

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
LABOUR DIVISION  
AT DAR ES SALAAM  
REVISION APPLICATION NO. 750 OF 2018**

**BETWEEN**

**PILI HAMISI MNGOYA.....APPLICANT**

**AND**

**KURASINI CONTAINER TERMINAL LIMITED.....RESPONDENT**

**JUDGEMENT**

**Date of last order: 26<sup>th</sup> February, 2021**

**Date of Judgment: 19<sup>th</sup> March, 2021**

**A.E. Mwipopo, J**

The applicant namely Pili Hamisi Mngoya filed the present Application for Revision against the Commission for Mediation and Arbitration Ruling in labour dispute no. CMA/DSM/TEM/294/2018/123/2018 delivered on 19<sup>th</sup> October, 2018, by Hon. H. Amos, Arbitrator. The applicant is praying for the Court to call for record, revise the ruling and make such orders as it deems fit to do so.

The application is supported by Applicant's affidavit. The Affidavit contains two grounds of revision in paragraph 11. The grounds are as follows:-

- i. Whether it was proper for the Arbitrator to rule that the complaint was filed out of time.
- ii. Whether it was proper for an employee to file complaint for unfair termination when her employment contract was for fixed period of time.

The historical background of the dispute in brief is as following: The Applicant was employed in the position of the Security Guard by the Respondent namely Kurasini Container Terminal Ltd. On 1<sup>st</sup> April, 2017 he was issued with two years employment contract which was expected to come to an end on 31<sup>st</sup> March, 2019. However, the Respondent terminated her employment contract on 31<sup>st</sup> March, 2018. Aggrieved by the Respondent decision, the Applicant referred the complaint to the Commission for Mediation and Arbitration 11<sup>th</sup> May, 2018. The complaint was struck out by the Arbitrator on ground that it was referred to the Commission out of 30 days provided by the law. The Applicant was not satisfied with the Commission award and filed the present application.

The applicant was represented by Mr. John Lingopola, Advocate, whereas the respondent was represented by its Principal Officer namely Mr. Emmanuel Mvungi. Hearing of the application proceeded orally.

The Applicant counsel submitted both grounds of revision together. He averred that the Applicant was employed by the Respondent for the contract

of 24 months from 1/04/2017 to 01/04/2019. On 31/03/2018 the Applicant received a termination letter from the Respondent while knowing that the contract of employment was for 2 years. According to rule 10(2) of the Labour Institutions (Mediation and Arbitration) Guidelines Rules, G.N. No. 64 of 2007 all other dispute than the dispute for unfair termination of employment must be referred to the commission within 60 days from the date the dispute arise. On 16/05/2018 the Applicant filed dispute for the breach of contract before the Commission. Counting from 31/03/2018 up to 16/05/2018 when the Applicant filed his dispute before the commission it was just 46 days which has passed. Thus, the Applicant was within 60 days provided by the Law for referring the dispute to the commission.

The Counsel submitted further that the commission erred to uphold the preliminary objection that the dispute was supposed to be filed within 30 days as it is a dispute of unfair termination. The dispute before the Commission was for breach of contract and not for unfair termination as the contract of employment was for a fixed term. Even the termination letter stated that the contract will not be renewed after the date of expiry while there was still 12 more months in the contract. The Arbitrator stated in his Ruling that the dispute was for breach of contract. The Applicant did not at all fill part B of CMA form No.1 providing for unfair termination. For that reason, the dispute before the commission was for breach of contract and not unfair termination as it was held by the Commission. The complaint was filed within time hence the Arbitrator erred to strike it out.

Replying to the Applicant submission, the Respondent Principal Officer submitted that the preliminary objection (P.O.) was filed at CMA to the

effects that the dispute with filed out of time which is contrary to rule 10(1) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, G.N. No. 64 of 2007. The Applicant referred the dispute out of 30 days provided by the Law. The CMA rightly struck out the dispute and gave the Applicant 14 days to follow the proper procedure so that they may proceed with Arbitration.

In rejoinder, the Applicant's Counsel argued that Rule 10(1) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, G.N. No. 64 of 2007 provides for time limitation for filing of the dispute about the fairness of termination of the employee. The dispute before the Commission was about breach of contract. Thus, it was filed within 60 days as provided by the law..

He submitted further that the 14 days granted by the CMA Ruling was not automatic that the Applicant will be allowed to proceed with the hearing. But the ruling stated clearly that the Applicant has to follow the procedure which includes to file the application for condonation. Thus, the 14 days granted was not a leave to proceed with hearing of the arbitrator but rather to file an application for condonation.

In determination of this application, the relevant provision of law providing for time limitation for referring the dispute to the Commission is rule 10 of Labour Institutions (Mediation and Arbitration Guidelines) Rules, G.N. No. 64 of 2007. This rule provides for the time limitation for referring a labour dispute to the CMA. The rule provides that, I quote;

*"10. (1) Dispute about the fairness of an employee's termination of employment must be referred to the Commission within thirty days from the date of termination or the date that the employer made a decision to terminate or uphold the decision to terminate.*

*(2) All Other disputes must be referred to the Commission within sixty days from the date when the dispute aroused."*

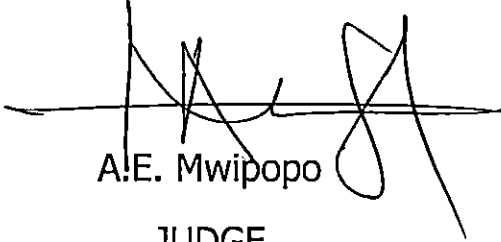
It is in record that the dispute referred to the Commission by the Applicant was struck out for being filed out of 30 days following P.O. raised by the Respondent. The Applicant argued that the complaint she referred to the Commission was for breach of contract and it was filed within 60 days as per rule 10(2) of the G.N. 64 of 2007. The Arbitrator held that the complaint was for termination of employment since the breach of contract led to the end of Applicant's employment.

I agree with the Arbitrator holding that the act of the Respondent to end the employment relationship with the Applicant before the expiry of the fixed period of contract means the employment was terminated. The Applicant argument that there was breach of contract does not hold water as rule 10(1) of G.N. 64 of 2007 provides clearly that the dispute about the fairness of an employee's termination of employment must be referred to the Commission within thirty days from the date of termination. It is clear

that the Applicant is challenging the fairness of termination of her fixed term contract before the expiry of the contract period. The Applicant's Counsel was of the opinion that the termination letter stated that the contract will not be renewed after the date of expiry which means that the term of contract was breached. But, it is the breach of term of contract which ended employment relationship before its expiry which is the act the Applicant is challenging. This means that the Applicant was challenging the fairness of ending the contract before its expiry date.

The Applicant's Counsel alleged that the Applicant did not at all fill part B of CMA form No.1 providing for unfair termination. But, reading the Respective CMA Form No. 1 it shows that the Applicant filled in Part B of the form about fairness of termination where the Applicant stated that she was terminated on 3<sup>rd</sup> April, 2018 by letter. The facts that the Applicant did not file reason for termination or fairness of the termination does not change the fact the dispute referred to the Commission was for termination. The proper remedy available to the Applicant was to file a fresh the Complaint together with the application for condonation as it was held by the Commission.

Therefore, I find the Revision Application to have no merits and I dismiss it. Each party to take care of its own cost of the suit.



A.E. Mwipopo

JUDGE

19<sup>th</sup> March, 2021