

IN THE HIGH COURT OF TANZANIA

DODOMA SUB - REGISTRY

AT DODOMA

LABOUR REVISION NO. 26 OF 2021

(Originating from labour dispute No. RF/MCA/DOD/10/2018)

ORESTUS LEONARD NDIMBO APPLICANT

VERSUS

SUNSHINE INDUSTRIAL CO. LTDRESPONENT

RULING

14th August & 29th September, 2023

HASSAN, J:.

Saddened by the verdict of the Commission for Mediation and Arbitration (CMA) in the Labour Dispute No. **RF/MCA/DOD/10/2018** delivered on 15th November, 2021, the applicant fronted the application under Section 91 (1) (a), 91 (2) (c), 91 4 (a) and (b) and section 94 (1) (b) (i) of the Employment and Labour Relations Act [CAP 366 RE 2019] and Rule 24 (1), (2) (a), (b) (c) (d), (e), rule 24 (3) and rule 28 (1) (c) (d) and (e) of the Labour Court Rules, 2007 (G N. No. 106 of 2007).

Deponed by ORESTUS LEORNARD NDIMBO, is an affidavit in support of this application. Similarly, the respondent confronted the application through a notice of opposition yielding the counter affidavit

sworn by ESTER MEELA, the Respondent's Principal Officer. The matter proceeded orally.

During hearing, Mr. Charles Christopher, learned counsel appeared for the applicant, whereas Ms. Faraja Shayo also learned Counsel entered presence for the respondent.

Discomforted by its legal acquiescence, the respondent raised a preliminary objection on the point of law to the effect that this application is time barred.

On the 14th day of August, 2023 the matter was called on for hearing. Ordinarily, it started with preliminary objection thus, Ms. Shayo kick-started to submit that this application was filed out of time. That is, since the ruling for extension of time was delivered on 30th August, 2021, then the applicant was supposed to file the application for revision within six weeks which could have ended on 11th October, 2021.

However, the applicant failed to honour the timeline available in law, hence, the application was filed on 12th November, 2021 which is out of the time stipulated by the law. And for that delay, no reason has been given. She further submitted that, initially the applicant had lodged an application for extension of time, of which he was granted and thus,

negligently he let the time pass and now he came again for the same application.

Ms. Shayo added that, in her view what the applicant is doing is an unacceptable misbehaviour. Since, as reasonable person, the applicant should have complied with the order of the court to file this application within the timeframe. Therefore, she stressed that, since the applicant failed to comply with the requirement of the law, and there is no sufficient reason placed for such failure, then the applicant should bear the consequences and thus, the only available remedy is to dismiss the application. To strengthen her argument, she referred the case of **Hamisi Rajabu Shoma v. Pili Mpinda Nkindwi**, Land Application No. 80 of 2020 (unreported).

Furthermore, advocate Shayo submitted that, looking at paragraph 12 of the applicant's affidavit, the applicant deponed that he delayed because he was late to be supplied with the order of the court to extend time. And that, he made several follow up for the same. That said, Ms Shayo contended that, the applicant did not issue any letter of request to justify his claim. On this point, she referred the case of **Valerie Megivern & others v. Salim Farkrudin Balal**, Civil Appeal No. 386 Of 2019 CAT

(unreported) where the position taken by the court was, if such circumstance occurred, the applicant should make a written request.

More so, she submitted, that in the application at hand, the applicant failed to make any official request, and besides, his acknowledgment under paragraph 12 of his affidavit that, the order of which he was making the follow up was delivered and signed on 11th September, 2021. Therefore, Ms. Shayo averred in such a case that, even if days will be counted from the date which the applicant acknowledged that the order was issued and signed, to the date when this application was filed, yet, the application will still be lodged out of time. She stressed that alike situation was addressed at page 10 and 11 in the case of **Valerie Megivern & others v. Salim Farkrudin Balal** (supra), she cemented.

In conclusion, she argued that, due to that delay, it is clear that the applicant had not acted diligently, provided that he was already given an extension of time at once. To that ends, Ms. Shayo prayed for this application be struck out with costs.

