

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(IRINGA SUB-REGISTRY)

AT IRINGA

LABOUR REVIEW NO. 01 OF 2023

CHRISPAS MADEGHE CONSTANTINE APPLICANT

VERSUS

MUFINDI TEA AND COFFEE LTD. RESPONDENT

(Originating from Labour Revision No. 01 of 2022)

RULING

Date of last order: 20.02.2024

Date of Judgement: 01.03.2024

S.M. KALUNDE, J.:

This ruling resolves a preliminary objection raised by the respondent that the present application is hopelessly time barred. Historically, on the 26th day of September, 2022, the respondent lodged Labour Revision No. 13 of 2023 seeking to revise the award of the Commission for Mediation and Arbitration for Njombe District in Labour Dispute No. CMA/NJ/JULY/19/2021. Unfortunately, on the 28th day of March, 2023, Labour Revision No. 13 of 2023 was struck out.

after the counsel for the respondent, who were applicants then, conceded to a preliminary objection on a point of law that the application was time barred.

The applicant, who was a respondent then, was aggrieved by the decision of this court striking out Labour Revision No. 13 of 2023. In his opinion, the correct approach to be taken by the court should have been to dismiss the application instead of striking it out. In view of that, he lodged the present application seeking the indulgence of this court in reviewing its decision striking out Labour Revision No. 13 of 2023 and seeking for orders that the court substitute with it, a decision dismissing the application.

The present application was lodged on the 10th day of May, 2023. Thereafter, the respondents were dully served. Subsequently, on the 08th day of June, 2023, the respondent lodged their reply to the memorandum of review. Together with it, they lodged a notice of preliminary objection containing one point of preliminary objection that ***"This application is hopelessly time barred."***

In support of the preliminary objection, Mr. Idris Msemwa, learned Advocate for the respondent submitted that the present application was filed out of time in contravention of rule 27(1) of **the Labour Court Rules G.N. 106 of 2007** (hereinafter "the Labour Court Rules"), which requires that a memorandum of review be filed within fifteen (15) days from the date of delivery and receipt of the decision sought to be reviewed. The learned counsel argued that, on the 28th day of March, 2023, when Labour Revision No. 13 of 2023 was struck out, both parties were represented by advocates. The learned counsel argued that, on the same day both parties were supplied with copies of the drawn order for their actions. The learned counsel submitted that instead of promptly lodging his application immediately, the respondent waited for almost 45 days until around the 10th day of May, 2023, when the present application was lodged.

Mr. Msemwa concluded that, lodging the memorandum of appeal 45 days after obtaining the decision sought to be challenged was a contravention of the provisions of rule 27(1) of the Labour Court Rules. In view of the above, the learned counsel advised that

the application be dismissed in terms of section 3 of **the Law of Limitation Act [Cap. 89. R.E. 2019]** for being filed out of limitation period. To support his view, the learned counsel cited the case of **Mariam Enock Chacha vs Accacia Bulyanhulu Gold Mine** [2020] TZHC 754 (29 April 2020) TANZLII at page 5 and 6.

In reply, Mr. Yusuph Luwumba, learned advocate for the applicant submitted that, being aggrieved by the impugned decision, the applicant immediately filed a Notice of Review on the 11th day of April, 2023, as required by rule 27(1) of the Labour Court Rules. He added that, in accordance with rule 27(6) of the Labour Court Rules, upon receipt of the Notice the registrar was required to supply parties with a certified copy of the impugned decision. The learned counsel submitted that, upon filing of the notice, on the 27th day of April, 2023, they were served with summons. According to the learned counsel, upon being served with summons, on the 10th day of May, 2023, the applicant filed a memorandum of review. The learned counsel conceded that, considering that the challenged decision was delivered on the 28th day of March, 2023, it is correct

that the decision was lodged after a lapse of 45 days. That notwithstanding, Mr. Luwumba insisted that the application was time barred because a Notice of Review was lodged on time as required by law.

Mr. Luwumba interpreted the provisions of rules 27(1) and rule 27(6) of the Labour Court Rules to mean that a notice of review and a memorandum of review cannot be filed simultaneously. In his view, an applicant can start the review process by lodging notice of review and thereafter file a memorandum of review. The learned counsel added that, since the notice of review was filed within thirteen days from the date of the decision, then the application was lodged on time.

By way of distinguishing the case of **Mariam Enock Chacha vs Accacia Bulyanhulu Gold Mine** (supra), Mr. Luwumba submitted that the said case largely dealt with a situation where a notice of review was filed out of time and not a memorandum of review filed out of time. The learned counsel argued that, in the

present case, the notice of review was filed on time but it was only the memorandum of review which was filed out of time. Having said that, the learned counsel insisted that the application was proper before the court, having being filed within the prescribed time limit.

