

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT MUSOMA

LABOUR REVISION NO. 15 OF 2022

*(Arising from the decision of the Commission for Mediation and Arbitration for
CMA/MARA/MUS/32/2022)*

GOODMAN MATHEWAPPLICANT

VERSUS

NORTH MARA GOLDMINE LIMITED..... RESPONDENT

RULING

29th May & 20 June, 2023

M. L. KOMBA, J.:

This is a ruling in respect of the preliminary objection raised by the counsel for respondent in regard to the prayer of examination of the Commission for Mediation and Arbitration (the CMA) proceedings and ruling in **Labour Dispute No. CAM/MUS/32/2022** so that this court can revise the same. The application is filled under Rule 24(1), (2 a-f) and (3 a-d), 28(1) (a-c) 55(1) and (2) of the Labour Court Rules GN No. 106 of 2007 read together with section 91 (1) (a), 91 (2) (a-c) and 94 (1) (b) of the Employment and Labour Relations Act, No. 6 of 2004 cap 366. Upon filling of the same,

counsel for respondent raised a Preliminary Objection (PO) and prayed it to be heard on the date scheduled for hearing of Application that;

'The application is hopelessly time barred.'

As custom, Preliminary Objection has to be determined first. See **Khaji Abubakar Athumani vs. Daudi Lyakugile TA D.C Aluminium & Another**, Civil Appeal N0. 86 of 2018, CAT at Mwanza. When the date fixed for hearing was scheduled, parties agreed the PO to be disposed of by way of written submissions. PIER Advocates (Iman Mfuru) presented the written submissions for the respondent in support of the objection whereas on behalf of the applicant, Mr. Sylivatus Sylvianus Mayenga and Mr. Mwitwa Emmanuel both learned Advocates filled reply in opposing the Objection. Both parties adhered to the filling schedule as directed.

In his submission, Mr. Mfuru, the counsel for respondent adduced that, two applications by the applicants which are Labour Dispute No. CMA/MUS/119/2021 and Labour Dispute No. CMA/MUS/171/2021 were ended up to be truck out as they were incompetent and Labour Dispute No. CMA/MUS/32/2022 which is subject of this application was dismissed for it lacks sufficient reason to warrant extension of time. Following that fracas, the applicant lodged Labour Revision No. 11 of 2022 against the said decision

of the CMA. Through Court order (**Hon. Mahimbali, J.**) dated 19/10/2022, the application was withdrawn and the Applicant was given leave to refile within 14 days which were to expire on 2/11/2022.

It was his submission that the application for revision which is subject to this application was filed on 23/11/2022 contrary to the order of the High Court and that it was filed 33 days later. Arguing in respect of paragraph 15 of the Applicant's affidavit, this counsel submitted that the allegation that the applicant filed the application on 1/11/2022 but on 21/11/2023 he was informed by the Deputy Registrar that the application which was filed on 1/11/2022 was lodged in the High Court Labour Division which is not accessible at Musoma District Registry and the effort to refile on 21/11/2022 does not hold water as Rule 24 (5) and (6) of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 (the filing Rules) stipulates correct procedures.

Mr. Mfuru protested that if at all the applicant had experienced technical issues while filling, he was supposed to move the District Registrar who was supposed to grant relief thought in writing. But that was not the case. He referred this court to the case of **Barclays Bank Tanzania Limited vs. Phylisiah Hussein Mchemi**, Civil Appeal No. 19 of 2016 (unreported)

where Court of Appeal considered the effect of limitation of time specifically at page 11 to 12 where it quotes unreported decision of **John Cornel vs. A. Grevo (T) Limited**, Civil Case No. 70 of 1998 where it was stated that:

'However, unfortunate it may be for the plaintiff; the law of limitation, on actions, knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web.'

In the same case the CAT appreciated the wisdom of **The learned High Court Judge (Rweyemamu, J.** as she then was) which the counsel too subscribes to it that,

'For one, economic development cannot be promoted by allowing labour disputes to remain unresolved for an undue long period, as that would keep both the employer and the employee tied up in disputes instead of being productively engaged...to revert to the submission of the counsel for the complainant, I stress that it is in regard to the nature of labour disputes that time limits for initiating actions must be provided.'

