

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

REVISION NO. 269 OF 2021

BETWEEN

FREDY MBEYELA APPLICANT

VERSUS

TANZANIA EDUCATION AUTHORITY RESPONDENT

RULING

S. M. MAGHIMBI, J.

This ruling is in respect of the preliminary objections raised by the respondent's duly represented by Ms. Rose Kamasha learned State Attorney. The objection was to the effect that:

- i. This application is hopelessly time barred.
- ii. This application is premature and unmaintainable in law for the applicant failure to issue notice of intention to seek for revision of award contrary to regulation 34 (1) of the Employment and Labour Relations (General) Regulations of 2007 ('Regulations').

The preliminary objections were argued by way of written submissions. Mr. Richard Clement, Learned Counsel appeared for the applicant.

On the first preliminary objection that the application is time barred; Ms. Kashamba submitted that the challenged award was delivered on 28th May, 2021 and the copy thereto was supplied to the parties on the same date. That this application was filed on 15th July, 2021 which is out of time prescribed by the law. She argued that the time limit to file revision application against the decision of the CMA is six weeks from the date the award was served to the applicant as it is provided under section 91 (1) (a) of the Employment and Labour Relations Act, CAP 366 RE 2019 ('ELRA'). Ms. Kashamba stated that counting from the date the award was served to the applicant on 28th May, 2021 to the date the applicant filed the present application on 15th July, 2021 it is about 48 days which is contrary to the provision of the law cited. She therefore urged the court to dismiss the application for being time barred. To support her submission, she cited the case of **Geita Gold Mining Limited vs Christian Christopher** (Labour Revision 90 of 2020) [2021] TZHC 5457 (02 July 2021).

Regarding the second preliminary objection Ms. Kashamba submitted that the application is premature and unmaintainable for offending Regulation 34 (1) of the Regulations which requires the applicant before filing an application for revision to file notice of

intention to seek revision before the CMA. She argued that the cited provision is coached in mandatory word "*shall*". She further submitted that according to section 53 (2) of the Interpretation of Laws Act, CAP 1 RE 2019 it is clearly provided that where in a written law the word shall is used in conferring a function, such word shall be interpreted to mean that the function so conferred must be performed.

Responding to the first preliminary objection Mr. Clement submitted that this application was filed in accordance with Rule 8 of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 ('Electronic Filing Rules'). He stated that the application was supposed to be filed on or before 09th July, 2021. He submitted that this application was electronically filed on 09th July, 2021 at 09:51:59 thereafter conventionally filed on 15th July, 2021. Mr. Clement argued that when the document is submitted electronically then such submission date shall be considered as the filing date and not the day of conventionally filing as per Rule 21 (1) of the Electronic Filing Rules. To support his submission the Counsel attached the printouts from the e-filing system.

As to the second preliminary objection Mr. Clement submitted that regulation 34 (1) of the Regulations was complied with by the applicant by filing the notice of intention to seek revision of award which was

dated and presented for filing at the CMA on 5th July, 2021. The counsel also attached the relevant notice as evidence. He therefore urged the court to overrule all preliminary objections.

After considering the rival submissions of the parties I will start with the first point of objection on time limitation. I have noted Ms. Kashamba's submission in rejoinder that the applicant's counsel has attached evidence in his submission contrary to the practice. Indeed, it has been decided in numerous decisions that evidence should not be attached in the submissions, however, by the nature of the relevant preliminary objection denying the applicant to attach the electronic printout will lead to a wrong conclusion that the application is time barred while in fact, it was so timely filed. The fact that the application was filed on time will not be changed by refusing the applicant to show proof that it was so filed. Therefore under the circumstances like the one at hand, since there is no law that requires the applicant to attach the filing of proof of electronic filing, it will be unfair to dismiss the application on the ground that it was time barred. However, before I move into the substance of objection, I find it pertinent to use this opportunity to urge parties to make it a habit of attaching the electronic filing form to show when actually was the application submitted and

admitted on line so as to save time on dealing with the preliminary objections like the one at hand. This is especially encouraged in cases where the physical filing of the matter was done outside the time prescribed by the law while the electronic document was electronically filed within time.

As for the substantive part of the first objection, it need not detain me much. It is undisputed that the impugned award was delivered on 28th May, 2021 and served to the parties on the same date. As rightly submitted by Mr. Clement, the time limit to file revision applications against the CMA's decision is governed by section 91 (1) (a) of the ELRA which provides as follows: -

"91.-(1) Any party to an arbitration award made under section 88(8) who alleges 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".

Therefore, in the matter at hand since the award was delivered on 28th May, 2021 pursuant to the above provision, the application for revision was supposed to be filed on or before 09th July, 2021. Mr. Clement submitted that the application was electronically filed on 09th July, 2021 at 09:51:59. Rule 21 of G.N. No. 148 of 2018 provides that:

"A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the date it is submitted, unless a specific time is set by the court or it is rejected."

In line with the provision quoted above, since Mr. Clement has brought proof that the application was electronically filed on the 09th July, 2021, then this application was timely filed. The first objection is therefore overruled.

The second preliminary objection should also not detain me because Mr. Clement has attached a copy of Notice of Intention to seek revision of award (annexture 2). Since the notice was actually filed, it shall also be taken note by this court and in line with the overriding objective, as I have found earlier on, we cannot ignore the fact that the notice was filed simply because it was not attached to the application

while there is no law which requires him to do so. On that basis, the second preliminary objection also lacks merit since the applicant complied with Regulation 34 (1) of the Regulations.

In conclusion, all preliminary objections raised by the respondent's counsel lack merit and they are hereby overruled. The matter shall proceed for hearing on merit. It is so ordered.

Dated at Dar es Salaam this 13th day of May, 2022.


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S.M. MAGHIMBI
JUDGE