When he was prompted by the court to explain which document commences the application in accordance with rule 27(6) of the Labour Court Rules, Mr. Luwumba conceded that it was a memorandum of review and not the notice of review.

In his rejoinder, Mr. Msemwa submitted that the applicant counsel admission that the memorandum of review was filed after 45 days; and that a review process is commenced by the memorandum of review and not a notice of review demonstrated that they were conceding that the application was filed out of time. He insisted that a concession meant that the application was filed out of time and hence incompetent.

Submitting on the applicability of rule 27(7), Mr. Msemwa submitted that the said rule was only applicable in situations where

parties were not supplied with copies of the impugned decision. The learned counsel implored that, where parties are served with copies of the impugned decision the provisions of rule 27(1) kicks in and the applicant is supposed to lodge his application within fifteen (15) days thereafter. The learned counsel added that, there was no evidence that the applicant was served with summons or copies of the impugned decision on the 27th day of April, 2023, as alleged by the counsel for the applicant.

Finally, the learned counsel refuted a contention by Mr. Luwumba that rules 27(1) and rule 27(6) prohibits the filing of the Notice of Review and Memorandum of Review simultaneously. In the end, Mr. Msemwa urged the court to dismiss the application for being time barred.

Having narrated the factual background and summary of submissions by the parties, I think it behooves to revert to the merits of the preliminary objection. The question I have to resolve is

whether the present application was filed on time as required by the Labour Court Rules.

To start with, I wish to point out several undisputed facts as may be gleaned from the records: firstly, it is evident from the records that the impugned decision was delivered on the 28th day of March, 2023. Secondly, it was also not disputed that on the same day, parties were supplied with copies of the order striking out Labour Revision No. 13 of 2023. Thirdly, there is agreement between parties that the notice of review was lodged on the 11th day of April, 2023, thirteen days after delivery of the impugned decision; and fourthly, that the memorandum of review in the present case was lodged on the 10th day of May, 2023, which is approximately forty-five days from the delivery and supply of the impugned decision to the parties.

However, despite all the above consensus, it seems clear to me that parties are at loggerheads on whether, considering the circumstances, the present application was lodged on time. The

respondent's argument is that given the memorandum of review was filed on the 10th day of May, 2023, 45 days after receipt of the decision, the application was filed out of time. The applicant, on the other side, admits that the memorandum of review was filed on the 10th day of May, 2023. However, he maintains that, since the notice of review was filed on the 11th day of April, 2023, thirteen days after delivery of the impugned decision, then the application was filed on time.

To resolve this controversy, I think it would be instructive to reproduce the provisions of rule 27 of the Labour Court Rules which regulate the procedure and timelines for review of decisions of this court. The entire provision is reproduced hereunder:

"27.- (1) Any review shall be instituted by filing a written notice of review to the Registrar within fifteen days from the date the decision to be reviewed was delivered.

(2) Any person considering himself aggrieved by a judgment, decree or order from which-

(a) an appeal is allowed, but from which no appeal has been preferred; or

- (b) no appeal is allowed, and who, from the discovery of any new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the judgment or decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the judgment, decree or order made against him,*
- (c) may apply for a review of the judgment, decree or order to the Court.*
- (3) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.*
- (4) A copy of the notice to review shall be served on all interested parties.*
- (5) The notice to review shall substantially be as prescribed in Form No .6 in the Schedule to these Rules.*
- (6) On receipt of a notice to review, the Registrar shall as soon as possible supply a certified copy of the decision sought.*
- (7) On receipt of a copy of the decision of the review, the applicant shall within fifteen days file a concise*

memorandum of review stating the grounds for the review sought without narratives or arguments.

- (8) Any party on whom a notice to review has been served may, within fifteen days after the filing of the applicant's memorandum of review subject to subrule (7), file a concise statement of response in respect of the memorandum of review without narratives or arguments.*
- (9) Where the Registrar receives a statement of response in terms of subrule (8) or the time limit for filing of the statement of response lapses, whichever occurs first, the review shall, subject to the provisions of subsection (3) of section 50 of the Act, be placed before the presiding Judge and assessors who passed the decision for hearing and decision."*

The above section is quite clear in its meaning and directives. The rule provides that any person aggrieved by a judgment, decree or order of this court for which an appeal is allowed, but from which no appeal has been preferred; or where no appeal is allowed, and who, from the discovery of any new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the judgment or decree was passed or order made, or on account of

some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the judgment, decree or order made against him, may apply for a review of the judgment, decree or order to this court.

