

**IN THE HIGH COURT OF TANZANIA  
LABOUR DIVISION  
AT DAR ES SALAAM  
REVISION NO. 415 OF 2021**

**ULTIMATE COMMUNICATIONS LTD .....APPLICANT**

**VERSUS**

**ISAACK JOSEPH MWANGOMA AND ANOTHER.... RESPONDENTS**

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

(Kiangi: Mediator)

dated 29<sup>th</sup> September, 2021

in

**REF: CMA/DSM/KIN/160/2020**

**EXPARTE RULING**

29<sup>th</sup> June, 2022

**Rwizile, J**

This court is asked by the applicant to set aside the ruling of CMA in Misc. Application No.CMA/DSM/MISC/21/2021 arising from Labour dispute No CMA/DSM/KIN/160/2020 dated 24<sup>th</sup> September, 2021. The same, by its second prayer is asking this court to quash the ruling of the CMA and grant leave to the applicant to apply for setting aside an exparte award in the original labour dispute. The prayers are filed by the notice of application.

Under paragraph 12 of the affidavit, the applicant asked this court to set aside both ex parte award dated 23<sup>rd</sup> November, 2020, and a ruling dated 24<sup>th</sup> September, 2021.

The applicant did not appear to defend the application, when the preliminary objection was raised that the application is time barred. Mr. Denis Mwamkwala, a personal representative who appeared for the respondent, asked this court to proceed ex parte to hear a point of objection on limitation of time.

In his submission, Mr. Denis stated that the application was filed on 22<sup>nd</sup> October, 2021, from an award made on 23<sup>rd</sup> November, 2020. In his view, in the absence of the order extending time for him to file the same, it should be considered out of time and so suffer a dismissal.

I have gone through the record. It shows an award was made ex parte on 23<sup>rd</sup> November, 2020. The applicant applied to set it aside but was found out of time on 24<sup>th</sup> September, 2021.

Before this court, the applicant is under rule 24(1) (2) required to file a notice stating among other things the reliefs as well the application has to be supported by an affidavit which under rule 24(3) of Labour Court Rules has

to have reliefs sought. This means reliefs stated in the affidavit should align with those in the notice and the vice versa. The applicant in the affidavit prays for setting aside both rulings of the CMA, that is an award dated 23<sup>rd</sup> November, 2020 and a ruling date 24<sup>th</sup> September, 2021. By the letter and spirit of the law, the applicant was out of time to challenge the award dated 23<sup>rd</sup> November, 2020 but not the ruling dated 24<sup>th</sup> September, 2021.

Looking at the grounds for the application, the applicant does not challenge the merits or otherwise of the award. I am therefore in agreement with Mr. Denis that since the applicant is challenging both at the same time it is true that the application is time barred. It is therefore dismissed in absentia without costs.

A.Rwizile

**JUDGE**

29.06.2022

Ruling delivered in chambers ~~reported~~, in the presence of Mr. Denis Mwamkwala, personal representative for the respondent, this 29<sup>th</sup> day of June, 2022.



A.Rwizile

**JUDGE**

29.06.2022