

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

**REVISION NO. 458 OF 2019**

**BETWEEN**

**STEVEN MWAKYEMBE..... APPLICANT**

**VERSUS**

**M.M INTERGRATED STEEL LIMITED..... RESPONDENT**

(Original/ CMA/DSM/KIN/R.710/12/14)

**RULING**

Date of Last Order: 24/08/2020

Date of Ruling: 30/10/2020

**Aboud, J.**

This ruling is in respect of the preliminary objection raised by respondent's Counsel against the application for revision of the decision of the Commission for Mediation and Arbitration (CMA). The revision application was opposed on three grounds namely;

- i) This application is incompetent for being time barred.
- ii) The application is incompetent for improper or wrong citation.

iii) This application is vexatious.

In supporting the first ground of the preliminary objection the respondent submitted that the applicant did not attach the ruling which granted extension of time. The respondent stated that this Court delivered its order in respect of revision No. 605 of 2017 on 10<sup>th</sup> October 2018 with a leave to re file. In support of her argument she cited the case of Meis Industries Ltd. and 2 Others v. Twiga Bank Corp, Misc. Commercial Cause No. 243 of 2015.

On second ground of preliminary objection, the respondent submitted that the application is incompetent for having wrong citation, by citing 91(1) (a) (i) of the Employment and Labour Relation Act, 2004 which is none existed. She referred different cases including the case of **Barclay Bank Tanzania Ltd v. Phylisiah Hussein Mcheni**, Application No. 239 of 2013, HC, Lab. Div. at DSM(unreported), **Total Tanzania Limited v. Zenon Oil and Gas**, Misc. Commercial Cause No. 219 of 2015, HC, Commercial Div ,at DSM (unreported).

Lastly, she submitted that the application is vexatious as the applicant filed many repetitive application and the same being struck

out with a leave to refile. Including Revision No. 62 of 2017, Revision No. 605 of 2015 and Revision No. 811 of 2018 which of the same matter and prayers. They thus prayed for the application to be dismissed.

In reply, Ms. Rutajuna submitted that Revision No. 62 of 2017 was filed within a time as the applicant received the award on 23<sup>rd</sup> January 2016 and the same was filed on 21<sup>st</sup> February 2018.

She further argued that Revision No. 811 of 2018 also was filed on time, on 13<sup>th</sup> November 2018 as the applicant was granted leave to refile within fourteen days from 30<sup>th</sup> October 2018.

On second ground of preliminary objection Ms. Rutajuna submitted that it was a typing error of (i) it didn't mean the citation, as the defect is curable by a slip of a pen therefore it cease to be pure point of law and prayed the overriding principle to be applied.

The applicant representative therefore prayed for preliminary objection to be dismissed.

Having gone through both parties submission I find the issues to be determined are whether the preliminary objections raised by the respondent has merit.

From the court records it is clear that the applicant filed Revision No.811 of 2018 within the prescribed time. However the same was struck out for being defective and the leave was granted by court on 14/05/2019 to file another competent application two (2) days from the order.

According to the records the applicant was granted two days to file another application and filed the present application on 15/05/2019.

It is settled principle of law that failure to comply with a Court's order in filing the application it's not excusable in administering justices as was rightly held in the case of **Tanzania Fish Processors Ltd. v. Christopher Luhangangula**, Civil Appeal No. 161/1994 (Unreported) held that:-

"The question of limitation of time is fundamental issue involving the jurisdiction of the Court.....it is a material point in the

speedy administration of the justice.....

limitation is there to ensure that a party does not come to court as and when he chooses”.

(Emphasis is mine).

However things are different in the present application the applicant filed the matter within a time.

On second ground of wrong citation the applicant contend that it was a typing error, I agree with the respondent's submission since the required provision to move the Court is Section 91(1) (a) of the Employment and Labour Relation Act, 2004 and the applicant cited Section 91(1) (a) (i) of the Employment and Labour Relation Act, 2004 which does not even exist in the relevant statutes. As this was not a first time for the applicant to file the incompetent application contrary to law I am of the view that the Court was not properly moved as was held in the case of In the case of **Alfonse Nikas Buhatwa T/A Coco Enterprises vs. DCB Commercial Bank PLC, Misc. Commercial Application No. 187 Of 2018 (HC-DSM)** Hon. B.K Philip held that:-

"...from the foregoing, as correctly submitted by the Mr. Mzikila, wrong citation of the law renders the application incompetent, therefore this application deserves to be dismissed and I hereby dismiss it with costs."

After conceding to the above objection, the applicant prayed the court to be guided by the overriding objective to cure wrong citation.

However, to me the overriding objective principle, cannot be applied to this situation where wrong citation has been cited, because one cannot use the said provision to cure the application which is nonexistent. It should be noted that the overriding objective principle was not meant to enable parties to circumvent the mandatory rules of the court or to turn blind to the mandatory provisions of the procedural law which go to the foundation of the case. [See **SGS Societe Generate De Surveillance SA & Another vs. VIP Engineering and Marketing Limited & Another, Civil Appeal No. 124 of 2017 (CAT-DSM)** (unreported)].

Having found that the second preliminary objections have merit, I hereby proceed to struck out the application from the Court registry and, I find no need to belabour much on the last point of objection.

It is so order.

A handwritten signature in blue ink, appearing to be 'I.D. Aboud', written in a cursive style.

I.D. Aboud

**JUDGE**

30/10/2020