

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

REVISION NO. 191 OF 2021

BETWEEN

THEOGENES KATO ISHERWIGA APPLICANT

VERSUS

NIC BANK TANZANIA LIMITED RESPONDENT

RULING

S. M. MAGHIMBI, J

This ruling is in respect of the preliminary objections raised by the respondent's Counsel that:

- i. That the application was brought out of time, as such it is time barred.
- ii. That the affidavit in support of the application is bad in law for contravening the provision of Rule 24 (3) of the Labour Court Rules, GN No. 106 of 2007 (herein the Labour Court Rules) rendering the application incompetent.

The preliminary objections were argued by way of written submissions. Both parties enjoyed the services of Learned Counsels. Dr. Lugaziya M.J was for the applicant whereas Mr. Shiza Ahmed John appeared for the respondent.

As to the first preliminary objection Mr. Shiza submitted that the application was lodged in total disregard of the Courts order dated 06/05/2021. That the Court ordered the applicant to file fresh application on or before 17/05/2021 while the present application was filed on 21/05/2021, which was four days out of the time granted by the Court. she hence argued that the application is time barred. To support his submission, he cited the case of **Antony Ling'wetu & 156 others Vs. Tanzania Ports Authority**, Misc. Application No. 81/2020. Mr. Shiza then argued that the applicant's failure to comply with the court's order is against Rule 28 of the Labour Court Rules, praying for the Court to dismiss the application.

In reply, Dr. Lugaziya did not deny that the case was filed on 21/05/2021 instead of 17/05/2021 which is four days after those granted by the Court. He admitted that the Court's order must strictly be complied with, arguing that his failure to file the application on time was not their fault. He narrated that the documents were brought 17/05/2021 pursuant to the Court's order but when the application was taken for admission, the registry clerk informed them that the application was incomplete for lack of attachment of the Court's order dated 06/05/2021. That it is when they attached the order that the

applicant was admitted hence the apparent delay. He hence argued that the delay is a technical one which cannot be held to suffocate the applicant's quest for justice.

I have considered the submission of the parties and the court's records. It is undisputed between both parties that the application was filed four days after the court's orders were granted and no leave to do so was granted by the court. It is on record that the present application emanates from the court's order dated 06/05/2021, where the applicant's application for revision No. 485 of 2019 was struck out for being incompetent and he was granted leave to refile the same on or before 17/05/2021. Pursuant to the court's order the applicant filed the present application on 21/05/2021 which is four days outside the time granted by the Court. Dr. Lugaziya alleged that the application was timely filed to the court's registry on 17/05/2021 however, due to failure to attach the court's order, the admission of the application was delayed. I have examined the applicants' documents for the institution of the matter at hand, the record shows that the documents were ready for preparation and signed by the applicant on 17/05/2021. The record further shows that the relevant documents were admitted to the court and stamped the court seal on 21/05/2021. There is no any proof

showing that the documents were submitted to the court on the alleged date by Dr. Lugaziya or any affidavit of the said court clerk to support that the documents were refused admission on the ground that the applicant did not attach a court order. Therefore, on the face of record there is no doubt that the application was filed out of time granted by the Court.

It has been discussed in a number of cases that limitation is set to speed administration of justice and to limit parties to come to court at their own time. 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'.

In the matter at hand, the applicant was granted four days leave to refile proper application not later than 17/05/2021. On his own accord without leave of the court the applicant refiled his application on 21/05/2021 without any justifiable and proved reasons. Under the

circumstance it is my settled view that the application is time barred. The first point of objection is therefore sustained. Since the point goes to the root of jurisdiction of this court with regard to time limitation, I see no reason to dwell on the remaining points of objection. Having been filed out of time granted by the court, the application is time barred and it is hereby dismissed.

It is so ordered.

Dated at Dar es Salaam this 06th day of October, 2021



S.M. MAGHIMBI
JUDGE