

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

LABOUR REVISION NO. 12348 OF 2024

*(Originated from the Commission for Mediation and Arbitration of Shinyanga in
Dispute No. CMA/SHY/81/2023)*

BETWEEN

KIRIBO LIMITED.....APPLICANT

VERSUS

ISMAIL WAZIRI AND 59 OTHERS.....RESPONDENT

JUDGMENT

3rd April & 31st May 2024

MASSAM, J.:

In this application, the applicant seeks the court's revision of the Award from the Commission for Mediation and Arbitration of Shinyanga (CMA) in Labour Dispute No. CMA/SHY/81/2021 dated 26th day of July, 2023 (Alfred Massay, Arbitrator).

Prior to the hearing of the application, the respondents raised five points of preliminary objection as follows:

1. That, the Honourable Court has not been properly moved to entertain an application lodged after the expiry of 6 weeks of the CMA award.

2. That, the application lodged into this Court is hopelessly Res Judicata.
3. That, the application lodged is hopelessly time barred.
4. That, the application is incompetent and untenable as is supported by affidavit which is incurably defective for offending Section 44 (1) of the Advocate Act, Cap 341.
5. That, the application is hopelessly incompetent for offending laws governing decisions issued by Registrar in Execution of the CMA decree.

During the hearing of the raised points of objection, Mr. Frank Maganga, Personal Representative represented the applicant whilst Mr. Ismail Waziri, the 1st respondent represented the whole respondents. By the consent of the parties, the hearing was done by way of written submissions. Their submission will be considered during the determination of the raised Points of preliminary objection.

Starting with the 1st ground of Preliminary Objection, Mr. Ismail submitted that this application is time barred. He submitted further that as per **Section 91 (1) (a) and (b) of the Employment and Labour Relations Act**, Cap 366 R.E 2019 the application for revision is filed at the High Court within six weeks from the day the award was delivered.

He argued that in this application, the award of the CMA was delivered on 26th day of July 2023 and this application was filed on 20/10/2023 while 16 days has already lapsed. Thus, he added that the applicant was supposed to file an application for extension of time as per **Rule 56 (1) of the Labour Court Rules**, GN No. 106 of 2007 for the time to be extended prior to the filing of this application. He supported his argument by citing the case of **Ezekiel Andrew v. AfricanLife Tanzania** [2011-2012] LCCD 35.

On his side, Mr. Maganga did not respond to the points of preliminary objection raised by the respondents and instead he filed a written submission supporting the application stating that each party was ordered to argue their respective cases. Before I determine the 1st ground of preliminary objection, with due respect I wish to make it clear to Mr. Maganga that when the court allow the preliminary objection to be argued together with the main case, the parties are supposed to argue the raised points of preliminary objection and then turning to the main application. Mr. Maganga proceeded to urge his application as if there was no objection raised in this application. There is no procedure where each party submit in respect of his case without respond to what was submitted by the other party, because respondent raised a

Preliminary Objection of time barred Mr. Maganga was required to respond on it first by telling this court if the said application is out of time or not. As it was held in the case of **Director General, Regional Manager (Iringa) NSSF v. Machumu Mkama**, Civil Appeal No. 5 of 2018 (CAT at Dar es Salaam) reported at Tanzlii that:

"As the practice of the Court, the preliminary objections have to be disposed first before going into determination of the merit of the appeal".

Guided by the cited authority the same principle applies to our application at hand that the PO was required to be dealt first before going to determine the said revision the procedure which was not followed by Mr. Maganga.

Regarding the 1st point of PO where the respondent submitted that the matter is time barred, I am aware with **Section 91 (1) (a)** of the ELRA which provides that:

"(1) Any party to an arbitration award made under section 88(8) 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;"

Guided by the cited provision, the ruling at the CMA was delivered on 26/7/ 2023 and the applicant was served with the award on 28/7/ 2023 however this application was filed on 20/10/2023 when more than 42 days has already lapsed. Thus, as per **Rule 56 (1) of GN 106 of 2007**, the applicant was supposed to seek for extension of time before filing this application. The said rule provides that:

"The Court may extend or abridge any period prescribed by these Rules on application and on good cause shown, unless the Court is precluded from doing so by any written law".

In our case at hand the applicant failed to seek an extension of time as required by the law for the reasons best known to himself. For that reasons this honourable court has not been properly moved to entertain an application lodged after the expire of 6 weeks after the delivery of the CMA's ruling.

That being said, the 1st ground of the preliminary objection is hereby sustained. As the 1st ground dispose the whole application, there is no need to determine the rest of the raised points of objection.

For the reasons submitted herein, the application is worthy of being dismissed for want of merit as it was filed out of time without extension of time as I hereby do. This being a labour matter I give no order as to costs.

It is so ordered.

DATED at SHINYANGA this 31st day of May 2024.



A handwritten signature in blue ink, appearing to read "R.B. Massam".

R.B. Massam
JUDGE
31/05/2024