

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

LABOUR REVISION No. 76 of 2023

(C/f Labour Application No. CMA/ARS/ARS/216/22/105/22)

SALVATORY KIMBOKA APPLICANT

VERSUS

NITRO EXPLOSIVES (T) LTD 1ST RESPONDENT

NITRO LOGISTICS LTD 2ND RESPONDENT

RULING

22nd June & 27th July, 2023

TIGANGA, J.

The applicant seeks for revision of the decision from the Commission for Mediation and Arbitration of Arusha (the Commission) in Labour Application No. CMA/ARS/ARS/216/22/105/22 dated 11th October, 2022 by A.K. Anosisye, Arbitrator.

Briefly, the applicant was employed by the respondent as a Deputy General Manager on a fixed-term contract of two years from June 2020 to 31st May, 2022. On 28th February, 2022, the respondent notified him through a letter of their intention not to renew his contract. Eventually, the contract ended on 31st May, 2022. On 27th June, 2022, the applicant decided to file

his complaint to the Commission claiming for breach of contract by the respondent. Before the matter was heard on merit, the respondent filed a preliminary objection that the application was time-barred in terms of Rule 10 of the **Labour Institution (Mediation and Arbitration) Rules, 2007**. The Commission sustained the objection and dismissed the application, hence the current revision.

The application was preferred by chamber summons and affidavit duly sworn by the applicant's Advocate, Mr. Ernest Jones in which the grounds of the application are narrated and are brought under section 91 (1) (a), (2) (a) (b) (c) and 94 (1) (b) (i) of the **Employment and Labour Relations Act**, No. 6 of 2004 as amended (the ELRA) and Rule 24 (1), (2) (a) (b) (c) (d) (f), (3) (a) (b) (c) (d) and 28 (1) (b) (c) (d) and (e), of the **Labour Court Rules, GN. 106 of 2007** (Labour Court Rules).

The respondents contested the application, and filed a joint counter-affidavit through Mr. Salimu Juma Mushi, learned Advocate in which he gave reasons for their contest. He also filed the following points of preliminary objections;

1. That, by clear implication out of pleadings, the application is hopelessly time barred.

2. That the current application is unmaintainable and bad in law it being an abuse of court process, embarrassment to the administration of justice, and serious derogation to the principle of sanctity of court records.

The objections were heard by way of written submissions, the applicant had representation of Mr. Ernest Jones whereas the respondents were jointly represented by Mr. Richard Valerian Massawe, all learned Advocates.

Supporting the objections Mr. Massawe started with the 2nd objection in which he submitted that, the application in this court seems to have been received and filed on 12th December, 2022, however, the affidavit is signed, attested, and verified on 13th December, 2022. According to him, the applicant must have colluded with the registry officer to backdate the date as he saw himself as time-barred. Such kind of act tarnishes the image of the court hence, in the interest of justice and for preserving public faith in the Judiciary, this court be pleased to find that, the application was filed on 13th December, 2022. He referred the court to a number of authorities including the cases of **Ogilvy Tanzania Ltd vs. Airtel**, Misc. Civil Application No. 72 of 2020 and **Alex Ndendya vs. The Republic**, Criminal

Appeal No. 207 of 2018 in which the Court underscored the importance of respecting the rules and procedures of the Court.

On the 1st objection he submitted that, according to section 91 (1) (a) of ELRA, the time fixed to challenge any ruling or Award of the Commission is six weeks. He argued that, in light of what he submitted in the above objection, from 31st October, 2022, six weeks or 42 days lapsed on 11th December, 2022, hence the application is time-barred. He prayed that the same be dismissed with cost.

Opposing the objections raised, Mr. Jones submitted to the 1st point of objection that, the applicant filed the application electronically through the Judicial Statistical Data System (JSDS) and was given a reference number. Thereafter, the application was duly received by the Office of the Deputy Registrar and was stamped on the same day. He argued that, the application was filed as per section 91 (1)(a) and (b) of the ELRA that it, six weeks/42 days. That, the application was filed on the 42nd day, on 12th December, 2022 at 18:03:27hrs before midnight hence, the same is within time.

