

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
LABOUR DIVISION  
AT ARUSHA**

**REVISION APPLICATION NO. 63 OF 2022**

(Originating from Labour Application No CMA/ARS/ARS/146/22/88/22)

**BLANKA EVAREST ASSENGA ..... APPLICANT**

**VERSUS**

**BAMPRAS PETROLEUM LTD ..... RESPONDENT**

**JUDGMENT**

01<sup>st</sup> June & 13<sup>th</sup> July 2023

**KAMUZORA, J.**

The Applicant herein preferred labour dispute before the Commission for Mediation and Arbitration (CMA), Labour Dispute No. CMA/ARS/ARS/146/22/88/22. The Respondent herein raised preliminary objection on point of law that the dispute was time barred and contravened Rule 10(1) (2) of the Labour Institutions (Mediation and Arbitration) GN No. 64 of 2007. The CMA upheld the objection and dismissed the labour dispute on ground that it was time barred and no application for condonation was made.

The Applicant was aggrieved by CMA decision and brought this application under the provisions of sections 91 (1) (a), 91 (2) (b) (i) of the Employment and Labour Relations Act, No. 6 of 2004 and Rules 24 (1), (2) (a) (b) (c) (d) (f), (3) (a) (b) (c) (d) and 28 (1) (d) (e), of the Labour Court Rules, GN. 106 of 2007. The application was supported by the affidavit duly sworn by Mr. Lawrence Mollel, the secretary of CHODAU Trade Union in Karatu acting as Applicant's representative. Under the chamber application, the following were listed as grounds for revision: -

- 1) That, there were procedural errors material to the merit of the matter before the CMA involving injustice*
- 2) That, the Arbitrator erred in law and in fact by not affording the Applicant right to be heard.*
- 3) That, the arbitrator erred in law and in fact by holding that the application was time barred in considering the submission by the Respondents only.*

When the matter was called for hearing Mr. Laurence Mathew appeared as personal representative of the Applicant whereas the Respondent was ably represented Dr. Mjema, learned Advocate.

Submitting in support of application Mr. Mollel adopted the affidavit in support of application and argued that, before the CMA the Applicant was denied right to be heard. That, the arbitrator upheld the preliminary

objection by ruling that the application was time barred without giving the Applicant an opportunity to respond to the Preliminary objection. He was of the view that since the Applicant was not heard before the CMA, there existed procedural errors in the CMA record. He prayed for this court to consider that the Applicant was wrongly suspended from her employment hence, be reinstated and paid all her salaries from the time of her suspension.

In reply, Dr. Mjema submitted referring page 3 of the CMA ruling that the Applicant was heard. He explained that the Applicant and her representative, Mr. Mollel were served with a copy of preliminary objection and Mr. Mollel appeared before the CMA on the date scheduled for hearing of the objection and made submission.

On the argument that the Applicant was wrongly terminated Dr. Mjema submitted that the Applicant was suspended on employment misconduct pending investigation as per Rule 5(1) of the Employment and labour relations (Code of Good Practice) Rules 2007 GN No 42 of 2007. He added that suspension is not a labour dispute rather administrative measure towards an employee who commits employment misconduct. He insisted that the Applicant was not terminated from her

employment rather she was suspended but never reported back to the Respondent's office.

In a brief rejoinder, Mr. Mollel reiterated his submission in chief and added that, the arbitrator did not follow the procedure and was bias. That, after the Applicant was suspended there was expected time frame for investigation. That, suspension of employees is governed by Rule 27(1)(4) GN No 42 of 2007 but the procedures were not adhered to. That, the Applicant responded to the suspension letter but she was not charged for any offence so that the suspension could stand until the decision of the court made.

Having gone through the CMA's records as well as both parties' submissions, I will now proceed to determine the grounds for revision raised in the same sequence.

On the ground that the Applicant was denied right to be heard, I have revisited the record. The proceedings before CMA indicate that on 29<sup>th</sup> June 2022 the Respondent herein through her personal representative, Herode Bilyamutwe filed a notice of Preliminary Objection the labour dispute before CMA was time barred. The record also reveals that the objection was scheduled for hearing on 04<sup>th</sup> October, 2022. On the date of hearing both parties were represented;

Mr. Mathayo Lawrence also known as Mollel appeared as personal representative of the Applicant while Dr. Mjema, advocate appeared for the Respondent. After the counsel for the Respondent had submitted in support of the objection, Mr. Mollel was asked to respond for the Applicant. He informed the CMA that he was not prepared to respond to the submission as by his experience, the PO ought to be argued by way of written submissions and not orally. He insisted that the Arbitrator should order for written submissions. He was informed by the Arbitrator that he had right to engage an advocate if he had problems in understanding the procedures but he insisted that he will not respond to the submission by the Respondent's counsel as the same were not made in writing. The CMA decide to set date for ruling which was delivered on 07/10/2022.

