

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

REVISION NO. 527 OF 2019

BETWEEN

ENOCK SHANGO.....APPLICANT

VERSUS

VGK COMPANY & WAZO ROAD HAULAGE.....RESPONDENT

(Original/ CMA/DSM/KIN/370/12/2020)

RULING

Date of Last Order: 05/08/2020

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 two grounds namely:-

- a) That the applicant's application is barred in law as the same is filed out of time without the leave of this Honourable Court.
- b) That the applicant's affidavit is barred for containing defective jurat of attestation.

In supporting the first ground of the preliminary objection Mr. Mbuga learned advocate for the respondent submitted that the applicant filed revision No. 634 of 2015, which was struck out on 23rd May 2019 for being defective with a leave to re-file within 14 days. He stated that after being struck out the applicant decided to file the matter on 10th June 2019. Which means there was a delay of 16 days from the date when an order to refile the same was issued, contrary to Section 3(1) of the Law of Limitation [Cap 89 R.E 2019].

On second ground of preliminary objection Mr. Mbuga submitted that the applicant's affidavit is bad in law for containing defective jurat of attestation, for not identifying on how the applicant being known by the attesting officer contrary to section 10 of the Oaths and Statutory Declarations Act, Cap 34 R.E 2002. To support his submission he referred the Court to the case of **Commissioner General (TRA) v. Pan African Energy (T) Ltd**, Civil Application No.277/20 of 2017.

He further submitted that from 2013 up to present application Revision No. 527 of 2019, the applicant filed several application with no success for being defective and for non-appearance.

The respondent's counsel, prayed for the application to be dismissed.

In response Mr. Shango submitted that failure to abide Court's Order of refiling the application should not be a sufficient reason to hinder the interest of justice as the applicant is a layperson, apart from legal assistance offered by Human Right Centre. He cited the case of **Ramadhan Nyoni v. M/S Haule & Company, Adovacate**, 1996 TLR 71 (HC).

He further argued that the Court should endeavor to do justice rather than technicalities. He lastly prayed for the matter to proceed on merits.

In rejoinder the applicant reiterated his submission in chief.

Having gone through both parties submission I find the issues to be determined are whether the present application was filed within the prescribed time and whether the Jurat of attestation has any defect.

From the court records it is clear that the applicant filed Revision No.634 of 2018 within the prescribed time. However, the same was struck out for being defective and the leave was granted by court on

23/05/2019 to file another competent application in fourteen (14) days from the order.

According to the records the applicant was granted fourteen (14) days to file another application however he filed the present application on 10/06/2019 instead of being filed on 06/06/2019. In other words the applicant was supposed to file the revision application on or before 06/06/2019. Therefore he was late for four (4) days.

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 **Meis Industries Ltd. and 2 Others v. Twiga Bank Corp, Misc. Commercial Cause No. 243 of 2015,(unreported), It was held that:-**

".....if the appellant has a good case on the merit but is out of time and he has no valid excuse for the delay, the Court must guard itself against the danger of being led away by sympathy, and the appeal should be dismissed as time barred, even at the risk of injustice and hardship to the appellant".

Under the circumstances, I am of the considered view that the applicant failed to file the application as per Court's Order. Consequently, the application is dismissed as for the first ground of preliminary objection stand and, I find no need to labour much on second one.

It is so ordered.



I.D. Aboud

JUDGE

30/10/2020