

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT MUSOMA**

APPLICATION FOR REVISION NO. 19 OF 2023

(Arising from Labour Dispute No. CMA/MUS/175/2021)

EMMANUEL GEORGE NYAMTIGA 1ST APPLICANT

JOHN MWITA MASUBO 2ND APPLICANT

MASAMAKI KONA NYAMHENGA 3RD APPLICANT

DAVID SALEHE 4TH APPLICANT

JULIUS ALBERY ALOHO 5TH APPLICANT

JUMA JOSEPH 6TH APPLICANT

BAHATI ROMAN 7TH APPLICANT

FRANK MAHELI MATIKO 8TH APPLICANT

BOKOBORA MRONI CHACHA 9TH APPLICANT

RHOBI NYAMAHANGA KUBYO 10TH APPLICANT

MSONSO CHACHA TARELI 11TH APPLICANT

MORIS ISDORI EZEBIO 12TH APPLICANT

MANGURE IBRAHIM MANGORE 13TH APPLICANT

DANNY BURTON MGOMBELE 14TH APPLICANT

CHARLES JOHN KISINGABI 15TH APPLICANT

ZAWADI HAMISI BIGINA 16TH APPLICANT

MNIKO CHARLES CHOMA 17TH APPLICANT

DANIEL NJILE JITINYA 18TH APPLICANT
MAFIKIRA FELARIAN MAFIKIRA 19TH APPLICANT
PASCAL ZENGO SABANJA 20TH APPLICANT
DANIEL SIMON SYAMBAI 21ST APPLICANT
HEMED OMARI MDEE 22ND APPLICANT

VERSUS

KIRIBO LIMITED RESPONDENT

RULING

18th & 24th April, 2024.

M. L. KOMBA, J.:

The applicant herein is seeking for the following orders;

1. *This honorable court be pleased to call for records and proceedings of the Commission for Mediation and Arbitration of Musoma (CMA) and revise the proceedings and award issued in Labour dispute No. CMA/MUS/175/2021 delivered on 03 March 2022 and;*
 - (a) *Set aside the order dated 03/03/2022.*
 - (b) *Having set aside order, remit the case file for the parties to be heard on merit.*
 - (c) *The court be pleased to issue any other relief(s) it deems fit and just to grant thereof.*

The application is preferred by way of chamber summons made under sections 91(1)(a) and (b), 91(2) (a, b, c) and S. 91(4) (a) (b), 94 (1) (b)

(i), of the Employment and Labour Relations Cap 366 RE 2019, Rules 24(1), 24(2) (a) (b) (c) (d) (e) and (f), 24 (3) (a), (b), (c), and (d) and rule 28(1) (a), (b), (c), (d) and (e) of the Labour Court Rules of 2007 GN No. 106 of 2007. The Chamber summons is supported by joint affidavit deponed by all applicants;

- (i) That the mediator erred in law and fact for determining the matter as Res judicata*
- (ii) That the mediator erred in law for entertaining the preliminary objection raised not conformity the rules.*
- (iii) That the mediator erred in law and fact for holding that, the applicant before the CMA was ambiguous as it was neither the application for condonation nor joinder of parties/joinder of disputes.*
- (iv) That the mediator erred in law for determining that, the commission must be moved by rule 11 of Labour Institutions Mediation and Arbitration Rules GN No. 64/2007 for it to entertain the application for condonation.*
- (v) That the mediator erred in law for determining that there was a need to cite rule 24 and 26 of Labour Institutions mediation and Arbitration Rules GN No. 64/2007 for it entertain the application for condonation.*
- (vi) That the mediator erred in law and fact for determining the preliminary objection from the principle officer of the respondent who did not issue notice of representation in advance before his appearance to the CMA.*

Before the matter was pressed for hearing, representative of the respondent, Mr. Frank Maganga filed notice of opposition under Rule 24 (4) (a) and (b) of the Labour Court Rules GN. 106 of 2007 with four points where during hearing he dropped the other and remained with one that;

1. That the application is bad in law for being time barred.

Following presence of the PO, parties agreed the same to be argued first before main application. When the PO was ready for hearing, the applicants had the legal service of Mr. Ernest Mhagama, learned advocate while Mr. Frank Maganga, a Human Resource Officer of the respondent appeared for the respondent.

