

**IN THE HIGH COURT OF TANZANIA**  
**LABOUR DIVISION**  
**AT DAR ES SALAAM**

**REVISION NO. 449 OF 2019**

**BETWEEN**

**RIDHIWANI A. JUMA..... APPLICANT**

**VERSUS**

**ULTIMATE SECURITY (T) LTD..... RESPONDENT**

**RULING**

*Date of Last Order: 02/06/2020*

*Date of Judgement: 24/07/2020*

**Aboud, J.**

The Applicant in this revision application calls upon the Court to examine and revise the Commission for Mediation and Arbitration (herein CMA) award in Labour Dispute No. CMA/DSM/KIN/R.1158/16, Dar es Salaam delivered by Hon. Mwalongo, A. Arbitrator dated 14/06/2018.

The application is made under the provision of section 91 (1) (a) 91 (2) (b) of section 94 (1) (b) (i) of The Employment and Labour Relations Act [CAP 366 RE 2019], herein the Act, Rule 24 (1), 24 (2) (a) (b) (c) (d) (e) and (f), Rule 24 (3) (a) (b) (c) (d) and 28

(1) (c) (e) of the Labour Court Rules GN No. 106 of 2007 (herein referred as the Labour Court Rules).

The respondent vehemently opposed the application through notice of preliminary objection (PO) on point of law to the effect that:-

The application is incompetent for  
hopelessly being time barred.

During hearing the applicant was represented by Joseph Basheka, Personal Representative while the respondent enjoyed the services Richard Liampawe, respondent's Principal Legal Officer. The Court ordered hearing of preliminary objection to proceed by way of written submissions.

Arguing in support of the application Mr. Richard Liampawe submitted that, on 11/10/2018 the applicant filed an application for revision No. 643 of 2018 before this Court which was struck out on 06/05/2019 for being incompetent. He stated that, the court granted him seven (7) days leave to re-file a fresh and proper application, but to the contrary he re-filed this application on 13/05/2019 which was registered as Revision No. 449 of 2019.

Mr. Richard Liampawe went on to submit that, the applicant did not comply with the Court's order because he re-filed his application one day after the granted time limit. He stated that, there was no reason for delay or any prayer for extension of time. Mr. Richard Liampawe argued that failure to comply with the scheduling order of the court to file the application for revision on time is as good as failure to attend hearing of the matter on the scheduled hearing date. He stated that, the consequences of which is to dismiss the matter for want of prosecution. Mr. Richard Liampawe cited number of cases to support his argument.

In reply Mr. Joseph Basheka submitted that, it is not disputed there was an order which granted leave to the applicant to file a fresh and proper application within seven days (7) which issued on 06/05/2019. He stated that, the application for Revision No. 499 of 2019 was filed on 13/05/2019. Mr. Joseph Basheka further submitted that, in normal counting of days from 06/05/2019 up to 13/05/2019 when the application was filed, it gives a total of 8 days. Therefore, that filing was out of 7 days given by the Court but in law the application was filed within time granted by the Court.

Mr. Joseph Basheka went on to submit that, in computation of time the first day in which the order was issued is not included in the granted time limit of seven days. He argued that, normally time started to run against the applicant from the second day of the order, which is on 07/05/2019. He said from 07/05/2019 to 13/05/2019 when the application was filed is only seven days, therefore the application was filed within time granted by the Court. To support his submission Mr. Joseph Basheka relied to the provision of section 60 (1) (b) of the Interpretation of Laws Act [CAP 1 RE 2002].

Mr. Joseph Basheka further submitted that, in the impugned order the word "from" was used; therefore, the first day in which the order was issued is not included in the period of seven days. To robust his argument Mr. Joseph Basheka referred the case of **Kes International Limited Vs. Azania Bank Limited**, Comm. Case No. 152 of 2015 (unreported). He also relied to section 19 (1) of the Law of Limitation Act [CAP 89 R.E 2002]. He added that, even if the first day in which the order was issued is included in the period of seven (7) days, the application will still be considered to have been filed timely. He said, the last day he was supposed to file his application was on Sunday which is also an excluded day as per

section 60 (1) (h) of the Interpretation of Laws Act, reads together with section 19 (6) of the Law of limitation Act.

