

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

MISC. LABOUR REVISION NO. 12 OF 2022

(Arising from Commission for Mediation and Arbitration for Dodoma at Dodoma in
Labour Dispute No. CMA/DOM/140/2020)

MKOMBOZI COMMERCIAL BANK PLC.....APPLICANT

VERSUS

BERNICE ASNATH NGAKA.....RESPONDENT

Date of Ruling: 03/08/2023

RULING

A.J. MAMBI, J.

This Ruling emanates from the application filed by the applicant namely **MKOMBOZI COMMERCIAL BANK PLC**. The applicant filed this application under Rules 24(1), (2)(a),(b),(c),(d),(e) and (f), (3)(a),(b),(c) and (d), (11)(b),28(1)(c),(d) and (e) of the Labour Court Rules, 2007, GN. No. 106 of 2007, and sections 91(1)(a),(2)(a),(b) and (c) and (4)(a) and (b) and 94(1)(b)(i) of the Employment and Labour Relation Act, [Cap 366 R: E 2019] and section 51 of the Labour Institution Act, [Cap 300 R: E 2019]. The application is supported by an Affidavit of **Oswald Mpangala** who is the company's legal services manager. The applicant prayed for this Court to amongst others revise the proceedings and award of the



Commission for Mediation and Arbitration for Dodoma at Dodoma (herein "*the trial CMA*") in Labour Dispute No. CMA/DOM/140/2020 delivered on 20th May, 2021 and ultimately set it aside on the ground that the referral before it was time barred.

The material facts on this case as they appear on the records are that, prior to the labour dispute that is subject of this application that is Labour Dispute No. CMA/DOM/140/2020 there was a labour dispute at the instance of the respondent (the applicant at the CMA) that is Labour Dispute No. CMA/DOM/54/2020. This dispute was filed on 3rd April, 2020 about 28 days from when the respondent was terminated from her employment on 6th March, 2020. In this dispute the respondent (the then applicant at the CMA) claimed compensation of twenty-one (21) years remuneration and other claims annexed in annexure A from the applicant (then respondent) for unfair termination. On the date of hearing that is on the 3rd July, 2020, the respondent (who was the applicant at the CMA) was granted an order by the CMA to withdraw the matter with leave to re-file. Having withdrawn, the respondent (then applicant) instantly filed another labour dispute, No. CMA/DOM/92/2020 claiming for compensation of not less than sixty (60) months, and any other reliefs. In reply, the applicant in this case (then respondent) raised the preliminarily objection on the ground that the application is time barred.

Having heard the preliminary objection raised, the CMA on 6th Nov. 2020 sustained the preliminary objection by striking out the application and went ahead to order the respondent (the then applicant) to file a fresh application within 14 days. Pursuant to that order, the respondent (then applicant) on 16th Nov, 2020 filed another labour dispute No. CMA/DOM/140/2020. In this application, the respondent (the applicant at the CMA) accompanied with an application for condonation.

Having heard the parties on the application for condonation of the Labour Dispute No. CMA/DOM/140/2020 the CMA was satisfied and granted condonation vide its ruling delivered on 2nd Feb, 2021. Following that condonation, the CMA scheduled the matter for mediation. It would appear that neither the representative of the applicant Bank (then respondent) nor its counsel appeared at the CMA for mediation. Following the non-appearance of the applicant (the respondent at CMA) the CMA on 24th Feb, 2021 ordered the matter to proceed ex-parte which culminated to an ex-parte award in favour of the respondent (then applicant) delivered on 20th May, 2021.

It appears that having noted the ex-parte award, the applicant (the then respondent) on 2nd June, 2021 applied for setting the award aside via Labour Application No. MISC/APPL/CMA/DOM/10/2021. Having heard the application, the CMA on 10th Sept, 2021 dismissed it on the ground

that the applicant failed to adduce sufficient reasons. Following the dismissal of the said application, the applicant filed Misc. Labour Application No. 37 of 2021 before this Court. This court on the 30th June, 2022 granted an extension of time within which to apply for an application for revision of an ex-parte award of the CMA in Labour Dispute No. CMA/DOM/140/2020. Pursuant to this order, the applicant has now filed this application praying for this Court to revise and set aside the said ex-parte award of the CMA in Labour Dispute No. CMA/DOM/140/2020 delivered on 20th May, 2021 on ground of material illegality, irregularities and material errors in law and in fact.

