

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

LABOUR REVISION NO. 06 OF 2023

**SUN ACADEMY PRIMARY AND
SECONDARY SCHOOL APPLICANT**

VERSUS

HILTRUDA SHAYO RESPONDENT

(Originating from Labour Dispute No. CMA/IR/ARB/09/2022)

RULING

**Date of last order: 14/05/2024
Date of Judgement: 14/06/2024**

S.M. KALUNDE, J.:

This ruling resolves a preliminary objection raised by the respondent to the effect that the application is fatally defective, untenable and misconceived for being timely barred.

To argue the objection the respondent appeared in person unrepresented, while the applicant was represented by Mr. Emmanuel Chengula, learned Advocate.

In support of the preliminary objection, the respondent argued that the matter before the CMA was decided on the 29th March, 2023. On the day, the applicant was informed that if she wished to challenge the decision, she should do so within six

weeks. The respondent added that the six weeks expired on the 10th May, 2023. However, the present was filed on the 19th May, 2023, which was a delay of almost nine days without leave of the court. In view of the above submissions, the respondent argued that the application was filed out of time. She prayed that the application be dismissed for being filed out of time.

In reply, Mr. Chengula conceded that the decision at the CMA was delivered on the 29th March, 2023 and that the applicant had six weeks within which to file revision. The learned counsel added that it was not in dispute that the six weeks expired on the 10th May, 2023. However, the learned counsel objected that the present application was filed on the 19th May, 2023. The learned counsel argued that in accordance with information available on the JSDS as of the 29th September, 2023, the present application was filed on the 04th May, 2023. The learned counsel invited the court to take judicial notice of the information available in the JSDS system and the printout printed from the Judiciary submitted in reply to the counter affidavit.

The learned counsel argued that once a pleading or any documents for that matter, is filed through the online JSDS or any judiciary system, that application is deemed filed on the

date it was filed on the system. To support his argument the learned counsel cited the decision of this court in case of **Fredy Mbeyela vs Tanzania Education Authority** (Revision Application No. 269 of 2021) [2022] TZHCLD 659 (13 May 2022) TANZLII at page 6. The learned counsel insisted that the application was filed within the prescribed time limit.

The respondent's rejoinder was brief, she contended that now that the applicant has stated that the application was filed on time in the JSDS system, she is leaving it to the court to look into its own systems and decide whether or not the case was filed as argued by the applicant.

My duty now is to examine whether the present application has been filed within the time limits prescribed by law. As correctly submitted by the parties the time limit for challenging decisions of the CMA to this court is governed by section 91(1)(a) of the Employment and Labour Relations Act [Cap. 366 R.E. 2019], the respective section read:

"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."***

In light of the above provisions, an application for revision against the decision of the CMA must be filed within six weeks of the date that the award was served on the applicant.

In the instant case, the award was delivered on the 29th March, 2023, in the presence of both parties. There is no dispute that the CMA informed the applicant that if he wished to challenge the decision, she should do so within six weeks. It is also correct that the six weeks expired on the 10th May, 2023.

The area of controversy relates to the question whether the application was filed on time. While the respondent maintain that the matter was filed on the 19th May, 2023, which would amount to a delay of almost nine days and without leave of the court, the counsel for the applicant maintain that the application was properly lodged in the judiciary online systems on the 04th May, 2023. To verify the information, the counsel for the applicant invited the court to take judicial notice of the

date and time when the matter was filed on its online JSDS system prior to its transformation to the current electronic case management system. The counsel for the applicant view is that, since the matter was properly lodged online within time, the timeline for manual admission should not be considered in calculating the timeous of the application.

It is correct that under rule 4(1) of **the Judicature and Application of Laws (Electronic Filing) Rules, 2018, G.N. No. 148 of 2018**, the Chief Justice has been given a mandate to establish an electronic filing system and make provision for specified documents to be filed, served, delivered or otherwise conveyed using that system. Rule 4(2) provides for functional equivalence by providing that where a document is required to be filed, served, delivered or otherwise conveyed to the court under any other provision of the Rules, it shall be so filed, served, delivered or otherwise conveyed using the electronic filing service.

In line with rule 4 above, the judiciary of Tanzania established the Judiciary Statical Dashboard System (JSDS). The system operated for the large part of 2020 – 2023. In November, 2023, the judiciary implemented a new and comprehensive electronic case management system (eCMS). The eCMS is a much complex and comprehensive system

covering both court processes as well as non-court (trial) process. The eCMS also serves as the electronic filing system envisaged under rule 4.

Rule 8 of the Rules provide further that all pleadings, petitions, applications, appeals and such other documents must be filed electronically through an electronic management system. In accordance with rule 9, the official records shall be those contained in the electronic case file (ECF). In accordance with rule 8 read together with rules 10, 12, 17, 19, 20, 25, the current practice is that, upon filing the electronic records, a litigant would be required to print hard copies and file the same with the court. See also the decision of this court in the case of **Mohamed Hashil vs National Microfinance Bank Ltd (NMB Bank)** (Labour Revision No. 106 of 2020) [2020] TZHCLD 3789 (6 November 2020) TANZLII.

Regarding reckoning the date and time for filing online applications, rule 21 of the Rules provides:

"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."

In accordance with rule 21(1) above, a document filed online is deemed to have been filed on a particular date if it is filed before midnight on that particular date or day unless there are specific orders to the contrary. See also **Fredy Mbeyela vs Tanzania Education Authority** (supra).

In the instant case, I have a privilege to access the records of the eCMS regarding the present case. In accordance with the digital file system, there is no dispute that the present case was filed by the applicant on the 04th day of May, 2023 at 14:13:41 Hours, East African time. The system indicates that the matter was lodged by the account of Mr. Emmanuel Chengula, the learned counsel for the applicant. I must also point out here that, in accordance with rules 28, 29, 30 and 31, users of the electronic filing system envisaged under rule 4 are required to register and be issued credential for their access of the system. The counsel for the applicant is also a registered user of the said system. It is also worth noting further that, all proceedings in the present case are also conducted through the eCMS.

All said and done, since the timeline for filing the instant application was the 10th May, 2023, and considering that the present application was filed on the online system on the 04th day of May, 2023, the application was thus filed within the prescribed time limit.

For the foregoing reasons, I am satisfied that the application was filed within time and is therefore not time barred. The preliminary objection is thus without merits. It is accordingly overruled. The matter shall proceed to determination of the merits. In the circumstances, I make no order as to costs

It is so ordered.

DATED at IRINGA this 14th day of June, 2024.



A handwritten signature in blue ink, appearing to read "S. M. Kalunde".

S. M. Kalunde

JUDGE