

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

LABOUR REVISION NO.4 OF 2022

(Originating from CMA/LIND/ARB/02/2019)

DITRAM RAYMOND MKOMA.....APPLICANT

VERSUS

MWANI MARICULTURE LIMITED.....RESPONDENT

RULING

5/4/2023 & 30/05/2023

LALTAIKA, J.

The applicant herein, **DITRAM RAYMOND MKOMA**, lodged this application seeking to revise and set aside the Award of the Commission for Mediation and Arbitration for Lindi at Lindi in Labour Dispute No. CMA/LIND/ARB/02/2019 delivered by Hon. Mgendwa, M. (Arbitrator) on 30th day of April 2020.

The applicant has moved this court by a Chamber Summons supported by an affidavit unsworn by the applicant. The Chamber Summons was made under Section 91(1)(a),(2)(b) and (4)(a)(b) of the Employment and Labour Relations Act No.6 of 2004 and Rules 24(1) and 28(1)(b)(c)(d) and (e) of the Labour Court Rules and any other enabling provisions of the law. The respondent, on her part, vehemently resisted the application through a counter affidavit sworn by Mr. **EVANCE ATHANAS SHIRIMA**, her Principal

Officer. She has filed a Notice of Preliminary Objection comprised of two objections that is to say:-

- 1. The Application is time barred in contravention of s.91 (1)(a) of the Employment and Labour Relations Act [R.E. 2019] for being filed in Court after 42 days of the Award of the Commission for Mediation and Arbitration.*
- 2. The Application is incompetent and is contravention of Rules 24(3) of the Labour Court Rules 2007, GN 106 OF 2007 for being accompanied with an incompetent affidavit not attested by a Commissioner for Oaths.*

When this matter was called on for hearing of the preliminary objections on 23/3/2023 Mr. **Emanuel Ngongi** learned counsel appeared for the applicant while Mr. **Stephen Lekey**, learned counsel represented the respondent. It was ordered that the preliminary objections be argued by way of written submissions.

Submitting in support of the first preliminary objection, Mr. Lekey contended that the application is time barred and is in contravention of section 91(1) (a) of the Employment and Labour Relations Act [Cap. 366 R.E. 2019] for being filed in court after 42 days of the award of the Commission for Mediation and Arbitration. He stressed that under the law, time within which to file an application for revision is six weeks of the date of the award was served on him. The learned counsel went on and submitted that the time of limitation has also been acknowledged by the Court of Appeal in the case of **Serengeti Breweries Limited v. Joseph Boniface**, Civil Appeal No.150 of 2015, CAT at Mbeya at page 9 (unreported).

It was Mr. Lekey's submission that after they had conducted file perusal on 23/02/2023 noted the original copy of the award found in the case file that the applicant signed at the end of the award and indicated 30/04/2020

to be the date the applicant was served with the award. To this end, the learned counsel insisted that time of limitation begun to run on that date. Mr. Lekey submitted further that the "Notice of Representation" the only document with the court stamp of the High Court Labour Division indicates that it was filed and stamped on 09/07/2020.

The learned counsel submitted that counting from 30/04/2020 when the award was served to the applicant to 09/07/2020, it is apparent that this application was filed after the lapse of 70 days from the date of the award was served. To this end, Mr. Lekey contended that the present application is time barred hence he prayed this court to dismiss it.

Submitting **on the second preliminary** objection, Mr. Lekey averred that the application is incompetent and in contravention of Rules 24(3) of the Labour Court Rules 2007, G.N. 106 of 2007 for being accompanied by an incompetent affidavit not attested by a Commissioner for Oaths. Mr. Lekey submitted that provision of Rule 24(3) of the Rules provides that an application for Revision must be accompanied with the Affidavit.

The learned counsel argued further that the affidavit appended to the application was signed by the applicant but was not sworn before the Commissioner for Oaths contrary to section 8 of the Notaries Public and Commissioners for **Oaths Act Cap.12 R.E. 2019**. He insisted that that document barely qualifies as an affidavit. The learned counsel bolstered his argument by citing the case of **Mabao Ying v. Mbeya City Council**, Civil Appeal No.97 of 2013, Court of Appeal of Tanzania at Mbeya (unreported) in which the Court stated that there was no jurat of attestation at all and no

valid affidavit. To this end, Mr. Lekey invited this court to strike out the application for offending Rule 24(3) of the Rules.

In response, Mr. Ngongi contended that it was not in dispute as shown in the original copy of the award that the same **was certified by an Arbitrator on 30/4/2020**. The learned counsel contended that Chamber Application for this application was filed on **9/6/2020 which is 41** days after the certification of the copy of the original award but the same was signed by the Deputy Registrar on 19/8/2022 which is 2 years since this application has been presented before this Honourable court on 9/6/2020. Mr. Ngongi averred that counting from 30/4/2020 the date when the award was certified to 9/6/2020 is 41 days. He argued further that the application at hand was filed on time and **not time barred** as raised by the respondent's counsel.

Additionally, Mr. Ngongi submitted that section 91(1)(a) of the Employment and Labour Relations Act, provide 42 days to challenge the award of the commission for mediation and arbitration. He submitted that upon perusing the court documents the court stamp shows that the document was received on 9th June,2020 but latter it was cancelled and the other stamp show that the same was filed on 9th July 2020 which is not true according to the document they have. Thus Mr. Ngongi maintained that the application was filed **on 9th June 2020 and not 9th July 2020**. To this end, the learned counsel prayed this court to overrule the objection.

