

THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT MUSOMA

LABOUR REVISION NO 05 OF 2023

(Arising from the decision of the commission for mediation and Arbitration for Mara at Musoma in Labour Dispute No. CMA/MAR/MUS/39/2022)

IRASANILO GOLD MINEAPPLICANT

VERSUS

GOSBERT STANSLAUS RESPONDENT

RULING

16th & 22nd May, 2023

M. L. KOMBA, J;

This is a ruling on a preliminary objection raised by the counsel for respondent in regard to the examination of the Commission for Mediation and Arbitration proceedings and award which said to be improperly procured so that this court can overrule and decide otherwise. The application is filled under Rule 24(1), (2)(a-f), (3), 28(1)(c-e) of the Labour Court Rules of 2007 GN No. 106 of 2007 read together with section 91 (1) (a), 91 (2) (c) and 94 (1) (b) (i) of the Employment and Labour Relations Act, No. 6 of 2004 and any other enabling provision. Upon filling of the same, counsel for

respondent raised a point of law which pray to be heard on the date scheduled for hearing of Application that;

- 1. That this application is incompetent for being time barred.*
- 2. That application is incompetent for it being filed in non compliance with the requirement of the law.*
- 3. That the application is incurable defective for contravening Rule 24 of GN 106.*

When the matter was scheduled for hearing, applicant was represented by Mr. Emmanuel Mng'arwe while respondent was represented by Mr. Ernest Mhagama both advocates. As the tradition of the court that preliminary Objection should first be entertained, then, this court allowed counsel for the respondent to submit over the preliminary objection.

Mr. Mhagama opted to abandon second and third ground and submitted on only the first one. It was his submission that application before this court is time bared on the ground that the Award of the Commission for Mediation and Arbitration of Musoma over labour dispute No. CMA/MUS/39/2022 was delivered on 14/11/2022 and the same was collected on 14/11/2022 by the applicant and respondent respectively. He further submitted that the applicant through online system filed the application for revision on 17/01/2023 and it was admitted on 18/01/2023.

He paused that, counting from 14/11/2022 is more than 23 days beyond the date allowed by the law which it was filed within 42 days after award. This is in accordance to S. 91 (1) (a) of the ELRA Cap 366 R.E .2019 also Rule 56 of the Labour Court Rules GN 106 of 2007. He submitted further that the remedy for this application is dismissal as was in the case of **Bardays Bank Tanzania Ltd vs. Phylisian Hussein Mcheni**, Civil Appeal No. 19 of 2016 CAT at DSM it was insisted that when the matter is time barred the remedy is dismissal. The same position was discussed in the case of **Hezron M. Nyanchig vs. TUICO & OTTU Civil Appeal No. 79 of 2001** and prayed this court to find this application is time barred and dismiss it.

Defending the objection Mr. Mng'arwe submitted that the application was filed on time because on 14/11/2022 court made decision on the application and they filed revision on 12/12/2022 via online services which was 28 days after the decision, and he was on time and left with 14 days extra. What happened is that, he said, the application was disappeared in the system. When they make a follow up for the summons to be issued then they noticed it was not featured in system again.

It was his submission that following that fault he wrote a letter to the District Registrar (DR) asking him to admit the case basing on the date it was filed

via the letter dated 08/01/2023 but DR replied by his mere words that he should file afresh that's why he filed 17/01/2023 and it was admitted.

He concluded that because is the problem of the system and because by the time he was filling on the 1st place he had 14 days before expiration of time and because on 11/01/2023 he was informed to file afresh and he did then he was within time. Automatic exclusion of time was decided in **Geita Gold Mining Ltd vs. Anthony Karangwa**, civil appeal no 42 of 2020 at page 8 about exclusion of time and the effort were made by the applicant. He pray this court to dismiss the PO and the matter be heard on merit.

During rejoinder Mr. Mhagama referred Rule 24 (5) (6) of Judicature and Application of Laws Act, Electronic filing Rules of 2015 which provides that during the filing if the person filing encounter technical problem a person should notify the DR and the DR should reply in writing so as to waive the limitation of time. If there is no written consent or letter by the DR then the application is filed out of time and he insist it should be dismissed. About the cited case by the counsel for the appellant he said they are distinguishable as the circumstances are different as the applicant was supposed to receive a letter from the District Registrar and insisted the application be dismissed.

Having carefully considered the arguments by the counsel for the parties on submissions in regard to the points of preliminary objections, I proceed to determine on whether the application is time barred. I find this to be central issue for consideration and determination because, the question of time limitation touches on the jurisdiction of the court to determine a matter before it and that the preliminary objection to be successful, generally, it should not need support from evidence as stated in the case of **The Soitsambu Village Council vs. Tanzania Breweries Ltd and Another**, Civil Appeal No. 105 OF 2011 (unreported),

The law is settled that the issue of jurisdiction for any court is basic as it goes to the root of the authority of the court or tribunal to adjudicate upon cases or disputes. Courts or tribunals are enjoined not to entertain any matter which is time-barred and in any event they did so, the Court unsparingly declare the proceedings and the consequential orders a nullity." See **Swilla Secondary School vs. Japhet Petro**, Civil Appeal No. 362 of 2019 (unreported).

Going by the above authorities, it is clear that an objection on account of the time limit is one of the preliminary objections that courts have held to be based on a pure point of law that touches on the jurisdiction of the court

and whose determination does not require ascertainment of facts or evidence. To determine such an objection, the court needs only to look into the complaints/application and its annexures without any further facts or evidence to be ascertained in determining as to whether the suit is time barred.

In the case at hand, having perused the pleadings and specifically the applicant's pleadings, it was my observation as indicated from the records that, the decision which is subject to this application is Labour dispute No. CMA/MUS/39/2022 which was delivered on 14/11/2022 and copy of decision was collected on the same day. Looking at the application in court file through endorsement show it was filed on 17/01/2023 and admitted 18/01/2023.

More information was given by the counsel for the applicant that he filled the application on 12/12/2022 but when he made a follow up in order to have summons, he noticed his applications are not visible online and he communicated to the District Registrar. He said, the date which was stamped in the application was the second filling. This court finds no reason not to believe the counsel for the applicant as the system verify the same. It is Deputy Registrar to be blamed for not answering the said letter.

Although there is no formal consent of the registrar but all what it intended by that letter from Deputy Registrar is to allow party to re-file.

For the interest of justice and to serve time as the justice could have been delayed more than this, this court finds the effort made by the counsel are enough to prove he filled on time and therefore I find and rule out that the objection is overruled. The matter to be heard on merit.

Right of appeal explained.



Nk
M. L. KOMBA
Judge
22 May, 2023