On the 2nd objection, Mr. Jones submitted that, the respondent's allegations that, the applicant colluded with the Registry Officer to backdate

the filing date is a fact which needs proof hence does not fall under the purview of a point of law to be argued in objection. He asserted that what happened is an oversight and typical human error which can happen to any person. He prayed the court to invoke the Overriding objective principle which urges courts to do away with technicalities and deal with substantive justice as held in the case of **Yakobo Magoiga Gichere vs. Penina Yusuf**, Civil Appeal No. 55 of 2017 (unreported). He prayed that, all the objections raised be overruled with costs.

In his rejoinder respondent's Advocate reiterated his earlier position and maintained that, the application is time-barred and bad in law for being an abuse of the court process.

I have gone through both parties' rival arguments, I now proceed to determine the objections raised, starting with the first one as to whether this application is time-barred. It is clear on the record that, the ruling from the Commission was delivered on 31st October, 2022 and in this court, this application was endorsed and marked received on 12th December, 2022. Section 91 (1) (a) and (b) of the ELRA provides for time limitation to file the

application in this court challenging the Commission's proceedings, ruling, or Award. The provisions read;

"91.-(1) Any party to an arbitration award made under section 88(10) who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for a decision to set aside the arbitration award-

(a) within six weeks of the date that the award was served of the applicant unless the alleged defect involves improper procurement;

(b) if the alleged defect involves improper procurement, within six weeks of the date that the applicant discovers that fact."

In the context of the matter in controversy in the application at hand, the above provision goes hand in hand with section 19(1) of the **Law of Limitation Act**, Cap 89, R.E. 2019 which reads;

"19.-(1) In computing the period of limitation for any proceedings, the day from which such period is to be computed shall be excluded."

Applying these two provisions in this revision, it is undisputed that the ruling from the Commission was delivered on 31st, October, 2022. According to section 19 (1) of the Law of Limitation Act, computations exclude the day the ruling was delivered. Counting from 1st November, 2022 to 12th December, 2022, it is exactly 42 days or six weeks as required under section

91 (1) (a) and (b) of the ELRA. In the circumstances, the application was filed within time. The 1st objection is overruled.

Regarding the 2nd objection, I would like to start with the definition of a preliminary objection as per the famous case of **Mukisa Biscuit Manufacturing Company Limited vs. West End Distributors Limited** (1969) EA 696 on page 700 that;

"So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arise by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection of the Court or a plea of limitation, or submissions that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration."

The Court went on to state that;

"A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or what is sought is the exercise of judicial discretion."

The above definition of a preliminary objection has been cited with approval by the Court of Appeal in numerous decisions such as **Sharifa Twahibu Massala vs. Thomas Mollel & three others**, Civil Appeal No.

67 of 2011, **The Board of Trustees of the National Social Security Fund vs. New Kilimanjaro Bazaar Limited**, Civil Appeal No. 69 of 2007, **Eusto Ntagalinda vs. Tanzania Fish Process Ltd**, MZA, Civil Application No. 8 of 2011, **Dunia Worldwide Trading Company Limited vs. Consolidated Holding Corporation**, Civil Application No. 61 of 2008 and many more. (All unreported).

From the above decisions, there is no doubt that a preliminary objection must raise a pure point of law, otherwise, the Court cannot entertain such a motion. In the instant matter, as rightly argued by the applicant's counsel, the allegations that a court officer was involved in a heinous act of backdating the date for filing the application, is a serious allegation that requires proof. It, therefore, does not possess the qualities of being the preliminary objection worth a name, hence, untenable.

Be as it may, considering the current development of e-filing, every court document in the Judiciary is filed electronically, hence a stamp on the document reflects the exact day the document was filed hence leaving no room for forgery. This leaves me in agreement with the applicant's counsel that, the affidavit being signed and verified on 13th December, 2022 while the same had already been a day before was a human error more as

computers cannot not lie. In that regard, such an anomaly can be pardoned under the principle of overriding objective as no miscarriage of justice was occasioned by any of the parties. The 2nd objection is also overruled.

Having overruled all the preliminary points of objection raised, the matter will proceed to be heard on merit on the date which will be scheduled by the court. This being a labour matter I give no order as to costs.

It is accordingly ordered.

Dated and delivered at Arusha this 27th day of July, 2023 .



A handwritten signature in black ink, appearing to read "J.C. Tiganga", is written over a horizontal line.

J.C. TIGANGA

JUDGE