

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

MISCELLANEOUS LABOUR APPLICATION NO. 294 OF 2021

BETWEEN

PETER BONIFACE MUBA APPLICANT

VERSUS

GOODWILL (T) CERAMIC COMPANY LIMITED RESPONDENT

RULING

S. M. MAGHIMBI, J.

This ruling is in respect of the preliminary objections raised by the respondent's counsel, Mr. Manyama Nyambasi. The objections are that:

- i. The application for revision is out of time.
- ii. That the application is bad in law for violating the provisional requirement of Rule 24 (2) of the Labour Court Rules, GN 106 of 2007 (LCR).

The preliminary objections were argued by way of written submissions. Before this court the applicant appeared in person whereas Mr. Nyambasi and Mr. Edrick Luimuka were for the respondent.

I appreciate the comprehensive submissions of the parties which shall be taken on board in due course of constructing this ruling. In the first preliminary objection that the revision is time barred, Mr. Luimuka

submitted that the award was delivered on 11th June, 2021 and served to the applicant on the same date. That the present application was filed on 30th July, 2021, forty nine days from the date the award was served to the applicant. He stated that as per section 91 (1) (a) of Employment and Labour Relations Act, [CAP 366 RE 2019] the applicant was supposed to file the revision application within six weeks (42 days) from the date he was served with the award hence the application was filed out of time. He urged the court to dismiss the application, citing the case of **Arusha Art Limited v. Consolata Michael Woiso**, Labour Revision No. 22 of 2019 where the same position was taken.

On his part the applicant submitted that from 11th June, 2021 when the award was delivered the applicant was supposed to file the application by 22nd July, 2021. He stated that this application was filed electronically on 22nd July, 2021, unfortunately the same was filed in a wrong registry, High Court of Dar es salaam Zone instead of this court. He stated that on 23rd July, 2021 received a notification stating that ***"indicate exempted on the court fees status"***. He stated that after communication with court officers, they assisted his advocate and the matter was eventually admitted on 30th July, 2021. The applicant further submitted that he was on court corridors since 21st July, 2021 when he

came with hard copies but he was instructed to file the application electronically.

Having considered the submissions, my finding is that electronic filing system is recognized by the law as a means of filing documents in our courts, that is why the Judicature and Application of Laws (Electronic Filing) Rules, 2018 were enacted. From the applicant's submission, it is crystal clear that the application was electronically filed in this court on 26th July, 2021 which is out of time required by the law. I am therefore in agreement with the respondent's submission that being governed by section 91 (1) (a) of ELRA the application for revision was supposed to be filed within six weeks from the date the applicant was served with the award. As correctly submitted by the applicant the application was supposed to be filed by 22nd July, 2021. Therefore, by filing the application on 26th July, 2021 as it is reflected in JSDS printout, it was out of time required by the law.

I am not in disregard of the applicant's allegation that the application was wrongly filed in a wrong registry; however, such defence does not waive the fact that the application was filed out of time before this registry. In my view such reason would have stood if the applicant sought for extension of time first before filing the present application

and have the reason of filing in the wrong registry as a ground for extending time. That said, it is now to see what is the effect of filing application out of time without leave of the court. As it was held in the cited case of **Arusha Art Limited v. Consolata Michael Woiso** (supra), the remedy under the circumstances is dismissal of the case. I would have dismissed this application for being time barred as it is the position in the cited case. However, I have considered one thing in the interest of justice, this being a labour matter, the delay in this application was a technical one, the applicant had filed his application in the wrong registry. Being unrepresented, such a mistake cannot be treated in the strict sense of the term because even after finding out that the application was lodged in the wrong registry, the applicant did not sleep on his rights, he promptly approached this court. I therefore think he deserves another chance to pursue his right.

Owing to the above findings and reasons, I hereby struck out the application with leave to refile the application on or before 13th April, 2022. It is so ordered.

Dated at Dar es Salaam this 31st day of March, 2022.




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S.M. MAGHIMBI
JUDGE