

THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION APPLICATION NO. 139 OF 2021

(Originating from the ruling of the Commission for Mediation and Arbitration, Hon. Mahindi, P, Mediator, in Labour dispute No. CMA/DSM/KIN/R.1244/17 dated 12th April 2018)

BETWEEN

SAMSON BEGASHE AND 103 OTHERS APPLICANTS

AND

TANZANIA ELECTRIC SUPPLY COMPANY LIMITED..... RESPONDENT

RULING

Last order 31/03/2022
Date of Ruling 22/04/2022

B. E. K. Mganga, J.

On 1st November 2017, applicants who were employees of the respondent filed Labour dispute No. CMA/DSM/KIN/R.1244/17 before the Commission for Mediation and Arbitration (CMA) complaining that their employment was unfairly terminated by the respondent. In the Form referring the dispute to CMA henceforth CMA F1, they showed that the dispute arose on 30th July 2017. Together with the CMA F1, they filed application for condonation (CMA F2) and an affidavit showing the reason for the delay. The reason that was advanced by the applicant for the delay was that they were in negotiation with the respondent.

Respondent filed the affidavit sworn by Batilda Mally opposing the application for condonation. Having heard submissions of both sides, on 12th April 2018, Mahindi, P.P, Mediator, dismissed the application for condonation filed by the applicants.

Aggrieved with the dismissal of their application for condonation, applicants filed revision application No. 260 of 2018 but on 23rd August 2018 it was struck out by Hon. S.A. N. Wambura, J, (as she then was) for lack of mandate to Mr. Samson Begashe to represent other 103 applicants with leave to refile. Thereafter Mr. Samson Begashe filed revision application No. 612 of 2018. Instead of filing an application for representative, he filed a letter purporting to show that he was dully appointed by other applicants to file the application. On 20th February 2019, Hon. I.D. Aboud, J, struck out revision application No. 612 of 2018 for being incompetent because applicant did not adhere to the legal requirement of having leave of the court. The court therefore granted 14 days leave to the applicants to file a proper application. Being granted 14 days leave to file a proper application, applicants filed Miscellaneous Application No. 356 of 2019 under Rule 44(1), (2), (3)(a) and (b) of the Labour Court Rules, GN. No. 106 of 2007, praying the court to appoint Samson Begashe as their legal representative for purposes of appearing,

prosecuting, and executing the application on behalf of 103 others. The application was granted on 2nd March 2021 by Hon. A. E. Mwipopo, J.

On 15th March 2021, Samson Begashe, signed both the notice of application and the affidavit and on 12th April 2021, filed this application seeking the court to revise the aforementioned CMA ruling. The respondent filed a counter affidavit sworn by Elizabeth George Kimako, her advocate, together with a preliminary objection that the application is time barred.

When the parties appeared before the court, they prayed to argue the said preliminary objection by way of written submissions and the prayer was granted.

Arguing the preliminary objection, Ms. Lightness Msuya, State Attorney, on behalf of the respondent, submitted that applicants are out of time. State Attorney submitted that, applicants were supposed to file an application for extension of time before filing this application. She cited the case of ***Barclays Bank Tanzania Limited v. Phylisiah Hussein Mcheni, Civil Appeal No. 19 of 2016***, CAT (unreported) and ***M/S. P & O International Ltd v. The Trustee of Tanzania***

National Parks (TANAPA), Civil Appeal No. 265 of 2020, CAT (unreported) and prayed for dismissal of the application.

Responding to the respondent's written submissions, Mr. Samson Begashe, submitted that the application was filed within time. He submitted that in Misc. Application No. 356 of 2019 that was heard by Hon. A.E. Mwipopo, J, respondent did not raise an objection but for surprise, respondent has raised this preliminary objection. He argued further that, applicants have filed this application timely after Misc. Application No. 356 of 2019 was granted. He therefore prayed that the preliminary objection should be dismissed and be allowed to argue an application for revision.

In rejoinder submission, State Attorney reiterated her submission in chief that the application is time barred.

This application is straight forward. The ruling that is a subject of this application for revision was delivered on 12th April 2018. It is undisputed that, applicants filed two revision applications namely No. 260 of 2018 and No. 612 of 2018 that were found by this court as incompetent and consequently struck out. In terms of section 91(1)(a) of the Employment and Labour Relations Act [Cap. 366 R. E. 2019],

application for revision must be filed within six weeks (42 days) from the date of the award or order of CMA unless time is extended in terms of Rule 56(1) of the Labour Court Rule, GN. No. 106 of 2007. From the date of the ruling namely 12th April 2018 to the date of filing this application, i.e., 12th April 2021, six weeks were already expired. It was argued by Mr. Begashe on behalf of the applicant relying on the order issued on 2nd March 2021 by Hon. A. E. Mwipopo, J, that the application was filed within time. With due respect to him, the order by Hon. Mwipopo, J, did not grant extension of time to the applicants but granted leave to Mr. Begashe to represent other 103 applicants in court. The Ruling of Hon. A.E. Mwipopo, J, is clear that applicants were seeking leave of the court for Mr. Samson Begashe to be appointed to represent 103 others and that the application was granted. There was no application for extension of time before the court. As it was correctly submitted by Ms. Msuya, State Attorney, after grant of leave to Mr. Begashe to represent others, as they were out of time, they were supposed to file an application for extension of time first before filing this application.

Since the application was filed out of time, the remedy available is to dismiss it as it was held in ***Barclays's case*** (supra) and ***TANAPA's case*** (supra). That being the position, I hereby uphold the preliminary

objection and hold that the application is time barred and proceed to dismiss it.

Dated at Dar es Salaam this 22nd April 2022.



B.E.K. Mganga
JUDGE

Ruling delivered today 22nd April 2022 in the presence of Samson Begashe for the applicants and Joyce Yonazi and Farida Swedi State Attorneys for the respondent.



B.E.K. Mganga
JUDGE