

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

REVISION NO. 38 OF 2021

EXPRESS HOTELS LTD.....APPLICANT

AND

SAMWEL JONAS MMARY.....RESPONDENT

RULING

Date of Last Order: 12/08/2021

Date of Judgment: 27/08/2021

B. E. K. MGANGA, J.

Samwel Jonas Mmary, the herein respondent, was an employee of Express Hotel Ltd, the herein applicant, filed Labour Dispute No. CMA/DSM/ILA/R.238/19/145 in the Commission for Mediation and Arbitration henceforth CMA for unfair termination. On 20th November 2020, Mourice Egbert Sekabila, Arbitrator, issued an award in favour of the respondent on ground that his employment was unfairly terminated. The arbitrator ordered the applicant to pay the respondent TZS 7,200,000 being twelve months compensation and TZS 646,154 being respondent's three years severance all total amounting to TZS 7,846,154/-. The applicant was aggrieved with the said award and orders arising therefrom as a result she filed a notice of application supported with an affidavit of

Robert Charles Ouko praying this to revise the proceedings and set aside the said award.

The application was resisted to by the respondent who filed a notice of opposition supported by a counter affidavit of Samwel Jonas Mmary. Together with the said notice of opposition, the respondent filed a notice of preliminary objection containing two grounds namely:

1. *That, this application is hopelessly time barred for being filed out of the reasonable and prescribed time and without leave to that context this honourable court it lacks jurisdiction to entertain justice in the dispute of such nature.*
2. *That, this application has made (sic) in a defective notice of application which contravenes the mandatory legal requirement under provision of Rule 24(2)(f) of the Labour Court Rules, GN.106 of 2007.*

On 12th August 2021 when this application was called for hearing of the said preliminary objections, Mr. Hamza Sulemani Rajabu, a personal representative of the respondent duly appointed on 30th July 2021 in terms of section 56(b) of the Labour Institutions Act, [Cap.300 R.E. 2019] and Rule 43(1) of the Labour Court Rules, GN. No. 106 of 2007, appeared and argued on behalf of the respondent. On the other hand, Mr. **Arnord Arnord Luoga, advocated**, who was duly appointed by the applicant on 5th January 2021 in terms of section 56(c) of the Labour Institutions Act,

[Cap.300 R.E. 2019] and Rule 43(1) of the Labour Court Rules, GN. No. 106 of 2007 appeared and argued on behalf of the applicant.

Mr. Rajabu abandoned the 2nd ground of preliminary objection as a result argued the 1st ground only. In arguing this objection, Mr. Rajabu submitted that the award was issued on 20th November 2020 in presence of the parties and that the same was ready for collection as that is the normal procedure at CMA. He went on that; the applicant **altered the date of collection of the award to read 07/12/2020** while the correct date is **20/11/2020**. He submitted that the application was time barred as it was filed before this court on 26/1/2021 contrary to the provisions of section 91(1)(a) of the Employment and Labour Relations Act, [Cap. 366 R.E. 2019] that require an application for Revision to be filed within 42 days. He submitted that counting from the date the award was issued to the date of filing is 95 days hence out of time for 53 days. He cited the case of *Jeni Nshunju Tesha v. NSSF* [2011/2012] LCCD 46 and prayed the application be struck out.

Mr. Luoga, advocate for the applicant was of the view that the application is within time and submitted that the **award was collected on 7/12/2020 and not 20/11/2020**. He submitted that the application

was filed on 19/1/2021 electronically in accordance with the Electronic Filing Rules, 2018. That, the said date was the 42 day and that in terms of section 60(1)(b) of the Interpretation of Laws Act [Cap. 1 R.E.2019], the day the applicant collected the award has to be reckoned. He refuted the allegation that the applicant altered the date of collection of the award and prayed the preliminary objection be overruled.