In accordance with rule 27(1) and (5), the first step in lodging the application for review is to file a notice of review, in a prescribed form, which must be filed within fourteen days from the delivery of the decision. Thereafter, subrule (4) requires that the notice be served on all interested parties including the Registrar. Upon receipt of the notice, in terms of subrule (6), the Registrar is required to supply parties with a certified copy of the decision sought to be challenged.

Upon being supplied with copies of the decision sought to be challenged applicant is required, within fifteen days, to file a concise memorandum of review stating the grounds for the review. This is provided under subrule (7) of rule 27. Further to that, in terms of subrule (8), upon receipt of the memorandum of review, the

respondent is also supposed to file his reply to the memorandum of review within 15 days.

I have pointed out above that, in the instant case the decision sought to be challenged was delivered on the 28th day of March, 2023. Immediately thereafter parties were supplied with copies of the decision. Thirteen days later, on the 11th day of April, 2023, the applicant lodged a notice of review. At this point, the applicant had already been supplied with copies of the impugned decision. However, he did not file the memorandum of review despite the fact that he had the decision sought to be reviewed.

In his submissions, Mr. Luwumba seemed to suggest that he could not file the memorandum of review until and unless he was served with certified copies of the impugned decision by the Registrar as required by subrule (6) of rule 27. The learned counsel submitted that he was served with summons on the 27th day of April, 2023. In his opinion, this was the time the fifteen days limitation period under rule 27(7) started to run. With due respect to the learned counsel, I

do not think that is a correct position of the law. Firstly, it is not true that the applicant was supplied with copies of the decision sought to be challenged on the 27th day of April, 2023. Upon perusal of records, I have noted that that was in fact the day the matter was slated for a first mention before the presiding judge.

Secondly, the applicant obtained copies of the decision sought to be challenged on the 28th day of March, 2023. In that respect, the fifteen days to lodge a memorandum of review prescribed under rule 27(7) started to run on the 28th day of March, 2023, and not on the 27th day of April, 2023. It is illogical that the applicant obtained a copy of the decision on the 28th day of March, 2023, and failed to lodge the memorandum of review within the requisite time allegedly waiting for a resupply of the same decision from the Registrar. In fact, Mr. Luwumba failed to even substantiate that he indeed obtained the copies of the impugned decision on the 27th day of April, 2023. His argument was all along that on the respective date, they obtained summons from the registrar. To my understanding, summons and orders are two distinct court documents. I do not think

the two documents are disconcertingly similar that the learned counsel would confuse one for the other.

At this juncture I wish to state that, applying a purposive interpretation, it seems clear to me that rule 27(6) was intended to ensure that prior to lodging a memorandum of review, a party is supplied with a certified copy of the impugned decision by the Registrar. The said provision cannot be interpreted to mean that a party who had already obtained a copy of the decision sought to be challenged is precluded from lodging the memorandum of review alongside a notice of review. My careful reading of the entire rule 27 leads me to a conclusion that the timings stated therein are sequentially inclusive and not exclusive. This means that immediately after the decision a party must issue a notice of review within fifteen days. Then he should obtain a copy of the decision so that he may prepare a concise memorandum of review. After obtaining the copy of the decision, a memorandum of review must also be filed within fifteen days.

The section also implies that, where the copy is supplied to a party on the date of the decision, then the applicant must lodge his memorandum of review after fifteen days because the clock of limitation starts to run simultaneously for filing a notice and memorandum of review. That means a notice of review and memorandum of review may be filed simultaneously. Mr. Luwumba contention that, according to rules 27(1) and rule 27(6), a notice and memorandum of review cannot be filed simultaneously is thus unfounded.

From the above analysis I am satisfied that the clock of limitation in lodging the memorandum of review started to winddown against the applicant on the 28th day of March, 2023 when he obtained copies of the impugned decision. Therefore, by the 10th day of May, 2023, when the memorandum of review in the instant case was filed, the applicant was therefore late by almost 43 days. For the foregoing reasons, I agree with Mr. Msemwa that this application is hopelessly time barred.

As for the way forward, the Labour Court Rules do not provide for the consequence of an application of review filed out of time. However, in terms of rule 55(1), in situations where the Labour Court Rules do not provide for a specific procedure the court is allowed to adopt any procedure that it deems appropriate in the circumstances. Considering that allowance, I agree with Mr. Msemwa that, resort must be made to the provisions of section 3 of the law of Limitation Act.

That said, I sustain the preliminary objection raised by the respondent and proceed to dismiss the application in its entirety for being lodged out of time.

It is so ordered.

DATED at IRINGA this 29th day of February, 2024.




S. M. Kalunde

JUDGE