

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

REVISION NO. 354 OF 2021

BETWEEN

DONATIAN DAMIANI SENTOZ
YUSUPH MUSSA MSANGI
HUSSEIN ATHUMAN GAO } **APPLICANTS**

AND

NATIONAL FOOD RESERVE AGENCY (NFRA) RESPONDENT

RULING

S.M. MAGHIMBI, J:

The revision beforehand was lodged under Section 91(1)(a), 91(2)(c), 94(1)(b)(i) of the Employment and Labour Relations Act, No. 6 of 2004 Cap 366 R.E. 2019 ("ELRA") and Rules 24(1), 24(2)(a),(b),(c),(d),(e), and (f) 24(3) (a),(b),(c) and (d) and Rule 28(1)(d) and (e) of the Labour Court Rules, G.N. 106 of 2007 ("The Rules"). The applicant is moving the court for the following orders:

1. That this Honourable Court be pleased to revise and set aside the Commission for Mediation and Arbitration Award delivered on 08th

October, 2019 by Honourable Ngarika, E; Arbitrator in Labour dispute No. CMA/DSM/TEM/263/19.

2. Any other relief that the Honourable Court may deem fit to grant.

Brief grasp of the dispute is that the Applicants were employees of the Respondents since 01st day of August 2015 on which they were employed on temporary terms for three months as Security Guards II, subject to special terms on changes. They so worked under temporary terms of three months without being given new terms of contract until on 2nd May 2018 the Respondent issued a new term of contract, subsequently, via a termination letter dated 2nd day of July 2018 the Applicants were terminated from the employment effective on 31st day of July 2018 for the reason of low budget.

The applicants instituted a labour dispute on unfair termination, on the 10th day of August, 2018. The application was struck out by Hon. Ngalika, E, through a Ruling delivered on the 10th day of October 2018 subject to institution of a new application within 14 days from the date of the Ruling. Aggrieved by the said decision, the applicants have lodged the current application raising the following issue:

1. Whether the Arbitrator erred in law by holding that the Applicants had no reasonable cause to extend the time to file their complaint without regarding the Applicant acted immediately and timely in filing the same; thus, the Arbitrator failed to consider the date of the cause of action arise with respect of the technical errors or delay.

On her part, the respondent lodged a preliminary point of objection on point of law that the application beforehand is time barred. When the matter came for hearing of the objection on the 23rd day of February, 2022, Ms. Lucy Kimario, learned State Attorney represented the respondent while the applicant was represented by Mr. Wilfred Mbilinyi who was holding brief of Mr. Benson Kikule with instructions to proceed.

Having considered the submissions of the parties, I will now determine whether the application beforehand is time barred. Ms. Kimario's argument is that the award that is a subject of this revision was delivered on 08th October, 2019. That according to Section 91(a) of the ELRA, an application for revision must be filed within 42 days or 6 weeks from the date of the award while the present application has been filed on 15/09/2021, almost three years from the date of the arbitral award. She argued that the applicant did not bother to pray for extension of time before this Honorable Court and

the last ruling which the applicant applied to file representative suit, was delivered on 19/08/2021 by Hon Judge Mganga whereby the applicants were granted leave to file a representative suit and not extension of time to file the present application as they did not pray for it.

In reply, Mr. Mbilinyi did not make any substantive submissions on whether the application is time barred or not. He only termed the filing of the application as reasonable and timely. Apart from that, his submissions were mainly on the history of the application and how it got to this point arguing that when Misc. Application No. 685/2019 on 18/11/2019 was struck out on 18/12/2020, a leave to refile the proper application was granted and following that order, on 29/12/2020 the applicants filed the proper application which was Misc. Appl. No. 581/2020.

In rejoinder, Ms. Tarimo submitted that the leave to refile granted by Hon Aboud was not over extension of time to file an application for revision but for an application to file a representative suit. That by the time the ruling granting the applicant leave to file representative suit was delivered, the applicants were out of time therefore they ought to have filed an application for extension of time stating the reasons why they couldn't file their revision on time.

On my part, I could not agree more with Ms. Tarimo. It is better to point out at this point that time limitations set by the law have no postponement or exemptions, once they start to run, they cannot be stopped. That is why the law allows a party who is out of time to lodge an application for extension of time and give sufficient reasons as to why the matter could not be filed on time. An issue of time limitation is an issue of jurisdiction and cannot be assumed by a party on mere assertion that it is reasonable. It is either within time or outside the prescribed time and no two ways about it.

That said, since the applicants did not have the advantage of stopping the hands of time, the time to file revision continued to run when the award was delivered on the 08th October, 2019. Counting from then to May 2021 when this application was filed, it is way out of time. After getting leave to represent others from Hon. Mganga, J, the applicants ought to have applied for extension of time before they proceed to lodge an application for revision.

On those findings, I find the application before me to be time barred. However, this being a labor matter and having the complication of applying for leave to file representative suit, I will not dismiss the application for being

time barred. Instead, I hereby struck out this application in order to give room to the applicants to seek extension of time if they will still be interested.

Dated at Dar-es-salaam this 20th day of April, 2022.



A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above a dotted line.

S.M. MAGHIMBI
JUDGE