

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

**REVISION NO. 443 OF 2019**

**BETWEEN**

**AIZACK ADAM MALYA..... APPLICANT**

**VERSUS**

**WILLY MLINGA. .... RESPONDENT**

**JUDGMENT**

*Date of Last Order: 17/07/2020*

*Date of Judgment: 29/07/2020*

**Z.G. MURUKE, J.**

Aggrieved by the ruling of the Commission of Mediation and Arbitration [herein to be referred as CMA] in the Labour Dispute No. CMA/DSM/KIN/99/R.115/17 dated 1<sup>st</sup> August, 2017 which was in favour of the respondent **WILLY MLINGA**, the applicant **AIZACK ADAM MALYA** has filed this application seeking for revision of the award on the following grounds:

- i. The mediator erred when failed to consider that, the respondent is breaching contract at the end of every month continuously by not paying salary according to Minimum Wage Orders.
- ii. The Mediator erred in law and facts when dismissed the complaint without considering the labour laws.

The application was supported with the applicant's affidavit, while the respondent filed a counter affidavit of Paschal Kamala, his advocate to challenge the application. The applicant enjoyed the service of Advocate Saulo J Kusakala, while the respondent was served by Advocate Alex F. Mianga. Hearing was by way of written submission, I thank both parties for adhering to the schedule and for their submissions.

The brief facts of the case are that the applicant was employed by the respondent on 6<sup>th</sup> June, 1999 as a supervisor in his project. He worked with the respondent with a salary of Tshs.70, 000/= per month. The respondent ceased to pay the applicant's salary for 19 years. On 03<sup>rd</sup> February, 2017 the applicant decided to refer the complaint before CMA where the matter was dismissed for being time barred. Dissatisfied with the decision the applicant filed the present application.

Submitting in support of his application the applicant's counsel submitted that, the course of action arose in 1999 where the respondent refused to pay the 1<sup>st</sup> salary. There was continuing breach of contract as the applicant have not paid the applicant his salary for 19 years. That means the fresh period of limitation started afresh at the end of each month. Referring section 7 of the Law of Limitation Act (Cap 89)RE 2002 which provides;

"where there is continuing breach of contract or a continuing wrong independent of contract a fresh period of limitation shall begin to run every moment of the time during which the breach or the wrong as the case may be continues."

He also filed the case of **Tanzania China Friendship Textile Co.Ltd v Matheson and 1360 others**, Rev. No. 88.

The respondent's counsel in his reply to the applicant's submissions he stated that in CMA F1 the applicant is claiming for 19 years unpaid salaries. That under normal circumstances it is not possible for the employee continuing to affirm the terms of the contract of employment despite the seizure of the employer to pay his monthly salary. To rely on Section 7 of the law of Limitation Act is baseless, inconsistent with principles of limitation and contrary to the legislative intent.

It was further submitted that the law requires all other dispute to be referred to the CMA within 60 days, citing Rule 10(2) of the Labour Institution (Mediation and Arbitration) Rules GN.64/2007. The cause of action arose in 1996. The applicant ought to have filed the application before CMA within 60 days from the day of occurrence of the breach. It should be noted that the Employment and Labour Relations Act Cap 366 came into force 2007 hence were supposed to be instituted under the repealed laws i.e. the Security of Employment Act. That the matter is time barred and its effect is dismissal, He cited the a number of cases in that regard including the cases of **Pee (T) Limited v Shaban Juma Omari** (2015) LCCD Part 1, Case No. 9 and **Commercial Bank of Africa (T) Ltd v Agnes Mgongo** Rev No.02/2015, LCCD 2015,Part II. It was further submitted that the Law of Limitation does not apply in labour matters. He prayed for dismissal of the application.

In rejoinder the applicant's counsel submitted that the respondent wasn't to mislead the court as the Case of **Tanzania China Friendship Textile Co.Ltd v Madahason** was instituted in 2008 and decided in 2010 while the Act was enacted in 2004 and operated from 2007.

Having considered the rival submission of the parties, issue for determination; Whether the applicant's salary claims were timely filed. The time limit for referring disputes before CMA is governed by Rule 10 (1) (2) of GN 64. The relevant provision that covers the applicant's claim is Rule 10 (2) of GN 64. It provides:-

"All other disputes must be referred to the commission within sixty days from the date when the dispute arised"

From the above provision any party having other claims apart from unfair termination, must refer the dispute to the CMA within 60 days from the date cause of action arose.

In the matter at hand it is from record that the applicant was employed in 1999 and he alleged not to have been paid even his salaries for 19 years, thus referred his claim before CMA on 03<sup>rd</sup> February, 2017.

It is my view that the matter is time barred as the cause of action arose on the first month that the respondent neglected to pay the applicant of his salary.

I have taken into consideration the applicants submission that the respondent breached the contract continuously, refereeing to law of

limitation. It is my view that the law of limitation does not apply in labour matters in a circumstance which has been specifically provided in labour laws. The labour laws are very clear that a dispute shall be referred within sixty days from the date cause of action arose. Therefore, I find no need to fault the arbitrator's decision that the dispute at CMA was time barred, thus, dismiss the application for want of merits.

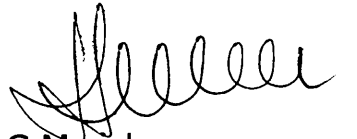


Z. G. Mũruke

**JUDGE**

29/07/2020

Judgment delivered in the presence of applicant in person and Esther Msangi for the respondent.



Z.G.Mũruke

**JUDGE**

29/07/2020