

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

**LABOUR REVISION NO. 05 OF 2023**

*(Arising from Labour Dispute No. CMA/KLM/SAM/ARB/22/2022)*

**BAHATI JUMA KIMWANA**  
**AISHA ABDALLAH HUSSEIN** } ..... **APPLICANTS**

VERSUS

**REGISTERED TRUSTEES OF ISLAMIC  
PROPAGATION CENTER..... RESPONDENT**

**RULING**

30/08/2023 & 06/10/2023

**SIMFUKWE, J.**

The applicants herein filed this application after being aggrieved with the Award of the Commission for Mediation and Arbitration in **Labour Dispute No. CMA/KLM/SAM/ARB/22/2022**. The application was preferred under **section 91 (1)(a), (2) (b) and Section 94 (1) (b)(i) of the Employment and Labour Relations Act, No. 6 of 2004, Cap 366 R.E 2019 (ELRA)**; read together with **Rule 24 (1)(2)(a)(b)(c)(d) (e)(f) and Rule 24(3)(a)(b) (c)(d) and rule 28 (1) (c)(d) and (e) of the Labour Court Rules, GN No. 106 of 2007**.

The respondent herein filed her Counter Affidavit, accompanied by Notice of opposition, Notice of Representation and Notice of Preliminary Objection as follows:

*1. That an application is untenable in law as it is time barred and liable to be dismissed.*

At the hearing of the above objection which proceeded by way of filing written submissions, the applicants were represented by Mr. Exaud M. Mgaya, personal representative, while the respondent had the service of Mr. Othman Kalulu, learned advocate.

Supporting the preliminary point of objection, Mr. Kalulu submitted that the objection was preferred under **section 91(1)(a) of ELRA, section 3 of the Law of Limitation Act** and **section 95 of the Civil Procedure Code**, Cap 33 R.E 2019. The learned advocate elaborated that the CMA Award was delivered on 16/12/2022 and the applicants collected the same on 07/02/2023 as stated under 2 of the Applicant Notice of Application. The applicants lodged the present application on 27/03/2023 which is 47 days from the date the applicants collected the CMA award.

Mr. Kalulu went on to state that **section 91(1)(a) of ELRA** requires the applicant to file revision against the Award within six weeks which is equivalent to 42 days. He cemented the above position of the law by the decision in **Consolidated Revisions No. 423 and 425 of 2022**, (HC), Labour Division.

Mr. Kalulu submitted further that under paragraph 5 of the applicants' Joint Affidavit they stated that the CMA Award was issued on 17/02/2023 instead of 07/02/2023 which they stated under paragraph 2 of the Notice

of Application. He opined that such variation on the dates has the aim of defrauding this court that the application was lodged within time. He added that, the applicant is estopped by the doctrine of estoppel to deny what has been stated under paragraph 2 of the Notice of Application that they were issued with the Award on 07/02/2023. To support his assertion, Mr. Kalulu explained that the respondent and the applicants signed the same document/Award which was left in the CMA which showed that the Applicants were issued with the Award on 07/02/2023 followed by Respondent on 20/02/2023.

The learned advocate made reference to **section 3 of the LMA** which is to the effect that the proceedings filed after the expiration of time has to be dismissed. He emphasised that the present application is time barred and this court has the jurisdiction to dismiss the same in consideration of **section 3 of ELRA** on the principal objective of the Act.

In his reply, Mr. Mgaya adopted the applicant's affidavit to form part of his reply. He submitted that, it is on record that this application was filed via online or e-filing with Ref. No. 64199231 on 17<sup>th</sup> March, 2023 at 17:00 Hours. Also, the original copy of the said Application was filed on the same date of 17<sup>th</sup> March, 2023. However, the Court Registry stamped and marked different date of filing original documents as dated 27<sup>th</sup> March 2023. The applicants' representative urged this court to go through its Judiciary Electronic System records for the ends of justice. He attached a copy of printed e-filed Applicant's application for revision as **Annexure A** to form part of his written submission. He insisted that the application before this court was filed on time and in accordance with **Rule 21(1) and 21(2) of the Judicature and Application of Laws (Electronic Filing)** GN 148 of 2018.

Furthermore, Mr. Mgaya expounded that the CMA award was served to the Applicants on 7/02/2023. Counting from the said date to 17/03/2023 when the application for Revision was filed via e-filing, then the present application was filed within 39 days including nonworking days which is within 42 days as required by the law. He added that, **the Interpretation of Law Act (ILA)** is very clear under **Section 60(2) of the Act and Rule 4(2) of the Rules** on exclusion of nonworking days. (Saturday, Sundays and public holidays). To support the point, Mr. Mgaya cited the case of **Barclays Bank T. Ltd vs Jacob Muro**, Civil Appeal No.357 of 2019/2020 (CAT) at page 8, where it was stated that:

*"The records reveals (sic) that ..... because under section 60(2) of the Interpretation of Law Act (ILA), weekend and public holidays are excluded in computing time that is not requirement of law but also the practice of this court in a number cases. Thus, out of 33 days if I exclude weekends, it remains 28 days, hence the referral was timely filed at CMA."*

Based on the above authority, Mr. Mgaya was of the view that, since the CMA Award was served to the Applicant on 07/02/2023 and the application was filed via Judiciary Electronic System (JSDS) on 17/03/2023, then the preliminary objection that the application is time barred is baseless.

