

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT – LABOUR DIVISION
(MUSOMA SUB REGISTRY AT MUSOMA)
(Revisional Jurisdiction)

LABOUR REVISION No. 17 OF 2023

*(Arising from the Commission for Mediation and Arbitration for Mara
at Musoma in Labour Dispute No. CMA/MUS/231/2021)*

NORTH MARA GOLD MINE LIMITED APPLICANT

Versus

JOHN MILINDI MAKOKO RESPONDENT

RULING

29.01.2024 & 05.02.2024
Mtulya, J.:

Section 21 (2) of the **Law of Limitation Act [Cap. 89 R.E. 2019]** (the Law of Limitation) provides that:

In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting, with due diligence, another civil proceeding, whether in a court of first instance or in a court of appeal, against the same party, for the same relief, shall be excluded where such proceeding is prosecuted in good faith, in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

The enactment was invited and resolved early last year, specifically on 20th February 2023 by our superior court, the Court

of Appeal (the Court) in the precedent of **Geita Gold Mining Limited v. Anthony Karangwa**, Civil Appeal No. 42 of 2020. The thinking of the Court is displayed at page 9 of the judgment that:

It goes without saying that section 21 (2) of the Law of Limitation does not require a party who intends to rely on it, to move the court by way of application for extension of time before he can have the time spent in prosecuting another proceedings against the same party excluded when computing the period of limitation. That is the law which, though not fixed, is well settled...we have no reason to disturb [the settled law].

The applicant in the instant application, **North Mara Gold Mine Limited** had hired and instructed **Mr. Faustin Anton Malongo**, learned counsel, to approach and file **Labour Revision No. 17 of 2023** (the Revision) in this court on 31st August 2023.

However, the application was protested by the respondent's Personal Representative, **Mr. Marwa Chacha Kisyeri**. According to Mr. Kisyeri, the applicant has breached section 91 (1) (a) of the **Employment and Labour Relations Act [Cap. 366 R.E. 2019]** (the Employment Act), which requires applicants disputing labour awards issued by the **Commission for Mediation and Arbitration** (the Commission) to approach this court in six (6) weeks' time. In

the opinion of Mr. Kisyeri, six (6) weeks is equivalent to forty-two (42) days, whereas the applicant had approached this court after seventy-two (72) days. In justifying his complaint, Mr. Kisyeri submitted that the decision of the Commission in **Labour Dispute No. CMA/MUS/231/2021** (the dispute) was delivered on 13th June 2023 and the applicant filed the present Revision on 31st August 2023, without an application of leave for enlargement of time to file revision in this court.

In replying the point of protest, Mr. Malongo cited the indicated two (2) paragraphs in section 21 (2) of the Law of Limitation and page 9 of the judgment of the Court in the cited precedent. According to Mr. Malongo, the applicant has the right to enjoy automatic exclusion of the time spent when prosecuting **Labour Revision No. 14 of 2023**, which was delivered by this court on 31st August 2023. In his opinion, **Labour Revision No. 14 of 2023** had involved the same parties and was prosecuted in good faith and due diligence. In the opinion of Mr. Malongo, if the time in prosecuting **Labour Revision No. 14 of 2023** is automatically excluded, the time in filling the present application was supposed to end on 1st September 2023.

In rejoining his earlier submission. Mr. Kisyeri insisted that the Revision was filed out of time without an application for

enlargement of time or leave of this court hence it must be struck out with costs. Regarding the provision of section 21 (2) of the Law of Limitation and precedent in **Geita Gold Mining Limited v. Anthony Karangwa** (supra), Mr. Kisyeri submitted that the section does not apply and the indicated precedent is distinguishable. In justifying his submission, Mr. Kisyeri had produced three (3) reasons, namely: first, the applicant does not pray the same relief as in the Revision No. 14 of 2023; second, the applicant had protested and argued a point of law registered in Labour Revision No. 14 of 2023; and finally, in the current protest, there are two (2) separate labour revisions, No. 13 of 2023 and No. 17 of 2023 disputing on the same subject matter.

I have scanned the submissions of Mr. Kisyeri and Mr. Malongo. I have also perused the provisions in section 21 (2) of the Law of Limitation and section 91 (1) (a) of the Employment Act. The sections regulate time limitations and automatic exclusion of time spent in prosecuting actions in courts. It is fortunate that both sections were invited, explained and resolved by our superior court in the precedent of **Geita Gold Mining Limited v. Anthony Karangwa** (supra). The facts in the indicated precedent show similar dispute, like the instant one. It was a labour dispute filed

and resolved by the Commission on 17th October 2018 and brought in this court by way of revision within time.

However, it was struck out on 22nd February 2019 and the applicant had preferred another revision on 6th March 2019, which was out of forty-two (42) days as per requirement of section 91 (1) (a) of the Employment Act. Following the situation, the respondent had raised a point of objection complaining that the revision was brought after one hundred and fifty (150) days contrary to section 91 (1) (a) of the Employment Act. This court was then convinced and persuaded by the respondent and held that the revision was time barred. When the Court was invited to resolve the dispute, it interpreted section 21 (2) of the Law Limitation to cover a situation where the applicant was busy in this court prosecuting his case for the same reliefs and in good faith. Finally, at page 11 of the judgment, the Court had allowed the appeal, set aside the Ruling of this court and remitted the second revision to this court for consideration of the award of the Commission.

It is unfortunate that similar dispute is brought to this court within a year period. According to Mr. Kisyeri, this is a distinct dispute as: first, the applicant does not pray the same relief as in Revision No. 14 of 2023; second, the applicant had protested and argued a point of law registered in Labour Revision No. 14 of 2023;

and that in the current protest, there are two separate labour revisions, No. 13 of 2023 and No. 17 of 2023 disputing on the same subject matter. These are unfortunate reasons for distinguishing the decision of the Court in the cited precedent and the instant dispute.

The current revision was filed to dispute the award of the Commission in the dispute, which is a similar contest as Revision No. 14 of 2023, which was struck out for want of competence. The protest on existence of two revisions in No. 13 of 2023 and No. 17 of 2023 were not supported by any law. Any protest on a point of law, must be supported by law, and in any case, that would be raising new issues in the present contest.

Finally, Mr. Kisyeri submitted that the applicant had resisted the previous Revision No. 14 of 2023 hence she should not benefit from the directives of the Court in the precedent of **Geita Gold Mining Limited v. Anthony Karangwa** (supra). Impliedly, Mr. Kisyeri was suggesting two issues, namely: first, when points of law are raised by respondents, applicants should not protest them; and second, the directives of the Court may be disregarded by this court. If the three (3) reasons of Mr. Kisyeri are positively considered by this court, that will be unlucky part of legal contests and developments of the law. This court cannot be part to it.

Having said so, and noting the raised point has already been resolved by the Court in the precedent of **Geita Gold Mining Limited v. Anthony Karangwa** (supra), this court cannot be detained in trying to interpolate other issues. I am therefore moved to overrule the objection, as I hereby do so. I do so without costs as this is a labour dispute and the contest on the award of the Commission is still on the course.

Ordered accordingly




F. H. Mtulya

Judge

05.02.2024

This Ruling was delivered in Chambers under the Seal of this court in the presence of the applicant's learned counsel **Mr. Faustin Anton Malongo** and in the presence of the respondent's Personal Representative, **Mr. Marwa Chacha Kisyeri**.


F. H. Mtulya

Judge

05.02.2024