With that record, the claim that the Applicant was not afforded right to be heard is unfounded. Much as the Applicant was well availed with opportunity to respond to the Respondent's submission and he opted not to respond, he cannot blame the Arbitrator for his inaction. I am of the firm therefore that the Applicant was well accorded right to be heard.

On the argument that, there were procedural errors in the proceedings of the CMA, this court finds that the said errors were not pointed out by the Applicant's representative. If he was referring the right to be heard, I reiterate my discussion above and maintain that the Applicant was accorded right to be heard. After a party who presented the objection was heard, the Applicant's representative was given chance to respond but decided not to respond rising unfounded defence that the objection must be heard by way of written submissions. It was expected that if he had any other reason for not submitting on that day, he could have prayed for adjournment so that he could prepare his submission. But while addressing the CMA he indicated his reluctance in responding to the submission by the Respondent's counsel unless it was made in writing. I therefore find that no error was committed by the Arbitrator in ordering for ruling because the Applicant's representative indicated his clear intention not to respond to the submission. The Applicant's representative's neglect in performing his duty by submitting to the objection could not have barred the CMA from delivering the ruling.

On the argument that the arbitrator was not justified in holding that the application was time barred basing on the Respondent's submission,

I find it baseless. Reading page 3 of the CMA ruling, the Arbitrator captured the submission by the Applicant's representative as follows: -

*"Mr. Mollel did not respond well to Dr. Mjema's submission above for the reason that, he has long experience in prosecuting labour disputes and that, with such an experience, he has never seen litigants argue on a PO by way of oral submissions. He is therefore of the views that, on 29<sup>th</sup> June 2022 after filing a notice of PO to the Commission, the Respondent was enjoined to immediately supply him with a copy of written submissions in support of such notice so that he could be able to reply...."*

Despite the fact that the Applicant's representative did not submit on the merit of preliminary objection, still the Arbitrator captured his submission made on that date. Thus, the Applicant cannot be heard complaining that in deciding the merit of the preliminary objection the CMA considered the Respondent's submission only. The Applicant's representative opted not to make submission on the preliminary objection thus, there was nothing to be considered. The decision of the CMA was therefore justly made.

On the argument that the CMA wrongly held the dispute as time barred, this court finds that the CMA decision was correct. The CMA ruling emanated from a preliminary objection on point of law that the application was time barred. The objection met all requirement of being

a point of law as held in number of cases. See the case of **The Soitsambu Village Council Vs. Tanzania Breweries Ltd and Another**, Civil Appeal No. 105 OF 2011 (unreported), which was cited with approval in the case of **Shose Sinare Vs. Stanbic Bank Tanzania limited and another**, Civil Appeal No. 89 of 2020 CAT at Dar es Salaam (Unreported) where it was held that;

*"A preliminary objection must be free from facts calling for proof or requiring evidence to be adduced for its verification. Where a court needs to investigate such facts, such an issue cannot be raised as a preliminary objection on a point of law. The court must therefore insist on the adoption of the proper procedure for entertaining applications for preliminary objections. It will treat as a preliminary objection only those points that are pure law, unstained by facts or evidence, especially disputed points of fact or evidence. The objector should not condescend to the affidavits or other documents accompanying the pleadings to support the objection such as exhibits."*

The Respondent herein raised objection before the CMA based on time limitation in institution of labour dispute. That in itself is a pure point of law. Reading the CMA F1 which is a form used for referring labour dispute to CMA, the Applicant indicated that the dispute arose on 22/11/2021 at Karatu. The dispute was filed before CMA on 19/04/2022

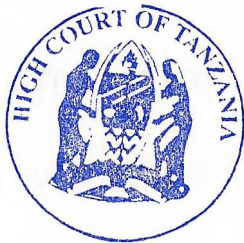


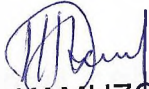
out of statutory time of referring labour dispute to CMA. The Labour Institutions (Mediation and Arbitration) Rules 2007 specifically, Rule 10 (2) which states that all other disputes must be referred to the CMA within sixty days from the date when the dispute arose. As per the record in this matter, dispute was referred before CMA after expiration of sixty days and no condonation application was made by the Applicant. In that regard, the CMA was right to declared the dispute as time barred.

On the prayer that the Applicant, be re-instated by the Respondent and be paid all her salaries from the time of her suspension, I find such prayer to be premature and could not be dealt with at this stage as there was no determination of labour dispute on merit. The revision before this court was against the order dismissing the dispute for being filed out of time and not against the decision of CMA determining the dispute on merit.

In the upshot and considering all what has been stated above, the revision application is devoid of merit and the same stand dismissed. In considering that this application emanates from labour dispute, I make no order of costs.

**DATED at ARUSHA** this 13<sup>th</sup> day of July 2023



  
D.C. KAMUZORA  
JUDGE