

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

REVISION NO. 356 OF 2021

DAUDI LUCAS KAHEMA 1st APPLICANT
KASSIMU S. ATHUMAN..... 2nd APPLICANT
MSHAM A KILINDO..... 3rd APPLICANT
JABIR RASHID MPITA..... 4th APPLICANT
JUMA SAID NGAPU..... 5th APPLICANT
DEODATUS SIMON WISIKO..... 6th APPLICANT
CHUMA ABDUL NGOMOLA..... 7th APPLICANT
SAID JUMA ALLY..... 8th APPLICANT
SALEHE OMARY SALEHE..... 9th APPLICANT

VERSUS

MOHAMED ENTERPRISES (T) LTD RESPONDENT

(From the decision of the Commission for Mediation and Arbitration at
Ilala)

(Msina: Arbitrator)

Dated 24th February, 2021

in

REF: CMA/DSM/ILA/1110/19/45/2020

EXPARTE RULING

06th May & 26th May 2022

Rwizile, J

This Ruling originates from the application for revision, which was filed by the applicant against the respondent. The prayer was to call for, examine

and revise the proceedings and set aside part of the award made by the Commission for Mediation and Arbitration (CMA) in a Labour Dispute No. CMA/DSM/ILA/1110/19/45/2020. The same is opposed by the respondent who raised the Preliminary Objection that: -

That the applicant's application for Revision is hopelessly time barred.

It was briefly stated that the applicants were employed on 'divers' dates by the respondent. It was not until 6th October 2020 when they were terminated. Being aggrieved, they filed a labour dispute No. CMA/DSM/ILA/1110/19/45/2020 at the CMA claiming for compensation for unfair termination and other terminal benefits. The applicants were successfully awarded terminal benefits but thought, their salaries were miscalculated. Hence this application.

The application was supported by the affidavit of Daudi Lucas Kahema, applicant's representative but opposed by Hassan Dewji, Principal Officer of the respondent.

Both parties were represented at the hearing. The applicants were represented by Mr. Edward Ngatunga, Personal Representative, whereas the respondent was represented by Mr. Adam Mwambene, learned Advocate. On the day of the hearing, not the personal representative or

the applicants did show up. Following the order of the Court, the hearing proceeded *ex parte*.

Mr. Mwambene submitted that CMA award was delivered on 24th February 2021 and the applicants got the copy on the same day and so 42 days to file an application for Revision before this court ended on 06th April 2021. He continued to argue that the application was filed on 16th September 2021, five months after, without an application for extension of time. For him Section 91(1) of Employment and Labour Relations Act was contravened. He was of the view that the application filed out of time must be dismissed under Section 3 of Law of Limitation Act and prayed for the application to be dismissed.

After perusal of the submission on Preliminary Objection raised, I was asked to determine *whether the application is time barred*. To start with section 91(1)(a) of The Employment and Labour Relations Act [CAP 366 R.E. 2019] provides for the time limitation to file applications before this court, it states: -

"91(1) Any party to an arbitration award made under section 88(10) who alleged a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for a decision to set aside the arbitration award-

(a) Within six weeks of the date that the award was served on the applicant unless the alleged defect involves improper procurement;"

Going by the attachments, it shows the award was delivered on 24th February 2020 and on the same day, parties were supplied with copies of the ruling. The applicants filed Revision No. 140 of 2021, which was withdrawn. The reason for its withdrawal was an irregularity of the notice of representation that appeared to have no leave to represent the others. The application was withdrawn with leave to refile on 03rd September 2021. Then came this application which was filed on 16th September 2021. Following the Court order dated 25th August 2021 on the Revision No. 140 of 2021, the applicants were time barred. The applicants were supposed to file the application on 03rd September 2021 but instead they filed it on 16th September 2021, which is 13 days out of time.

The case of **Anna Haule v Salum Ally**, Miscellaneous Application No. 250 of 2004 states the remedy when the application is filed out of time. It was held: -

"In the absence of the ruling of Hon. Mandia, J I would take that the appeal was dismissed because it was filed out of time... if that was the case, then the issue was finally determined..."

By not following the Court order the applicants filed this application out of time. For that matter, I find the objection with merit. It is sustained. The application is hereby dismissed. This being a labour matter, each party has to bear own costs.




A.K. Rwizile

JUDGE

26.05.2022

Labour Court TZ.