

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**REVISION APPLICATION NO. 58 OF 2021**

*(From the Ruling of the Commission for Mediation and Arbitration of Dar es Salaam at Ilala at dated 4<sup>th</sup> day of December 2020 in Labour Dispute No. DSM/CMA/ILA/219/2019/97) (By Mwalongo: Arbitrator)*

**BETWEEN**

**JUMBO PACKAGING PRINTING INDUSTRIES LTD.....APPLICANT**

**VERSUS**

**HASSAN YAHAYA .....RESPONDENT**

**RULING**

**13<sup>th</sup> June 2022 & 28<sup>th</sup> July 2022**

**K. T. R. MTEULE, J.**

This Ruling concerns a Preliminary objection raised by the Respondent to challenge the competence of this application for revision. The matter sought to be revised originates from the Labour Dispute No. DSM/CMA/ILA/219/2019/97 from the Commission for Mediation and Arbitration of Dar es Salaam, Ilala. The point of objection is based on timeliness of the application. The respondent asserts that the instant application is time barred hence need to be dismissed.

It is submitted by the Respondent's Counsel Mr. Stephen Ndila Mboje Advocate that **Section 91 (1) of the Employment and Labour Relations Act Cap 366 of 2019 R.E** an application for revision needs to be filed within 42 days from the date of receipt of CMA award. Due to lack of any indication to show when the Applicant received the award, Mr. Mboje assumed that it was received by the applicant on the date when it was issued, which is **4<sup>th</sup> December 2020**. In his view, the application ought to have been filed on **16<sup>th</sup> January 2021**. He submitted that the application having been endorsed to have been received in court registry on **11<sup>th</sup> February 2021**, it was more than 26 days late in court contrary to **Section 91 (1) of Cap 366**.

Mr. Mboje made alternative submission by assuming that the award was received on 21 January 2021, which he of course disputes, he submits that the application would still have been out of time for about 9 days as he ought to have filed the application on or before 2<sup>nd</sup> February 2021 and not 11<sup>th</sup> February 2021.

Further alternative submission was made by Mr. Mboje challenging the tenability of e-filing. He claimed that nothing in the record which indicates when the matter was filed electronically. In his view, the

lack of that record renders the Registrar's endorsement to bear the official registration of the application which is 16<sup>th</sup> February 2021. To support this assertion, the respondent's counsel cited the cases of **Geita Gold Mining versus Christina Christopher, Labour Revision No. 90 of 2020** and the case of **Biton Mwenisongole versus The Governing Body of the College of Business Education (CBE)** where the courts having found no proof of electronic filing did count the days from the date of the Registrar's endorsement.

Citing the cases of **Stephen Masato Wasira versus Joseph Sindi Warioba and the Attorney General, CAT, at Dar es Salaam 1999 TLR 334** and **Barclays Bank Tanzania Limited versus Phylisian Hussein Mcheni CAT, unreported**, the Respondent's counsel submitted that under **Section 3 (1) of the Law of Limitation Act**, the consequence of a time barred matter is dismissal. He prayed for the Court to dismiss the Application.

In response to the Respondent's submissions, the Applicant submitted that the application was filed electronically on **21 December 2020** which was only 18 days from the date when the award was delivered. The Applicant attached a printout of the

electronic filing record which indicates that the application was filed within time. He cited a number of decisions where the court held a matter to be within time upon being filed electronically within the time limit prescribed by the law. Citing **Rule 21 (1) of the Judicature and Application of Laws (Electronic Filing Rules) GN. No. 148 of 2018**, the applicant stated that counting of time in this matter should begin from the date when the matter was electronically filed.

The applicant challenged the relevance of the cases of **Geita Gold Mining versus Christina Christopher, Labour Revision No. 90 of 2020** and the case of **Biton Mwenisongole versus The Governing Body of the College of Business Education (CBE)** in our situation.

I have gone through the parties' submissions. I am concerned with the printout of the report of the electronic filing system which was attached with the Applicant's submission indicating to have the application filed on **21 December 2020**. I am aware that it is a common principle that any prove of a fact must be done by evidence. It is normal expectation that evidence should not be given on submission but rather with affidavit or oath. Although the printout

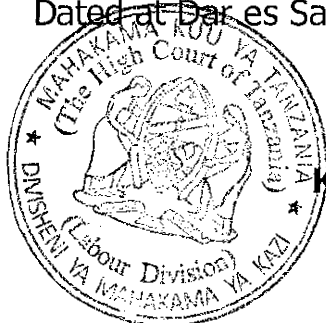
has been filed during the submission, I am inclined to take cognisance of it because there is no legal requirement to attach such a printout to the application. Since there is objection on timeliness of the application, its availability is necessary in any form. The printout clearly shows that the application was filed on 21 December 2021 which is more than 23 days before the lapse of 42 days from the date of CMA award. I will take it as a sufficient prove.

I agree with the Respondent counsel that the cases cited by the Respondent are not relevant in this matter because in those cases, there could be no prove by system printout which showed the date when the application was electronically submitted. Since there is such a prove in the instant case, I see no reason not to find the application out of time. It is therefore my holding that pursuant to **Rule 21 (1) of GN. No. 148 of 2018** this application was timely filed.

From the foregoing, I find the Preliminary objection not founded.

Consequently, the said preliminary objection is overruled.

Dated at Dar es Salaam this 28<sup>th</sup> day of July, 2022.



**KATARINA REVOCATI MTEULE**

**JUDGE**

**28/07/2022**