Representative of respondent was the first to argue his objection. He had a very short submission that the ruling on Labour Dispute No. CMA/MUS/175/2021 which is subject of the application was delivered on 30/3/2022. Application for Revision No. 19 of 2023 was filed on 15 September 2023. This is more than one year contrary to section 91 (1) of Employment and Labour Relations Act, Cap 336 which requires application of that nature to be filled within six weeks from the decision of CMA. He prayed this court to dismiss the application as was filled out of time.

Responding to Point of opposition, Mr. Mhagama was of the submission that application was filed within time. It is true that the application was filed on 15/09/2023. However, he submitted that the record shows there was issues on affidavit and this court on 15/8/2023 struck out the previous filed application and ordered the same to be filled within 30 days. On 15/9/2023 while within time, applicants filed fresh application which was admitted as Application for Revision No. 19 of 2023. He was of the position that so far as there was a court order, the matter cannot be said to be filed out of time. He prays it be found filed on time and opposition filled to be found with no merit.

During rejoinder respondent argue that the 30 days given by this court also was not met as the months of August 2023 has 31 days and counting days from the order to the time of filing is 31 days which is contrary to order if at all there was an order. He further submitted that there is no reference to an order of this court by the applicant in their application as it was not attached neither deponed in affidavit. So far as High Court order was not introduced in this application, that is submission is from the bar and there is nothing in their application that's why he submitted that he referred the decision of the CMA in Labour Dispute No. CMA/MUS/175/2021. Mr.

Maganga maintained that his opposition is that the matter is filed out of time be it from the decision of the CMA or the said order of this Court.

I am called upon to decide whether the application is properly before me. The contesting issue is time within which the application was filed. From submission there is no dispute that the Application for Revision No. 19 of 2023 was filed on 15/9/2023 and the decision of CMA which was the foundation of this application was delivered on 30/03/2022. It is prudent now to refresh on the provision regarding revision of this nature. Section 91 of Cap 336 provides;

'91.-(1) Any party 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;

(b) if the alleged defect involves improper procurement, within six weeks of the date that the applicant discovers that fact.'

I find the cited section insisted on six (6) weeks that the application has to be filed just as submitted by Mr. Maganga. Noting the matter was filed on

15/9/2023, Mr. Mhagama submitted that there was a court order that granted 30 days from 15/8/2023. The said court order was not deponed neither was it annexed to affidavit so as to form part this court record. There is no record in this application that applicants were granted time for them to file their application. The only record accessed by both parties and this court is traced form the decision of the CMA which was on 30/03/2022 and applicants left without time thus this court lacks jurisdiction.

The issue of jurisdiction is important as it is risky and not safe for this court to proceed with the hearing of any matter on the assumption that the court has jurisdiction to adjudicate upon the case. Court to proceed to try a case on the basis of assuming jurisdiction has the obvious disadvantage that the trial may well end up in futility as null and void on grounds of lack of jurisdiction when it is proved later that the court was not properly vested with jurisdiction.

Jurisdiction is a creature of the statute, and a bedrock of the court's authority. See, **The National Bank of Commerce Limited vs National Chicks Corporation Limited & 4 Others**, Civil Case No. 129 of 2015, **Tanzania Revenue Authority vs Tango Transport Company Ltd**, Civil Appeal No. 84 of 2009 (both unreported) and **Fanuel Mantiri**

Ng'unda vs Herman Mantiri Ng'unda & 2 Others [1995] TLR 155. In the case at hand, so far as the application was filed out of prescribed time from when the CMA provide its order, and it was not disputed, it is as good as there is nothing in this court. That is to say, this court lacks jurisdiction to entertain Application for Revision No. 19 of 2023 which was filed out of time. As rightly submitted by Mr. Maganga, the application is hereby dismissed.



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M. L. KOMBA

Judge

24th April, 2024

Ruling delivered in chamber before Mr. Msonso Chacha Tareli the 11th applicant and int absence of the respondent.

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M. L. KOMBA

Judge

24th April, 2024