On the other hand, Mr. Charles Magai, learned advocate for the applicant contested the preliminary objection and on that, he conceded that the order to grant condonation was delivered on 30th August, 2021

in Misc. Labour Application No. 23 of 2020, however, a copy of ruling and drawn order were issued to the applicant on 11th October, 2021, and that this application for labour revision was filed on the 2nd November, 2021. Hence, counting the days between these dates, it falls within the timeline stipulated by the law which is 23 days.

He further submitted that, looking at annexure APP6 of the applicant's affidavit, it shows the date on which ruling and drawn order were received. Adding to that, he submitted that the reason to which this application was filed on 2nd November, 2021 is well explained under paragraph 12 and 13 of the applicant's affidavit which among others, is, delay to receive ruling and a drawn order from the court.

Mr. Magai contended further that, apart from Rule 24 of the Labour Court Rules which requires the applicant to attach such documents, there are number of decisions which make mandatory to attachment an order in the application for revision. For instance, in the case of **Richard Marwa v. Elhillal Mineral Ltd**, Civil revision No. 16 of 2014 H/c (unreported) at page 6, the need to attach an order in the application for revision was bleeped. Where in the case at hand, he averred that, they could not have been able to file an application without first receiving the ruling and drawn order. He further submitted that, rule 23 (3) of the

Labour Court Rules, also provides that the court decision should be enlighten, hence it was necessary for the applicant to wait for those documents.

Advocate Magai went ahead to submit that, in reality, a copy of the ruling and drawn order were received by the applicant on 11th October, 2021 as it appears in the annexure APPL5 and APPL6. Therefore, he averred that, from 11th October, 2021 up to 2nd October, 2021, the applicant was within time for 23 days.

He added that the case of **Valerie Megivern & others v. Salim Farkrudin Balal** (supra) referred by the respondent's advocate, says much on the Law of Limitation Act, when they were challenging for limitation of time to appeal, where the Land Disputes Courts Act is silent on the time to appeal to the Court of Appeal. Therefore, on his view, that led to make reference to the general law of limitation, and thus, the decision in **Valerie Megivern & others v. Salim Farkrudin Balal** (supra) is distinguishable to the case at hand where the law used is the Employment and Labour Relation Act, No. 6 of 2004, which provides for limitation of time in labour dispute under section 91 (1) (a).

He further submitted that, as according to section 46 of the Law of Limitation Act, if the time limit is imposed in the specific law, this law

ceases to be applicable. Therefore, concluding his submission, Mr. Magai pray to overrule the sought preliminary objection, and thus to determine the main application in merit.

In rejoinder, Ms. Shayo protested the argument by the applicant's advocate that, the applicant was mandated to wait for the ruling and drawn order before he filed this application. On that, she argued that it has been observed by the applicant's advocate himself that Rule 24 of the Labour Court Rules does not make it necessary to attach the ruling and drawn order to the application for revision thus, she submitted if there is any contradiction between provision of law and the court precedent, then the law will always prevail.

Adding to that, she submitted that with respect to the case of **Valerie Megivern & others v. Salim Farkrudin Balal** (supra) is that, this case addresses the issue of computation of time, the issue which is not addressed in the labour laws. Therefore, she submitted, because of that omission, it is mandatory to use the Law of Limitation Act, which is the only law which provides for this effect thus, she insisted her earlier prayer that, this application has to be dismissed with costs.

Now, going through the battled arguments by the rival advocates, the contentious issue to be cared for is whether or not the application was filed within the time stipulated by the law.

In my efforts to resolve this issue, knowing it is a labour matter, I will start with section 91 (1) (a) of the Employment and Labour Relations Act, No. 6 of 2004, which provides for limitation of time in labour disputes. Section 91 (1) (a) provides that:

"Any person 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 on the applicant unless the alleged defect involves improper procurement."

From the above authority, it is obvious that time allowed to file application for revision is six weeks or 42 days from the date the award was served on the applicant.

