

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
SHINYANGA SUB REGISTRY
AT SHINYANGA**

LABOUR REVISION NO. 15 OF 2023

(Arising from NO. CMA/KHM /48/2023)

JONSON FELIX KATUNZIAPPLICANT

VERSUS

EPVATE FORTUNE INTERNATIONAL CO. LTD.....RESPONDENT

RULING

13th Feb & 19th Feb 2024

F. H. MAHIMBALI, J.

This ruling is in respect of preliminary objections raised by the respondent to the effect that; ***The application by applicant is time barred and the application by the applicant is devoid of any merit for being premature filed.***

Initially, the applicant filed the matter challenging for termination of his fixed term contract by the respondent before CMA. Before the matter had taken recourse, the respondent filed objection based on point of law that the dispute was filed before CMA out of time. The honourable chairman after had heard the matter on merit, sustained the preliminary objection and the matter was struck out.

Aggrieved by such decision, the applicant has applied for revision against the impugned decision on the fact that the impugned award contains illegalities and improprieties.

When the matter came for hearing, the respondent had lodged once again a preliminary objection based on the grounds outlined herein above that the revision application itself is also time barred. During the hearing, the applicant appeared in person while unrepresented and Mr. Kassim Masimbo principal officer of the respondent appeared on behalf of the respondent.

Arguing on the first ground of preliminary objection, Mr. Kassim Masimbo provided that this application was filed before this Court on 9th October 2023 against the CMA's award dated 11/8/2023. Thus, computing the time frame, this revision application was filed before this court out of 42 days statutorily provided for under Section 91(1) a of ELRA, Cap 366 R.E 2019. He exemplified that, counting from 11th August 2023 to 9th October 2023, it is about more than 59 days. As there is no extension of time filed pursuant to rule 56 of labour court Rules vide GN 106 of 2007, thus such an application being filed out of time, this court is not clothed with jurisdictions to entertain it. The only remedy available to the court is as provided by the Law of Limitation Act, Cap 89 R.E 2022 under section 3(1) which is strike out. He convinced this Court by referring to the case

of **Group Marketing Solutions vs. Sijaona Koba**, Civil Appeal No. 18 of 2021.

With the second P.O, Mr. Kassimu argued that the application is also wrongly filed before this court pursuant to Rule 50 of GN 106 of 2007 as the application is pre-maturely brought as the said matter was not conclusively heard. It was struck out as it is an interlocutory order. Therefore, this court is bound by that legal position stated in the case of **International tax consultants Limited vs. MacDonald Justus Rweyemamu**, Labour Revision No. 199 of 2023. He finally pressed that this revision application be dismissed.

On the side of the Applicant, in respect to the first ground of objection averred that it is true that the award being challenged of the CMA is dated 11/8/2023. As per law, the said award by the CMA being of unfair termination its life span is 60 days and not 30 days. Thus, the P.O is without any merit.

With the second ground of preliminary objection, the applicant stated that as regards to this application being brought beyond 42 days, Rule 21(1) of the Judicature and Application of Laws, Act GN 148 of 2018, prevails. He thus prayed that the preliminary objection be dismissed and the main application be heard on merit as both legal objections do not hold any legal sense.

I have heard both parties extensively and the issue for consideration is that the preliminary objections raised have been brought with sufficient cause. In deed to pursue the same, I have gone through the CMA records and the rival submission by the parties.

It is trite law that every application/suit be filed within the prescribed time the failure of which its redress is dismissal. See cases of **Stephen Masato Wasira v. Joseph Warioba (1999) TLR 334**, **Hashim v. Minister for Industry and Trade and Others, Civil Appeal No. 27 of 2003 (unreported)**, **Dr. Noordin Jella v. Mzumbe University, Complaint No. 47 of 2008** (unreported).

The contentious arguments herein are that, the respondent claims that the application for revision before this court by the applicant alleged to be filed out of time. The applicant has delayed for about 42 days. It is however clear that the decision of the CMA was delivered on 11/8/2023 and the application for revision before this court was filed on 9/10/2023 Counting from 11/8/2023 to 9/10/2023 equal to 59 days. To bring the point home, Section 91(1) (a) of ELRA, Cap 366 R.E 2022 provides that;

"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"

Now, the applicant herein was served with the decision of CMA on 11/8/2023. Based on the proviso, it is clear that the six weeks ended on 21/9/2023 and the application is out of time for 18 days.

