songea in Misc. Civil Application No. 08 of 2022**, it is irrelevant in this application, as the same discussed **Rule 21 of Electronic Filing Rules**, relating to the payment of fees while in this Application, fees are exempted for being a Labour matter. On that basis he is of the view that the case of Maliselino cited by the respondent is not applicable in this application.

Having noted the submissions of the parties, the task ahead is to determine as to **whether this matter is time barred**. Parties' contention lies on two aspects; **Firstly**, on the timing when the Application acquired a status of being admitted before this Court and **Secondly** when the time should start to count in filing this revision application.

Starting with the first aspect concerning the time when the application acquired the status of being filed, I will take note of the undisputed fact that this Application was filed electronically. This

being the case, I will traverse through the provision of **Rule 21 (1) of the Judicature and Application of Laws (Electronic Filing) G.N No. 148 of 2018** which provides thus;-

"A document shall be considered to have been filed if it is submitted through the electronic filing system before the midnight, east African time, on the date it is submitted, unless specific time is set by the Court or it is rejected."

From the above provision an application acquires a status of being admitted after being filed, if submitted through the electronic filing system, before the midnight of East African time, on the date it is submitted, unless specific time is set by the Court, or it is rejected. It is not disputed that this Application was lodged electronically on **7th October 2022**. This answers the question as to when the matter acquired a status of being filed that it was filed on **7th October 2022**.

The next question is when should the time start to count? According to Advocate Mayage, the first day when the applicant received the award needs to be excluded as per the principle cited from the case of **Ebrahimaji Charitable Health Centre Supra**. For ease of reference, I will quote the relevant part of the court holding in interpreting section 19 (1) of the Law of Limitation Act thus: -

*"The provision of **Section 19 (1) of the Law of Limitation Act, Cap 89 R.E. 2002** provides for*

the computation of time as rightly submitted by Learned Counsel for the applicant that, in computing the period of limitation for any proceedings the day from which such period is to be computed shall be excluded."

Section 91 of ELRA was previously discussed in the case of **Serengeti Breweries Ltd v. Joseph Boniface, Civil Appeal No. 150 of 2015** Court of Appeal of Tanzania, at Mbeya (unreported), where it was held; -

*"The plain and clear meaning of Section 91(1) of the ELRA is that, **the limitation period of six weeks begins to run against the applicant after the award is served on the applicant.***

The law is so couched because it is not open to the applicant to know if he is aggrieved with the award unless it is served to the applicant."

It is apparent that, the above authority read together with **Section 19 (4) of the Law of Limitation Act, Cap 89 R.E 2019** as further interpreted in Ebrahimaji's case requires that in computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded. In this application the record available reveals that on 26th August 2022 the Applicant was served with an award and on 7th October 2022 the application was filed electronically. Counting from 26th August when

the award was issued to the Applicant, to 7th October when the Application was lodged, there are exactly 42 days if the first day is excluded in accordance with **Section 19 of the Law of Limitation Act** as interpreted in **Ebrahimaji's case supra**. Under such circumstances I have no hesitation to say that the application was filed within the time of 42 days if time is computed from **27th August 2022** to **07th October 2022**.

In the result I find that the application for revision was filed on time and therefore the preliminary objection is unfounded. Consequently, I hereby overrule the preliminary objection raised by the respondent and order the application to be heard on merits. Each party should take care of its own cost. It is so ordered.

Dated at Dar es Salaam this 25th day of April 2023.



KATARINA REVOCATI MTEULE

JUDGE

25/04/2023