The applicant was represented by the learned Counsel in favour of the respondent (then applicant). Mr. Makaki Masatu for the applicant Bank in his written submissions based his arguments on paragraph 19 of the applicant's affidavit which in his view stated the grounds of the applicant's grievances. The learned counsel contended that the applicant was aggrieved by an ex-parte award in Labour Dispute No. CMA/DOM/140/2020. Mr. Masatu argued that the said labour dispute, No. CMA/DOM/140/2020 resulted from the order of the CMA of 6th Nov. 2020 striking out Labour Dispute No. CMA/DOM/92/2020 for being time barred. The learned counsel contended that it was wrong for the CMA to strike out Labour Dispute No. CMA/DOM/92/2020 and instead it was required to

dismiss it. Mr. Masatu referred this Court to the decision of the courts in **Stephen Masato Wassira vs Joseph Sinde Warioba and the Ag** [1999] TLR 334 at page 341, **Hashim Madongo and 2Others vs Minister for Industries and Trade and 2Others**, Civil Appeal No. 27 of 2003 and **Barclays Bank Tanzania Ltd vs Phylisiah Hussein Mcheni**, Civil Appeal No. 19 of 2016 [2021] TZCA 202.

The learned counsel for the applicant further submitted that where the matter is time bared the courts or CMA have no option apart from dismissing that matter and the aggrieved party has the right to appeal. He was of the view that, the CMA erred in law in granting extension of time as it had no jurisdiction to issue that order or to hear and issue an ex-parte award in Labour Dispute No. CMA/DOM/140/2020.

Responding to the submission from the applicant, Mr. Salehe Nassoro for the respondent in his written submissions contended that the law, that is Rule 10(1) and (2) of G.N. No. 64 of 2007 requires that disputes on unfair termination be filed at the CMA within 30 days while other disputes are supposed to be filed within 60 days from the day the dispute arose. Mr. Nassoro further contended that in the case at hand, the labour dispute between the applicant and the respondent arose on 6th March, 2020 when the respondent was unfairly terminated from her employment by the applicant. The learned Counsel argued that that

having been terminated, the respondent filed her first complaint to the CMA, No. CMA/DOM/54/2020 on the twentieth day that is on 3rd April, 2020 which was within the ambit of time required by the law. The learned counsel submitted that the respondent had good faith in seeking the withdrawal of the dispute with leave to refile. Consequently, Mr. Nassoro argued that, the respondent on the same day filed another labour dispute, No. CMA/DOM/92/2020. It was Mr. Nassoro further submitted that since the CMA granted the respondent leave to withdraw the matter with leave to refile and since the respondent acted diligently by refiling the matter on the same day, then it was wrong for the CMA to hold that the subsequent labour dispute filed that is Labour Dispute No. CMA/DOM/92/2020 was time barred.

Mr. Nassoro went on submitting that despite the fact that the CMA erred in striking out Labour Dispute No. CMA/DOM/92/2020 for being time barred, but because the respondent was not prejudiced as she was granted 14 of refiling another labour dispute then the Labour Dispute No. CMA/DOM/140/2020 that was filed pursuant to that order was rightly determined by the CMA. The respondent's counsel referred this Court on section 21(2) of The Law of Limitation Act, Cap 89, [R: E 2019], the decisions of the courts in **Geita Gold Mining Ltd vs Anthony Karangwa**, Civil Appeal No. 42 of 2020 (unreported), **Felician Rutwaza**

vs World Vision Tanzania, Civil Appeal No. 213 of 2019 and **The Registered Trustees of St. Anita's Greenland Schools (T) and 60others** vs Azania Bank Ltd, Civil Appeal No. 225 of 2019 (unreported)

With regard to the authorities referred by the learned counsel for the applicant, Mr. Nassoro for the respondent submitted that those cases cited by the applicant are distinguishable in the sense that in those cases the disputes which were referred in court were clearly filed out of time and the available remedy was dismissal, but in the case at hand the learned counsel submitted that the respondent did not file her labour dispute out of time.

In his rejoinder Mr. Masatu for the applicant contended that the respondent in her submissions was submitting on a new issue since the applicant's contention was based on paragraph 19 of the affidavit which is not about the legality of the order of CMA in Labour Dispute No. CMA/DOM/92/2020 granting the respondent 14 days within which to refile a new labour dispute. Mr. Masatu argued that even if in the views of the respondent that the CMA was wrong in striking out the Labour Dispute No. CMA/DOM/92/2020 for being time barred still she did not challenge it and ended up filing a new labour dispute subject of this revision application, that is Labour Dispute No. CMA/DOM/140/2020. The learned counsel for the applicant went on maintaining that the CMA having found

out that the Labour Dispute No. CMA/DOM/92/2020 was time barred ought to have dismissed it once and for all and not striking and granting the respondent 14 days within which to refile. Mr. Masatu further contended that there were no pleadings setting out facts for purposes of exclusion of time in light of section 21(2) of the Law of Limitation Act. He averred that, it was wrong for CMA to make an order which resulted to the refiling of Labour Dispute No. CMA/DOM/140/2020 by the respondent. To substantiate his arguments, Mr. Masatu referred this Court to the decisions of the court in **Bahari Oilfield Services FPZ Ltd vs Peter Wilson**, Civil Appeal No. 157 of 2020, **Barclays Bank Tanzania Ltd** *supra* and **Simac vs TPB Plc**, Civil Appeal No. 171 of 2018.