The main issue of controversy between the parties is the date of collection of the award and date of filing this application. Mr. Luoga, counsel for the applicant has argued that the award was collected on 07/12/2020 but Mr. Rajabu, the personal representative of the respondent, argued that it was on 20/11/2020, the date it was read as it was ready for collection and further that the applicant has altered the date to fit his interest. I have examined the award annexed to the affidavit of the applicant and find that it was delivered on 20/11/2020 as submitted by both parties. The said **award was collected by Arnord Luoga Advocate** who signed on it to acknowledge reception. I have noted that the dated of collection has been altered to read 07/12/2020 to suit interest of the applicant. Although, Mr. Rajabu did not bring to the court any evidence showing that the said award was not collected on 07/12/2020, as

it appears on the copy of the award annexed to the affidavit in support of the application, I am of the settled mind that, the same was forged. Reasons for this conclusion is not far. The original award that is in the CMA record shows that **on 23/11/2020 Mr. Muhindi M. Said**, the personal Representative of the herein respondent collected the award and that **on 27/11/2020, Advocate Arnord Luoga on behalf of the applicant collected the same**. Both endorsed their names and appended their respective signatures on the award that was retained in the CMA record. The said award shows that Mr. Muhindi M. Said used a **black ink pen** while advocate Arnord Luoga used a **blue ink pen**. With this, it is clear that the award was collected on **27/11/2020** and not on **07/12/2020** as it is indicated in the affidavit of Robert Charles Ouko in support of the application. It is also clear that the dates of reception of the award annexed to the affidavit of the applicant has been forged. Therefore, the Notice of Application that initiated this Revision Application is supported by an affidavit that contains forged annextures yet the deponent verified that all facts are true.

One thing the parties need to know especially advocates, is that their duty is to assist the court to reach a just decision and not to win a case at

all cost. They are not there to embrace their customers even by breaking the laws. Advocates are expected at all times to advise properly their clients and in accordance with the law. They are required to tell their clients the truth whether that truth is bitter or sweet, it has to be communicated. As members of this noble professionals, advocates should avoid breaking the law just to turn a bitter truth into sweet ones in both the mouth and ears of their clients. Because once the client and the society in general becomes aware that an advocate has broken the law for the interest of his, the reputation both of the said advocate and the association in which the said advocate is a member will be lost. It is my considered opinion that it is the duty of the Tanganyika Law Society to keep collegiality with her members but most importantly, to make sure that her reputation cannot be tainted. Keeping collegiality alone without taking actions against those who are tarnishing the image of the legal profession, will lead this profession to lose trust from the public and that will be the end of nobility of the profession. That should not be allowed to happen.

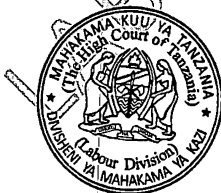
Apart from the foregoing, it was submitted by Mr. Rajabu for the respondent that the application was filed on 26/1/2021 but Mr. Luoga, counsel for the applicant contested arguing that the application was filed


electronically on 19/1/2021. I have examined a printout of the e-filing annexed to the affidavit of the applicant and find that it shows that the application was submitted on 19th January 2021 at 21:20:40 Hrs . In terms of Rule 21(1) of the Judicature and Application of Laws (Electronic Filing) Rules, GN. No. 148 of 2018, a document is considered to have been filed if it is submitted through the electronic filing system before midnight East African time, on the date it is submitted, unless a specific time is set by the court or it is rejected. I, therefore, hold that it was submitted on 19th January 2021 before midnight.

Now even if assuming that the award was collected by the said advocate on 07/12/ 2020 on behalf of the applicant as it was submitted, counting from that date to the date the application was filed i.e., 19/1/2021 is 44 days. The application was therefore filed after 43 days instead of 42 days after exclusion of a day the award is allegedly was collected. Still, this does not help the applicant as it was filed out of time for a single day. A delay even a single day like the application at hand, has to be treated as any other delay. It is the duty of the applicant at appropriate time to account for that delay. There are several decisions of the Court of Appeal to the effect that the Law of Limitations knows no

sympathy or equity. Among these decisions of the Court of Appeal are the Barclays ***Bank Tanzania Limited v. Phylisiah Hussein Mcheni, Civil Appeal No. 19 of 2016*** (unreported) and ***M/S. P & O international Ltd v. The trustees of Tanzania national Parks (TANAPA), Civil Appeal No. 265 of 2020*** (unreported). In these two cases, the Court of Appeal held that once the application or a case is out of time, the only option available is to be dismissed. Therefore, the position in the case of ***Nshunju Tesha*** (supra) is not correct. As I have pointed out that the award was collected on 27/11/2020, this application was filed in court 53 days thereafter while it was out of time for 11 days. For that reason, I hereby uphold the preliminary objection that the application is time-barred and proceed to dismiss it.

It is so ordered.




B.E.K. MGANGA
JUDGE
27/08/202

