

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

REVISION APPLICATION NO. 377 OF 2021

BETWEEN

KINONDONI MUNICIPAL COUNCIL APPLICANT

AND

YUSUPH MOHAMED NANDILE & 66 OTHERS RESPONDENTS

RULING

Date of last Order & Ruling: 22/07/2022

B. E. K. Mganga, J.

The respondent was an employer of the respondents. On 18th May 2015 Mr. Yusuph Mohamed Nandile filed the dispute before the Commission for Mediation and Arbitration henceforth CMA claiming to be paid TZS 2,725,986,222/= being salary arrears, leave and extra duty pay. In the CMA F1, Mr. Yusuph Mohamed Nandile indicated that he was representing 66 others. On 29th August 2019, Hon. Alfred Massay, Arbitrator, awarded respondents to be paid TZS 2,725,986,222/= as claimed in the CMA F1. Applicant was aggrieved by the said award hence this application.

When the application was called for hearing on 22nd July 2022, Ms. Neisha Shao and Jeremiah Odinga, State Attorneys, appeared for the applicant while respondents were represented by Shafii Mafita, their Personal Representative. I examined the CMA proceedings and the award and find that Mr. Nandile indicated in the CMA F1 that they were claiming to be paid TZS 2,725,986,222/= being salary arrears, leave and extra duty pay and further that the dispute arose on 30th April 2015. But evidence that was adduced at CMA and the award shows that their claims go way back to 2012 and the arbitrator issued the award based on those claims/evidence. I noted further that there was no application for condonation. Having so noted, I asked the parties to address the court as to whether CMA had jurisdiction to hear and determine the dispute between the parties.

submitting on the issue raised by the court, Ms. Shao, State Attorney for the applicant, conceded that the CMA record does not show that respondents were granted condonation. She admitted further that evidence that was adduced by the respondents shows that their claim goes back from 1997 to 2015. Ms. Shao submitted that in terms of Rule 10(2) of the Labour Institutions (Mediation and Arbitration) Rules, GN. No. 64 of 2007, respondents were supposed to file their claims within 60 days from the

date the dispute arose. She went on that Rule 11 of GN. No. 64 of 2007(supra) gives a room to the person who fails to file the dispute within time to file an application for condonation and argued that respondents were supposed to file application for condonation, but they did not. She therefore concluded that CMA had no jurisdiction to hear and determine the dispute because it was time barred. She cited the case of ***Precision Air V. Nancy Ngowi***, Revision No. 563 of 2021, HC (unreported) to support her point that CMA had no jurisdiction to hear and determine the dispute filed out of time. Ms. Shao prayed that the CMA award be quashed.

On his part, Mr. Mafita, personal representative of the respondents conceded that in the CMA F1, Mr. Nandile indicated that the dispute arose on 30th April 2015 and that the dispute was filed at CMA on 22nd May 2015. He went on that looking on the CMA F1, the dispute was within time, but according to evidence, claims of the respondents arose many years way back. He conceded that in terms of Rule 10(2) of GN. No. 64 of 2007 (supra), respondents were supposed to file their dispute at CMA within 60 days from the date the dispute arose. Mr. Mafita submitted that according to the evidence, some claims were out of time but in the award, the arbitrator awarded the respondents claims including those that were out of

time. He conceded further that it is impossible to tell what claims were within time or not and the amount awarded. Mr. Mafita conceded further that the arbitrator had no jurisdiction to hear and determine the dispute between the parties because the dispute was time barred. Mr. Mafita concurred with the prayer to nullify the CMA proceedings, quash, and set aside the award arising therefrom. Mr. Mafita was quick to submit that after nullification of CMA proceedings, the court should order trial *de novo*.

It was correctly submitted in view by Ms. Shao State Attorney for the applicant and Mr. Mafita, personal representative of the respondents that the dispute was time barred and that CMA had no jurisdiction to hear and determine the matter between the parties because there was no application for condonation which was granted. It was further correctly submitted that the remedy available is to nullify the CMA proceedings, quash and set aside the award arising therefrom. It was submitted by Mr. Mafita that I should order trial *de novo*. With due respect, the order of trial *de novo* is not an appropriate in the circumstance of the application at hand because the dispute was time barred and CMA had no jurisdiction. Trial *de novo* can be ordered when the court or CMA had jurisdiction, but it was found that there were irregularities that vitiated the proceedings. In

the application at hand, since CMA had no jurisdiction, an order of trial de novo cannot be issued. The reason and logic are that this court cannot cloth CMA jurisdiction which it lacked.

For the foregoing, I hereby nullify CMA proceedings, quash, and set aside the award arising therefrom because the dispute was filed at CMA out of the prescribed time.

Dated at Dar es Salaam this 22nd July 2022.


B. E. K. Mganga
JUDGE

Ruling delivered on this 22nd July 2022 in the presence in the presence of Neisha Shao and Jeremiah Odinga, State Attorneys for the Applicant and Shafii Mafita, Personal Representative of the Respondents.




B. E. K. Mganga
JUDGE