Mr. Mgaya He cemented his allegations with the decision in the case of **Nile Health Care T/A Uhuru vs Filbert John Mpogoro**, Labour Revision No.07 of 2022 (HC) which held that:

*"I have taken time to verify the time trail of the matter from Court Registry record, the application was submitted by*

*Kevin Mutatina on January 30th, 2022 at 20:28:48. Thereafter, normal/internal court procedures for admission and notification to parties followed. Therefore, the date affixed on the court stamp (01.02.2022) signifies the completion of initio admission processes. And as remarked earlier on, such process has nothing to do with the Application herein"*

It was further contended by Mr. Mgya that the respondent should consider that this is the Labour Case with peculiar circumstances of filing where payment of filing fees and control number is not applicable. Thus, the proof of receipt on the date of electronic filing (e-filing) cannot be procured. That, the only proof is for this Court to satisfy itself by passing through its registry records to verify the time of the same. He subscribed to the case of **Mohamed Enterprises (T) Limited Vs Masoud Mohamed Nasser**, Civil Application No. 33 of 2012 and the case of **Ottu and Another vs Iddi Simba, Minister for Industries and Trade and Others [2000] TLR 88** 12 which observed that:

*"In view of what we have endeavoured to discuss the question of when the twelve-year limitation period began to run against the appellant on a claim over the disputed house, still requires a proof as it cannot be determined at the stage of deciding a preliminary objection as a pure point of law."*

The applicants' Representative prayed the court to dismiss this preliminary objection with costs and proceed with the main case.

In rejoinder, Mr. Kalulu emphasized that there is variation on the dates as presented by the applicants on their Notice of Application and the date stated in the applicant's affidavit in respect of the date when the applicants were issued with the CMA Award.

Concerning the issue of excluding working days, Mr. Kalulu submitted that, exclusion of non-working days applies for the time frame for lodging in court falling in the non-working days only and not otherwise.

Having considered the submissions for and against the objections, I wish to commence by discussing albeit briefly the law that governs Preliminary Objections. It is trite principle of law that a preliminary point of objection must be purely point of law. Where the objection is a mixture of law and fact, then the point lacks the criteria of being preliminary Objection and being determined at the preliminary stage. In the case of **Shose Sinare vs Stanbic Bank Tanzania Ltd & Another** (Civil Appeal 89 of 2020) [2021] TZCA 476 Tanzlii at page 12 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 preliminary objection on a point of law. The court must therefore insist on the adoption of the proper procedure to entertain application for preliminary objections. It will treat as a preliminary objection only those points that are pure law, unstained by facts or evidence, especially disputed point of facts or evidence. The objector should not condescend to the*

*affidavits or other documents accompanying the pleadings to support the objection such as exhibits.”*

Guided by the above decision, in the instant matter the respondent raised the preliminary objection to the effect that the Application was brought out of time contrary to **section 91(1)(a) of the ELRA** which requires the Application for Revision to be filed in this court within six weeks which is equivalent to 42 days.

From the parties’ arguments, I have observed that the parties have debatable argument on when this application was filed in this Court. According to the hard copy of the Notice of Application, Chamber Summons and Affidavit of the applicants, the application was filed on 27/03/2023; while according to **Annexure A** annexed to the applicants’ submission the application was filed through e-filing on 17/03/2023. Through this variation of the dates, Mr. Kalulu for the respondent believed that the applicants are trying to deceive this court and their argument is not supported with enough evidence.

Also, the respondent’s counsel noted that, there is variation on the dates in respect of when the CMA Award was issued. The applicants under paragraph 2 of the Notice of Application stated that the award was issued on 07/02/2023 while under paragraph 5 of the Joint Affidavit they stated that the same was issued on 17/02/2023.

I am of considered opinion that in the circumstances where the date of being supplied with the award and the date of filing is not certain and it requires more proof by resorting to the JSDS, then the objection cannot be determined at the preliminary stage as the same is a mixture of law and fact.

The applicants' Representative implored this court to refer to the JSDS system to verify when the application was filed. However, with due respect to Mr. Mgaya, his prayer is misplaced since this court cannot entertain his prayer at this stage. Even **annexure A** which he annexed to his submission is misplaced as parties are not expected to annex evidence in their submissions.

Also, I wish to refer to the case of **Ibrahim Abdallah vs Selemani Hamisi** (Civil Appeal No.314 of 2020) [2022] TZCA 43 Tanzlii at page 9, where the Court of Appeal stated that:

*"It is settled law that a pure point of law does not arise **if there are contentions on facts yet to be ascertained by evidence.**"* [Emphasis added]

On the strength of the above findings, I am satisfied that the defendant's ground of objection lacks criteria of being determined at the preliminary stage. I therefore, overrule it with no order as to costs. Accordingly, the suit should proceed on merit.

It is so ordered.

Dated and delivered at Moshi this 6<sup>th</sup> day of October 2023.



X

S. H. SIMFUKWE

JUDGE

Signed by: S. H. SIMFUKWE

**06/10/2023**