He was of the submission that, it would be inequitable if we allowed one party to an employment contract to disregard time in instituting a complaint against the other party. He prayed this court to uphold the Preliminary Objection and dismiss the application as it is filed out of prescribed time.

While opposing the preliminary objection, Mr. Mwita Emmanuel prayed for adoption of the affidavit of the applicant in support of the application and submitted that the current application was filed on 01/11/2012 electronically but due to the court system application was inaccessible and then applicant refiled in the same day as deponed in affidavit. He said, what he gathered from the respondent submission is whether the move to approach the Registrar was made and was it in writing as per filing Rules. From the issue he raised he submitted that the cited rules deal with missing the filing deadline and that their first application was timely filed and subsequent application were filed under the directions of the Court Officials following the issues which they encountered.

In a different note he submitted that the said provision disqualifies the preliminary objection as it requires evidences/facts as to whether inconveniences met by the applicant were addressed in writing. Moreso, he relied on Rule 24(1) of the filing Rules which provides for exclusion of the period which the filing system is not operational and that facts were deponed and proved in affidavit and not mere words. He insisted that **there were issues with the filing system which caused the delay** and this implies

all the time they were hustling with the filing, the time must be excluded in computation of the time.

The counsel further submitted that the court system failure is straight forward issue and the part cannot be punished for it and it is an established court principle in our legal system and referred the case of **SPENCON Services (T) Limited vs. Gradiators Investment Company Limited and Another, HC. CIVIL APPEAL No. 21 of 2018 (Unreported)**. He further said that once application by the applicant is filed through online filing system, applicant has no control over the same and he only wait for the response of the Court either through the system or through mobile phones. He insisted that the instant application was timely filed and pray for dismissal of the Preliminary Objection.

In rejoinder, counsel for the respondent was of the analysis that at page 2 of the reply to respondent's submission the counsel for the applicant clearly confesses that there was a Court system failure and it was his submission that due to that confession applicant was supposed to move the Deputy Registrar under rule 24(5) of the filing rules and then if that is the case then

Deputy Registrar under rule 24(6) of the filing rules may grant that relief in writing and not just filing the application.

In application of rule 24(1) of the filing rules as relied by Mr. Emmanuel that the rule provides for the exclusion of period, it was his submission that rule 24(1) is subject to sub rule (5) and (6) that when a party encounter technical problem has to move registrar not later than 15:00 hours of the following working day for appropriate relief. According to applicant he filed on 01/11/2022 and made follow up on 21/11/2022 which is 20 days later and according to the counsel, this was violation of the law bearing in mind that he has no formal writing from the Registrar.

About information deponed in paragraph 15 of the affidavit, counsel for respondent submitted that information which was supplied by Deputy Registrar Mr. Moshi and that informed by court officer that technical issue happened as they cannot see the application, they lack merit on three grounds. **one;** there is no writing from the Registrar which grant that relief, **two;** said court officer whose name and tittle was not disclosed is not allowed in terms of rule 24(6) to grant request to exclude the period from the computation and **three;** affidavit contains purported information from

other persons but there are no affidavits of such other persons and therefore the said statements are hearsay.

To boost his argument he cited the case of **Suzan Ng'ondo vs. Anna Samwel Urassa**, Civil Application No. 606/01 of 2021, Court of Appeal of Tanzania at Dar es Salaam and **NBC Ltd vs. Superdoll Trailer Manufacturing Company Ltd, Civil Application No. 13 of 2002** (both unreported). Basing on the above cited cases he prays this court to find the content of paragraph 15 are hearsay and therefore reason for delay should not be considered. The cited case by the applicant, **Spenco Services (T) Limited vs. Gradiators Investment Company Limited and Another(supra)** he said is distinguishable on the ground that in the cited case it was held that the party who did his job should not be punished for the wrong or inaction of the staff of the judiciary but in the case at hand there is no wrong or inaction by the staff of the judiciary. If the electronic filing system has technical problem as alleged, then the applicant did not take the prescribed measures.

Basing on this submission the counsel prays this court to dismiss the application for it being time barred.