Adding to that, to satisfy myself on what was contested by the parties with regard to Rule 23 and 24 of the Labour Court Rules, I recollect

for reference, Rule 23 (3) and Form No. 1 in the schedule and Rule 24 (1) (2) (3) Form No. 4 in the schedule both of the Labour Court Rules for observation. Therefore, without reproducing dictation of these rules, my observation exhibited that, there is no requirement to attach ruling or a drawn order to the application as it was submitted by the applicant's advocate. In my view, the relevant attachment sought under Form No. 1 in the schedule was not specified and therefore it could be anything depending upon case by case bases.

Therefore, since ruling to enlarge time was composed on 30th August, 2021 together with a drawn order, and this application was filed on the 2nd November, 2021 thus, the application was lodged beyond six week or 42 days allowed by the law.

In her submission for preliminary objection, the respondent argued that because of the passing of the date, the application was filed out of time and it should be dismissed with cost. Whereas, the applicant resisted the objection and submitted that he has been supplied with drawn order on 11th October, 2021. And to evidence that assertion, the advocate for applicant averred that drawn order is marked at the last page on the bottom line **"issued on 11th October, 2021"** to signify that it was issued

on that date thus, from that date to 2nd November, 2021 it was within time for 23 days.

At this point, the basic question to keep in mind is, owing to the circumstance, from when computation of the time should begin. To answer this question, I will seek guidance from section 19(2) of LLA which provide that:

"In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded."

Thus, guided from the above provision, if at all proved by the applicant that, the delay to file an application for revision was caused by late supply of the Ruling and drawn order, then the time spent to obtain a copy Ruling or drawn order would be excluded. However, it must be understood that section 19(2) of LLA can only apply if intended appellant made a written request for the supply of the requisite copies for the

purpose of an application. See **Valerie Megivern & others v. Salim Farkrudin Balal** case (supra) at page 11 of judgment.

That being the case, suffice to say, my perusal through the record I have discovered that, it is true as rightly submitted by the respondent's advocate that since ruling was composed on 30th August, 2021, the applicant had not acted diligently by requesting the sought documents in writing. Thus, apart from indicating it under paragraphs 12 and 13 of his affidavits that delay was due to follow up to obtain a copy of ruling and drawn order, there is no tangible evidence to prove the hassles he went through. In my view, a letter of request annexed in the affidavit could have been enough to save the purpose.

Needless to say, in brief, adding to what I have observed, in the case of **Richard Marwa v. Elhillal Mineral Ltd**, Civil revision No. 16 of 2014 H/c (unreported) which was cited by the applicant's advocate at page 6 does not make it mandatory for applicant to attach an order in the application for revision, hence he misconceived its content.

For the foregoing reason, I agree with the advocate for the respondent that this application was filed out of time. Thus, couched by the decision **Hashim v. Minister for Industry and Trade and**

others, civil appeal no. 27 of 2003 (unreported), where the court of appeal held:

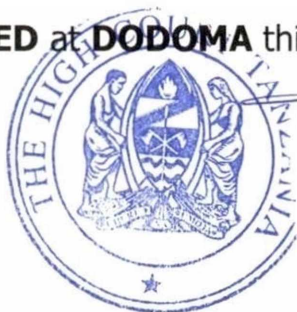
"Under section 3 of law of limitation act, a proceeding which is instituted after the prescribed period has to be dismissed. Therefore... it occurs to us that Kalegeya, J ought to have dismissed the application after he was satisfied that it was time barred. it was not open to him to strike out the application as it happens in this case."

See also, the recent decision in **CI Group Marketing Solution v. Sijaona Koba**, civil appeal no. 18 of 2021 CAT (unreported) where the court held that **MCA/DSM/TEM/170/2015** which was filed out of time ought to have been dismissed, instead of being struck out.

It follows therefore, the instant application for revision craved from Labour Dispute No. **RF/MCA/DOD/10/2018**. In the end, all being the same, the preliminary objection is sustained. Consequently, the labour revision No. 26 of 2021 is hereby dismissed with costs.

Accordingly ordered.

DATED at DODOMA this 29th day of September, 2023.



S. H. HASSAN

JUDGE