I am not blessed with the argument by the Applicant that since the said award by the CMA being of unfair termination its life span is 60 days and not 30 days. I think the argument by the applicant was misconceived, because it would sound better in the main application.

With that finding, I subscribe the argument by Mr. Kassimu that the only remedy available is dismissal, as held in the case of **Group Marketing Solutions vs. Sijaona Koba (supra), Stephen Masato Wasira v. Joseph Warioba (supra) Hashim v. Minister for Industry and Trade and Others (supra), Dr. Noordin Jella v. Mzumbe University, (supra).**

The argument by the applicant that though this application is brought beyond 42 days, but served by Rule 21(1) of the Judicature and Application of Laws, Act GN 148 of 2018, I think is cited out of the context

in the circumstances of this case. For clarity, rule 21 of the said GN 148 of 2018 is hereby reproduced for easy of reference:

21.-(1) A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the date it is submitted, unless a specific time is set by the court or it is rejected.

(2) A document submitted at or after midnight or on a Saturday, Sunday, or public holiday shall, unless it is rejected by the court, be considered filed the next working day.

There is no proof that the said document was filed electronically before a midnight of the expiring date. What is clear as per court record is the fact that, the said document was filed electronically on 9th October 2023 while the decision of the trial CMA was issued on supplied to both parties on the same date of 11th August 2023. The 42 days expired on 22nd September 2023 and not 9th October 2023 as alleged. Thus, it is justifiable on the first P.O that even this application itself has been filed out of time.

With the second ground of preliminary objection, Mr. Kassimu's complaint is that the matter was premature to be filed before this court on the sense

that the applicant has still other legal remedy to pursue before CMA for him to have redress.

In order to retrieve the truth, I have scanned Rule 50 of GN 106 of 2007 which provides that;

"No appeal, review or revision shall lie on interlocutory or incidental decisions or orders, unless such decision has the effect of finally determining the dispute"

However, the matter before CMA was struck out for being filed out of time.

From the point of view, reading Rule 50 (supra) it is clear that the matter was not fully determined on merit. And thus, I concur with Mr. Kassim that the applicant had still redress before CMA for applying for condonation pursuant to Rule 11 (2) of the Labour Institution (mediation and Arbitration) Rules GN No.64 of 2007.

It is clear that the law is now settled that no revision shall lie against an interlocutory decision or order unless such decision or order had an effect of finally determining the suit. See among other cases that of **Pardeep Singh Hans versus Merey Ally Saleh and 3 others, Civil Application No. 422/01 of 2018** (CAT) at Dar es salaam.

It is not the nature of the preliminary objection raised that determines the competence or otherwise but the effect of the decision or order reached. It would be the effect of the decision or order that would determine whether the applicant lies against it. That is what in law is termed as "*the nature of the order test*" as it was put in the case of **Tanzania Posts Corporation versus Jeremiah Mwandi, Civil Appeal no. 474 of 2020** (CAT) at Kigoma quoting its other previous decisions namely; **Murtaza Ally Mangungu v. The Returning Officer of Kilwa and two Others, Civil Application No. 80 of 2016** and **Peter Noel Kingamkono v. Tropical Pesticides Research, Civil Application No. 2 of 2009** to the effect that:

"In view of the above authorities, it is therefore apparent that in order to know whether the order is interlocutory or not, one has to apply "the nature of the order test". That is, to ask oneself whether the judgement or order complained of finally disposes of the rights of the parties. If the answer is in the affirmative, then it must be treated as a final order. However, if it does not, it is then an interlocutory order."

From this decision it is wide open that we don't look into the nature of the Preliminary objection which was upheld but the nature of the order or decision itself. It was wrong for the applicant to look for the nature of

P.O instead of the nature of the order issued by the CMA which had no effect of finally determining the suit.

With the here in above analysis, I find that this court has no jurisdiction to entertain the application against an interlocutory order. The revision is thus incompetent and accordingly dismissed.

Mindful, apart from hearing the P.O, this court also heard simultaneously with the main application. In due course since the preliminary objection by the respondent holds water, I will not endeavor my efforts into discussing the main application rather I am condemned to strike out the application and direct the parties to abide to the legal procedures.

No orders as to costs.

It is so ordered.

It is so ordered.

DATED at **SHINYANGA** this 19th day of February, 2024.




F. H. Mahimbali
Judge