Mr. Joseph Basheka strongly submitted that, the cases cited by the respondent are irrelevant in the present application, therefore they should be disregarded. He concluded by praying that the respondent's preliminary objection be dismissed for lack of merit.

As rightly submitted by both parties it is an undisputed fact that, an order to file fresh and proper application was issued on 06/05/2019 and the respondent refiled the present application on 13/05/2019, which was eight (8) days from the date of the order. Therefore, it is crystal clear that the applicant did not comply with the Court's order of filing this application within seven (7) days. It has been discussed in a number of cases that limitation is there to speedup administration of justice and to limit the parties not to bring litigation at their own whims. This position was firmly stated in the case of **Dr. Ally Shabhay vs. Tanga Bohora Jamaat [1997] TLR 305** where it was held that:-

"It is settled law that those who seek justice in court of law must file proceedings within the prescribed time, otherwise they will face the

law of limitation as a bar. Parties cannot conduct litigation as they deem fit. Limitation clause is there to speed truck proceedings. To the contrary, court will have endless litigations at the whims of the parties”.

The position was restated in the case of **Tanzania Fish Processors Ltd vs. Christopher Luhangula, Civil Appeal No 161/1994 Court of Appeal of Tanzania, at Mwanza** registry the court held that:-

"the question of Limitation of time is fundamental issue involving jurisdiction ...it goes to the very root of dealing with civil claims, limitation is a material point in the speedy administration of justice. Limitation is there to ensure that a party does not come to Court as and when he wishes”.

I have noted the applicant’s submission on the raised preliminary objection; he argued that the day in which the order was issued is legally excluded in computation of time. The applicant argument is based the provisions of section 60 (1) (b) of the

Interpretation of Interpretation of Laws Act, which is to the effect that:-

“60 (1) - In computing time for the purposes of a written law

(b) where a period of time is expressed to be reckoned, from, or after, a specified day, that day shall not be included in the period”.

In my view the significance of the above provision applies to written laws. The provision is applicable if the limitation of time is specifically provided in a certain written law as it reads in section 60 (1) referred above. However, in this matter an order of re-filing an application granted to the applicant is not in any written law. The relevant order was given under Court's discretion which was to be complied without any excuse. Thus, section 60 (1) (b) of the above relevant law cannot be applied to the application at hand.

In this matter the applicant was granted seven (7) days to re-file proper application. On his own whims he re-filed the application after seven days from the order. Such a conduct cannot be entertained by this court, by allowing a party to come to court when

he wishes. Certainly to allow such conduct by parties will cause a situation where there will be endless disputes which defeat the object of our labour laws. The applicant was required to adhere to the court's order; however he did not do so or even bothered to apply for extension of time before filling this application.

The law requires that, when a party delays to file an application he/she should first apply to the court to extend time to file his application. From the record, this application was filed without the prior leave of the court and outside the prescribed time limit. This position of the law have been discussed in a number of cases including the case of **DED Sengerema D/Council Vs. Peter Msungu & 13 Others**, Lab. Div. Mwanza, Misc. Appl. No. 27/2013 (unreported) Rweyemamu J. held that:-

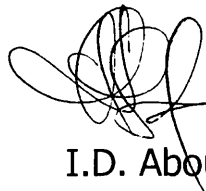
"When an action is time barred a party seeking to initiate it must first apply for extension of time. That the applicant did not do, consequently, I find this application incompetent and dismiss it as per the requirement of the law and practice".



Under the circumstance, I find the present application was filed out of time given by the Court on 06/05/2019. Hence the preliminary objection raised by the respondent has merit.

In the result the application is dismissed accordingly as it is the only remedy for applications filed out of time without leave of the Court.

It is so ordered.

A handwritten signature in black ink, appearing to be 'I.D. Aboud', written over a circular stamp.

I.D. Aboud

**JUDGE**

24/07/2020