Having summarized submission by both parties, let me now address the key issues. I have had a benefit of going through the application, affidavits, the submissions of the parties and the authorities in support. The main issue for determination in my view is whether this application has merit or not.

Reading between the lines of the chamber summons I find that the applicant is inviting this court to go through the records of the CMA in Labour Dispute No. CMA/DOM/140/2020 and find out whether the CMA was right in determining it as the same was time barred. In essence it is in this Labour Dispute No. CMA/DOM/140/2020 where the CMA issued an

ex-parte award in favour of the respondent. The question to be desired is; was the labour dispute, No. CMA/DOM/140/2020 filed out of time? In order to answer this question, I have to find out the origin of this application.

As I have indicated above that the records show that when the respondent was aggrieved by her termination from her work by her employer, the applicant Bank on 06/03/2020 and on 03/04/2020 lodged her labour dispute, No. CMA/DOM/54/2020. There is no dispute that this dispute was filed within time as required by the law that is why the applicant (then respondent) did not object and as such upon failure in mediation it was scheduled for hearing on 03/07/2020. Indeed, the dispute which was in respect of unfair termination of the respondent was filed on the twenty-eighth day making it within time as the law limits disputes of that nature to be filed within 30 days from when they arose. See Rule 10(1) and (2) of G.N. No. 64 of 2007. On the day of hearing, that is on 03/07/2020, the respondent (then applicant) was granted an order to withdraw the dispute with leave to refile. It is also on the records that, the Labour Dispute No. CMA/DOM/92/2020 was filed on the same day. The applicant (the then respondent) objected on ground that it was time barred. The CMA sustained the objection, striking out the said labour dispute and at the same time granting the respondent (then applicant) 14

days within which to file another dispute. The question that comes at this juncture is that, was the CMA right in striking out Labour Dispute No. CMA/DOM/92/2020? In my considered view the answer is **NO**. This is due to the fact that Labour Dispute No. CMA/DOM/92/2020 resulted from the CMA order dated 03/07/2020 which unconditionally required the respondent (then applicant) to withdraw her case with leave to refile. Furthermore, the respondent (then applicant) filed Labour Dispute No. CMA/DOM/92/2020 on the same day after the CMA order. In this regard, it follows that the CMA erred in striking out Labour Dispute No. CMA/DOM/92/2020 on ground that it was time barred. Additionally, it was the very CMA which granted leave for the respondent (then applicant) to file another application, that meant that what the respondent (then applicant) was required to do was just to file another labour dispute without accompanying an application for condonation.

That being the case, then it follows that the proceedings in Labour Dispute No. CMA/DOM/140/2020 that resulted from an order that struck out Labour Dispute No. CMA/DOM/92/2020 were nullity as the dispute was filed in execution of an illegal order. In this regard, it is the finding of this Court that an ex-parte award that was delivered on 20/05/2021 in Labour Dispute No. CMA/DOM/140/2020 had no legal effect since that decision resulted from illegal proceedings.

In light of the foregoing discussion, this Court finds that this application has merit. This means that the proceedings at the CMA including ex-parte award of the CMA dated 20/05/2021 in Labour Dispute No. CMA/DOM/140/2020 were a nullity. The consequences of such anomaly are to set aside the order of the CMA of 06/11/2020 that struck out the proceeding of the CMA in Labour Dispute No. CMA/DOM/92/2020. The matter is referred back to the CMA to determine Labour Dispute No. CMA/DOM/92/2020 afresh. This Court further orders the CMA to proceed from where it ended in Labour Dispute No. CMA/DOM/92/2020 before the order that struck it out. It should be noted that all matters that are remitted back for re-determination need to be dealt expeditiously.

It's so ordered.



A. J. MAMBI

JUDGE

03/08/2023

Ruling delivered in Chambers this 3rd day of August, 2023 in presence of Advocate Elisha who is holding brief for Advocate Kulwa for the applicant.



A. J. MAMBI

JUDGE

03/08/2023

Right of appeal explained.

