

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**DAR ES SALAAM**

**REVISION APPLICATION NO. 174 OF 2021**

**BETWEEN**

**MICHAEL MATERU..... APPLICANT**

**AND**

**AFRIQ ENGINEERING & CONSTRUCTION CO. LIMITED..... RESPONDENT**

**JUDGMENT**

Date of the last order: 10/12/2021

Date of judgment: 04/2/2022

**B.E.K. Mganga, J**

Applicant was employed by the respondent as an accountant. Their contract was a fixed term of two years renewable. The two enjoyed their relation for about ten years. When the last term contract expired, applicant did not wish to renew his employment. Instead, on 6<sup>th</sup> November 2018 he signed a contract with the respondent to be paid TZS 24,630,600/= being 16 months' salary that was not paid to him and 5 months pending Loan Board deductions. In the said contract, applicant and respondent agreed that the said money will be paid by eight installments and that the last installment will be paid on 31<sup>st</sup> May 2019.

Respondent did not honour the contract as a result, on 10<sup>th</sup> July 2019, applicant filed a dispute at CMA on ground that respondent breached it. Respondent raised an objection that the dispute was time barred arguing that the dispute arose on 6<sup>th</sup> November 2018, the date they signed the contract for payment of the aforementioned money. On 9<sup>th</sup> August 2019, Hon. M. Chengula, Mediator, delivered a ruling upholding the preliminary objection that the dispute was time barred. Applicant was aggrieved with that ruling hence this application for revision.

Arguing the applicant for and on behalf of the applicant, Ms. Catherine Lyasenga, advocate, submitted that, from the date of the last installment to the date of filing the dispute to CMA is 40 days only. Counsel for applicant submitted that the dispute was filed within time as Rule 10(2) of the Labour Institutions (Mediation and Arbitration) Rules, 2007, GN. No. 64 of 2007 requires dispute relating to breach of contract to be filed within 60 days. She therefore prayed the CMA ruling be revised and the parties be ordered to go back to CMA so that the dispute can be heard on merit.

On the other hand, Mr. Praygod Uisso, counsel for the respondent, resisted the application arguing that the Mediator did not error in dismissing the dispute as the same was time barred. Counsel for the

respondent submitted that the dispute arose on the 3<sup>rd</sup> August 2018, the date the respondent was supposed to pay the first installment to the applicant and not on 31<sup>st</sup> May 2019, the date the respondent was supposed to pay the last installment.

Having heard submissions of both parties, I find that there is no dispute that parties entered into a contract so that applicant can be paid his claims and that the last installment was supposed to be paid on 31<sup>st</sup> May 2019. It is also undisputed that respondent did not pay the applicant. The last installment was supposed to be paid on 31<sup>st</sup> May 2019 and the dispute was filed at CMA on 10<sup>th</sup> July 2019. This was 40 days from the date the respondent was supposed to pay the last installment. It was argued by Mr. Uisso, counsel for the respondent, that the dispute arose on 3<sup>rd</sup> August 2018, the date the respondent failed to pay the first installment and not 31<sup>st</sup> May 2019, the date respondent was supposed to pay last installment. With due respect, in my view, that argument is not correct. The dispute arose on the date the respondent failed to pay the last installment. As pointed out hereinabove, the dispute was filed at CMA 40 days from the date the respondent failed to pay the last installment. In other words, the dispute was filed within

time. The Mediator erred in dismissing the dispute on ground that it was time barred.

I therefore revise the CMA ruling, set it aside and order that parties should go back to CMA for the dispute to be heard on merit.

Dated at Dar es Salaam this 4<sup>th</sup> February 2022.

  
B.E.K. Mganga  
**JUDGE**

Labour Court-TZ.