I have deeply digested the both parties' submission, the vital point which need this court determination is whether the application is time barred. Applicant lodge his application via electronic filing system which is governed by the Judicature and Application of Laws (Electronic Filing) Rules, 2018 GN No. 148 of 2018 (the filing Rules) and I will reproduce relevant rules hereunder for easy of reference;

24.-(1) The period during which electronic filing system is not in operation, for any reason, shall be excluded from the computation of time for filing.

(5) Where party misses a filing deadline due to technical problems referred to in sub-rule (1) the party shall move informally and ex parte the Registrar or the magistrate in-charge not later than 15:00 hrs of the following working day for appropriate relief.

(6) Where the Registrar or magistrate in-charge is satisfied that there was good cause for missing the deadline, he shall grant the request under sub-rule (5) in writing.

From submissions, there is no doubt that the application was filed via electronic means and it is undisputed that the application was filed electronically on 23/11/2022 following the order of this court in Labour Revision No. 11 of 2022 (Hon. Mahimbali, J.) which on 19/10/2022 he

ordered the application to be re-file within 14 days. The prescribed time was to expire on 2/11/2022. This application was filed 20 days later after expiration of given time. In his affidavit, applicant deponed that on 21/11/2022 when he was making a follow-up he was informed by Deputy Registrar that he has to refile as the previous application was filed via High Court Labour Division which is not assessable at Musoma District Court. When he refiled in the same day, he was informed by the Court officer (without name) that some technical issue happened and they cannot see application and latter on he succeeded. I am not hesitating as to the correctness of messages, rather, assurance that those words were from the Registrar and court officer. Court of Appeal in **Suzan Ng'ondo vs. Anna Samwel Urassa** (supra) while dealing with situation like this when deponent complained of Dorini (the Court clerk) and later, to E.G. Mrangu (the Deputy Registrar) had this to say;

"Nonetheless, we decline to accept the deponent's allegation for one main reason...We are of the view that he could have sought and obtained affidavits of the said Ms. Dorin and Mr. E. G. Mrangu who he alleged to have met on the day to substantiate his allegations. Unfortunately, he did not do so...The said omission, in our considered view violates the mandatory rule of evidence which requires that, in

any contentious judicial proceedings, where the proof of existence of certain facts deposed in an affidavit needs evidence of the other person, that other person has to swear an affidavit to supplement the allegations of the principal deponent...”

Applicant attached no letter neither affidavit to confirm what he deposed off is actual heard from someone. By failure to file affidavits of the said registrar and court officer, the message in his affidavit becomes hearsay which has no value. See **NBC Ltd vs. Superdoll Trailer Manufacturing Company Ltd** (supra).

Moreover, in the same paragraph 15 applicant complained of the technical issues and provide further explanation in his submission that what he encountered is court system failure and a party should be punished for that as rule 24(1) allow exclusion of time when the system is not operational. I agree with the applicant that sub rule (1) provides for exclusion of time but it is not automatic just as submitted by the counsel for respondent. In order to benefit under sub-rule (1), party must utilize sub-rule (5) on time and upon satisfaction then Registrar shall grant request as is provided under sub-rule (6).

Applicant approached Registrar after 20 days and he has no written order from the Registrar that he was given the said relief to refile, just as submitted by the counsel for the respondent that, this application was filed out of time because the applicant did not utilized sub-rule 5 and 6 to benefit with exclusion of days in which the system encountered problem. I rule out that this application was filed out of time.

The law is settled that the issue of jurisdiction for any court is basic as it goes to the very 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 declared the proceedings and the consequential orders a nullity. See **Swilla Secondary School vs. Japhet Petro**, Civil Appeal No. 362 of 2019 (unreported).

Honestly speaking, I find none of the reasons advanced in the submission in support of the application as embodying any sufficient legal cause to warrant this court to entertain this application. All that is needed by the applicant, is to show that he filed the application on time, that is on or before 02/11/2022 or else he was supposed to apply for and granted with extension of time which he did not.

In the upshot. I find the preliminary objection meritorious and I proceed to dismiss the application as this court lacks jurisdiction for it being filed out of time.

Right of appeal explained.




M. L. KOMBA

Judge

20 June, 2023