



THE JUDICIARY OF TANZANIA

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT SHINYANGA

(CORAM: HON. FRANK MAHIMBALI)

APPLICATION NO. 000004282 OF 2024

**SHUKURU MWAINUNU COMPLAINANT / APPELLANT / APPLICANT /
PLAINTIFF**

VERSUS

BULYANHULU GOLD MINE LIMITED RESPONDENT / DEFENDANT

RULING

Fly Notes

Electronic filing rules - extension of time to file revision - technical fault in filing a case in the electronic system

Facts

The applicant has been dissatisfied by the decision of the CMA. He wishes to challenge it before the High Court. As he is out of time following technical error faced in the electronic filing system, he could not trace the filed case. He had to refile it. As he is out of time, he has resorted to this application which has been objected amongst others on legal point that the applicant having faced a technical issue in electronic filing, he ought to have resorted to the Deputy Registrar informally and not by application before a High Court Judge.

Ratio Decidendi

Where a party misses a filing deadline due to technical problems referred to in sub-rule (1) of rule 24 of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 the party shall move informally and ex parte the Registrar or the magistrate in-charge not later than 15:00 hrs of the following working day for appropriate relief

16th of April 2024

Hon. MAHIMBALI.:

RULING

8/4/2024 & 16/4/2024

F.H. MAHIMBALI, J

The applicant herein referred labour dispute before CMA Kahama, for the claims of unfair termination. After a full consideration the CMA entered its award in favour of the applicant by awarding him some of



benefits claimed.

The applicant was unhappy with such award he then preferred Labour Revision before this Court. According to him he filed it on time allegedly on 17th January 2024 but he encountered technical filing problem, until time limit for filing labour revision lapsed without the matter being admitted, hence this application for extension of time to file labour revision.

In fate premise, the respondent raised preliminary objection on point of law to the effect that the application by the applicant is misconceived as it contravenes Rule 24 (1) (5) and (6) of the Judicature and Application of Laws (Electronic Filing) Rules, 2018.

During the hearing of the objection, the applicant had legal representation of one Dotto (labour presentative) and the respondent enjoyed legal service of Mr. Mfuru learned advocate. Submitting on the preliminary objection Mr. Mfuru averred that the P.O is in respect of the incompetence of the application. He alluded that basing on the argument that as per paragraph 15 of the applicant's affidavit, the applicant is alleging that failure to file the application timely was due to failure of the electronic filing system to upload the filed application for court's admission (see paragraph 22 of the affidavit). The electronic filing is governed by the Judicature Application Filing Rules (Electronic Filing Rules) GN 148 of 2018.

The situation stated in the affidavit, is covered under rule 24(1), (5) & (6) of the Judicature Application Filing Rules (Electronic Filing Rules) GN 148 of 2018. In his considered view, in the circumstance of the case, the applicant ought to have addressed the DR for the appropriate reliefs and not by this office as done. As that has not been done, this court cannot do it otherwise as compliance to the provided rules is mandatory and not an option as done. On that basis, he prayed for the application be struck out for being incompetent.

On the side of the applicant, Mr. Dotto resisted the P.O as being devoid of any merit. He added that what has been raised is not purely a legal point worthy considerable by the court and rule it in affirmative. It is not legal requirement because the learned advocate has not stated what is a legal impact on non compliance to the said rule. Furthermore, the cited rule 24 (5) & (6) of JALA does not compel the DR to provide the extension of time as per electronic filing challenges. Thus, as provided under rule 24(5) of the filing rules, the motion is informal and not formal. As they complied with it, it was the DR's advise that they should do otherwise against what is provided by the rule. The reason by the DR's advice is based on the fact that after they had done their part, the DR had no mandate to access their application in the CMS system. Thus, it was impossible for him to comply with what is provided by the electronic rules. Thus, the basis of his advice to them were complied with. For that matter, the P.O is baseless as it is not purely legal, also the cited rules don't provide for the sought relief of strike out. He therefore prayed for the preliminary objection be dismissed for lack of merit.

In rejoinder Mr. Mfuru stated that the P.O is purely legal. This is because, the rule is coached in mandatory terms "shall". Furthermore, in their affidavit, there is nowhere provided that the DR was timely moved. As per the established rules, the end user is not the one to give solution but the DR. His duty as end user was to comply with the filing timeline, others were the DR's functions. Had the DR not acted timely upon being moved, the applicant would have other rights as per law. Thus, the current application having defaulted the electronic filing rules, is misplaced before the court for ascertainment.



Having heard both parties on merit, I have now to determine the preliminary objection and the issue for consideration is whether the preliminary objection by the respondent entail legal point of view.

It is trite law that a party who failed to submit his document due to technical issues afore stated under Rule 5 of the Electronic Filing Rules (supra) has a duty to make exparte informal application supported with tangible evidence such a receipt print out of the failed transaction or an affidavit of the necessary person or officer responsible on the transaction in issue. See **Maliselino B. Mbipi vs Ostina Maritime Hyera. Misc. Civil Application No.8 of 2022.**

I have impassively considered rival submissions of both parties. It is true that paragraph 15,16,17,18,19,20 of the applicant's affidavit details that the failure to file application for revision was caused by technical problem in e filing management system.

However, it was verbed by the applicant that the incidence for filing the instant application was due to advise by the deputy registrar.

I have gone through the rule, deemed to have been contravened, the same reads as follows;

“ Rule 24.-(1) The period during which electronic filing system is not in operation, for any reason, shall be excluded from the computation of time for filing.

(2) Problems on the user's end, such as problems with the user's Service Provider (SP), hardware, or software problems, shall not constitute a sufficient reason for an untimely filing. (3) For the purpose of sub-rule (1), the excluded time shall not extend the limitation period for such filing under the Law of Limitation Act, or any other written law.

(4) Where electronic filing is done the rules relating to time for the purposes of limitation shall be the same as those applicable to a conventional filing.

(5) Where party misses a filing deadline due to technical problems referred to in sub-rule (1) the party shall move informally and ex parte the Registrar or the magistrate in-charge not later than 15:00 hrs of the following working day for appropriate relief

(6) Where the Registrar or magistrate in-charge is satisfied that there was good cause for missing the deadline, he shall grant the request under sub-rule (5) in writing.” (emphasize added)

Glaring from the extract, it is clear under sub rule 5 of the rule, imposes mandatory directives for a person encountered with electronic filing problem, that he should refer it to the Deputy Registrar informally and the Deputy Registrar shall extent the time. see sub-Rule 6.

In that stance I agree with Mr. Mfuru that the rule cited ought to have been complied with first as it is a mandatory legal requirement in compliance to electronic filing rules. I am in controversy with the assertion of Mr. Dotto on the sense that the raised issue is pure point of law and not otherwise as contemplated by Mr. Dotto.



There was no way out for the applicant to skip the office of the Deputy Registrar and forward the application before a High Court judge. He would have first exhausted the available legal remedies as provided by the rules in place.

The above notwithstanding, there is no proof as to whether the filing of the application was due to directives by the Deputy Registrar as alleged. The applicant was burdened to substantiate it by fixing the Deputy Registrar's affidavit to prove the same.

As to what is the way forward, in my considered view, the application is misplaced and thus the only remedy is strike it out as I hereby do, with directives that the applicant should comply with the contravened rule.

No orders as to costs.

DATED at Shinyanga this 16th day of April, 2024.



F.H. Mahimbali

Judge

Dated at SHINYANGA ZONE this 16th of April 2024.



FRANK MAHIMBALI

JUDGE OF THE HIGH COURT