Submitting on the second preliminary objection the learned counsel for the applicant conceded that the application is supported with an affidavit not

attested by a Commissioner for Oath thus contravening section 8 of the Notaries Public and Commissioners for Oaths Act. However, Mr. Ngongi submitted that the omission is curable under the overriding objective principle by ordering the application to be struck out. He stressed that by doing so it will avail the applicant to make correction on the fault. To this end, the learned counsel prayed to this court to overrule the objection.

In a brief rejoinder, Mr. Lekey stressed that the documents were not filed on 9th day of June 2020. The learned counsel insisted that is date when the applicant verified, signed and dated his filed documents. He strongly argued that the law on time limits for revision begins to run on service of the award and on the date of certification of the award as alleged. To this end, the learned counsel contended that the application is still out of time.

Regarding the second objection, Mr. Lekey submitted that applicant has conceded to the objection, however, he has prayed to be availed time to rectify the anomaly since the impugned error is curable under the overriding objective principle. The learned counsel submitted that admitting the objection implies that the applicant agrees that the affidavit in support of the application is defective that makes the application defective and ought to be struck out.

The learned counsel for the respondent contended that the applicant is precluded by the law from doing anything to pre-empt it. To fortify his argument, he referred this court to the case of **Meet Singh Bhachu vs Gurmit Singh Bhachu** (Civil Application 44 of 2018) [2021] TZCA (Tanzlii).

In addition, Mr. Lekey submitted that section 8 of the Notaries Public and Commissioner for Oaths Act is couched in mandatory terms. The learned counsel contended that in that circumstances overriding objective principle is not applicable. To cement that, the learned counsel referred this court to the case of **Mondorosi Village Council & others v. Tanzania Breweries Limited & Others**, Civil Appeal No.66 of 2017[2018] TZCA 303. Furthermore, he submitted that it is worthy to note that overriding objectives principle does not apply to matters that have been explicitly and mandatorily provided for by statute and court rules. He insisted that this position has been explained in the case of **Erick Raymond Rowberg & Others vs Elisa Marcos & Another**, Civil Application No.571/02 of 2017 CAT at Arusha (unreported). To conclude, Mr. Lekey prayed this court to find the objection with merit and thus dismiss the application.

I have dispassionately considered the written submissions of both parties. It goes without saying that the issue for my determination are one, whether the application is time barred. Two, whether the application is incompetent for contravening Rule 24(3) of the Labour Court Rules 2007, G.N. No.106 of 2007 for being accompanied by an incompetent affidavit which is not attested by a Commissioner for Oaths.

At this juncture, I will start with the second issue. Indeed, I have gone through the affidavit of the applicant, from the outset I agree with both learned counsel that the jurat of attestation is not dated, no place, no name of the Commissioner, no signature and stamp of the Commissioner for Oaths. However, it has only the names and signature of the applicant. In fact, the absence of these features makes the affidavit defective for contravening the

mandatory provision of section 8 of the Notaries Public and Commissioner for Oaths Act. For better appreciation of the above position, it is imperative to paraphrase section 8 of the Notaries Public and Commissioner for Oaths Act as follows:-

"Every notary public and commissioner for oaths before whom any oath or affidavit is taken or made under this Act shall insert his name and state truly in the jurat of attestation at what place and on what date the oath or affidavit taken or made."

Said and done, the first preliminary objection is sustained hence, the application suffers a striking out.

As for the second objection, I have gone through the court file and realized that the Chamber Summons was presented for filing on 9th June 2020 although it lacks the signature of the registry officer. It is also true that the Notice of representation was stamped by a stamp of High Court of Tanzania-Labour Division on 9th July 2020 at Lindi. Furthermore, the record reveals that it is undisputed that the applicant signed his documents on 9th June 2020. However, what makes the respondent's counsel contend that the application for revision is time barred is the stamp and date on the Notice of Representation.

As I have said before that the Chamber Summons is one which carries the application. The same was presented for filing on 9th June 2020. Indeed, the filing from 30/4/2020 to 9/6/2020 was within 42 days. I think reasonableness should guide this court to determine this controversy about time. In my opinion, the date which the applicant presented the Chamber

Summons for filing is the right time which both counsel should consider for filing the application and not otherwise.

Moreover, there is a huge possibility of a Notice of Representation to be lodged on a different date like what happened in the present case. In addition, both counsels are aware that in our jurisdiction **there are no filing fees for labour matters**. Had it been the case, an exchequer receipt could have resolved this issue of time limitation. Absence of that, this court is guided by the spirit enshrined in our Constitution (the Constitution of the United Republic of Tanzania of 1977 as amended from time to time) that **courts should avoid technicalities and any undue delay** in deciding criminal or civil matters. Based on the above observation, I am convinced that the application was filed within time i.e., within 41 days from the date of service (30/4/2020) to the applicant. To this end, the first preliminary objection is overruled for lack of merit.

Since the second objection was sustained as indicated herein above, I therefore find this application is incompetent for having a defective affidavit. Consequently, the application is hereby struck out.

It is so ordered.



E.I. LALTAIKA

A handwritten signature in blue ink, appearing to read "E.I. Laltaika", is written over the printed name.

JUDGE
30.5.2023

COURT:

This Ruling is delivered under my hand and the seal of this Court on this 30th day of May 2023 in the presence of Ms. Lightness Kikao for Counsel for the Respondent and holding brief for Mr. Emmanuel Ngongi learned advocate for the respondent.



E.I. LALTAIKA

A handwritten signature in blue ink, appearing to read "E.I. Laltaika", written over the printed name.

**JUDGE
30.5.2023**