

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(MOROGORO SUB-REGISTRY)**  
**AT MOROGORO**

**LABOUR REVISION NO. 02 OF 2023**

*(Arising from Complaint No. CMA/MOR/42/2022 No. 997 of 2022 of the Commission  
for Mediation and Arbitration of Morogoro, at Morogoro)*

**SHABAN AMRI RAMADHANI .....APPLICANT**  
**VERSUS**  
**MTIBWA SUGAR ESTATES LTD ..... RESPONDENT**

**RULING**

26<sup>th</sup> Sept, 2023

M. J. CHABA. J.

This ruling seeks to address the preliminary point of objection raised by the respondent who upon being served with the application, sought to challenge the same on the ground of being time barred through the notice of opposition / preliminary objection lodged before this Court on 4<sup>th</sup> April, 2023.

As the practice of the Court demands that, once a point(s) of objection is raised by any party to the case, at any stage of hearing, the Court should first entertain and determine it because the PO 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 had to be ascertained or if what is sought is the exercise of judicial

discretion. On that ground, I allowed the parties to submit over the preliminary objection.

As the applicant was absent with notice on the date the matter was scheduled for hearing of the raised PO, for the interests of justice I decided to order the same be disposed of by way of written submissions. The respondent was to file his written submission in chief on 21<sup>th</sup> August, 2023 and the applicant was required to file his reply thereto by 31<sup>th</sup> August, 2023. Rejoinder (if any) was to be filed by the respondent on 5<sup>th</sup> September, 2023. It is on record that, Mr. Amani Juma prepared the respondent's submission and presented it for filing in this Court on 21<sup>th</sup> August, 2023. The applicant's submissions on the other hand, was drawn by the learned advocate, Ms. Alpha Alex Sikalumba who filed the same on 4<sup>th</sup> September, 2023, contrary to the Court's scheduled orders.

That being the case, and as rightly submitted by the respondent in his rejoinder, the applicant's failure to file his submission on the due date and without the leave of the Court amounted to failure to defend his case without a notice on the day fixed for hearing. In this regard, I will proceed to determine the raised PO *ex parte* against him. **[See - NIC of Tanzania & Consolidated Holding Corporation Vs. Shengana Ltd, Civil Application No. 20 of 2007 (unreported)]**.

Submitting in support of the raised PO, the respondent averred that, the applicant was served with a copy of the CMA Award on 16<sup>th</sup> day of January, 2023 and lodged this application on 27<sup>th</sup> day of February, 2023, which is forty-

three days (43) after the delivery of the impugned award. It was the respondent Counsel's contention that, since under section 91 (1) (a) of the Employment and Labour Relations Act, [CAP. 366 R. E, 201], the law is clear that, an application for revision has to be filed within six weeks (42 days) from the date the CMA's Award was served to the applicant, this application is improperly before this Court because the same was lodged in the Court outside forty-two (42) days which is the time limit prescribed by the law.

He asserted that, the applicant was supposed to seek leave of this Court before filing this Labour Revision No. 02 of 2023 under Rule 56 (1) of the Labour Court Rules, 2007, Government Notice Number 106 but he neglected and failed to adhere to the legal requirement. In conclusion, he prayed the Court to dismiss the application under section 3 (1) of the Law of Limitation Act, [CAP. 89 R. E. 2019], for being time barred.

I have impassively considered the argument made by the respondent on her written submission regarding the point of preliminary objection and further gone through the instant Application for Revision filed before this Court. The sole issue calling for my determination is whether the application is time barred.

Without consuming the precious time of this Court, at the outset, I would like to point out that, it is an undisputed fact that this Application for Revision has been filed out of time. I say so because, it is clear that the decision sought to be revised by this Court was delivered on 13<sup>th</sup> January, 2023, and that from the available records, the instant application was made by way of chamber



summons which was presented for filing before this Court on 27<sup>th</sup> February, 2023, which is forty-five (45) days from the date of delivery of the impugned decision of the CMA. According to the respondent, the applicant was served with the copy of the CMA Award on 16<sup>th</sup> January, 2023.

That being the case, in the eyes of the law, the clock of time limitation started to run against the applicant on that particular date. In this regard, the Applicant's Application for Revision ought to have been filed on or before 26<sup>th</sup> February, 2023. After excluding the days, on which the applicant was waiting to be served with the CMA Award, he was late for a single day as from 16<sup>th</sup> January, 2023 to 27<sup>th</sup> February, 2023 it is a total of 43 days.

It therefore goes without saying that this Application for Revision was filed out of the statutory time, which is beyond six weeks contrary to section 91 (1) (a) of the ELRA which read: -

"Section 91 (1) - Any part to an arbitration award made under section 88 (8) 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 on the applicant unless the alleged defect involves improper procurement."

The Court of Appeal of Tanzania applying the above provision of the law upon being confronted with akin situation in the case of **Agrey Sapali Vs. Mkuu Wa Chuo Must (Civil Appeal 153 of 2015) [2016] TZCA 281 (11 April 2016) (Extracted from [www.tanzlii.org](http://www.tanzlii.org))**, the Court had the following to state:

"It is true according to the cited provision herein above that the application to the Labour Court for a decision to set aside the arbitration award is to be made within six weeks.

Since the arbitration award was delivered on 3/4/2014 and served to the appellant on 4/4/2014, then, by simple computations, all things being equal, the Revision ought to have been instituted by 6/6/2014. As the record reflect, this was not the case. The same was instituted on 11/5/2015 which by far is out of the prescribed time by the law".

That being said and done, and as correctly submitted by the Counsel for the respondent, since the instant applicant is time barred, the only remedy available to the applicant is to lodge an application seeking for an extension of time within which to file revision and give an account for each day of delay.

As to the way forward, I think in my view that, section 3 (1) of The Law of Limitation Act, [CAP. 89 R. E. 2019] is a proper provision of the law to rely upon. The law stipulates thus:

"Section 3 (1) - Subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence."

Applying the above provision of the law in the matter under consideration, and given the surrounding circumstance, it is my holding that, this Application for Revision is incompetent before this Court. Accordingly, the preliminary objection raised by the respondent is meritorious.

In final event, I proceed to dismiss the application for being time barred. As this matter stemmed from a labour dispute, I make no order as to costs. It is so ordered.

**DATED at MOROGORO this 26<sup>th</sup> day of September, 2023.**



  
M. J. Chaba

**JUDGE**

**26/09/2023**

**Court:**

Ruling delivered this 26<sup>th</sup> September, 2023, in the presence of Ms Sekalumba,  
Learned Counsel for the Applicant, and in the absence of the Respondent.



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A. W. Mmbando

**DEPUTY REGISTRAR**

**26/09/2023**

**Court:**

Right of Appeal to the parties fully explained.



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A. W. Mmbando

**DEPUTY REGISTRAR**

**26/09/2023**

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