

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

REVISION NO. 302 OF 2021

BETWEEN

UNIVERSITY OF DAR ES SALAAM APPLICANT

VERSUS

BENEDICT AMBROSE RESPONDENT

JUDGEMENT

S. M. MAGHIMBI, J.

This application is made under the provisions of Section 91(1)(a), 91(2)(b) and 94(1)(b)(i) of the Employment and Labour Relations Act, [Cap 366 RE 2019] ("ELRA") and Rule 24(1), 24(2)(a), (b), (c), (d), (e) (f), 24(3)(a), (b), (c), (d), 28(1)(b), (c), (d) of the Labour Court Rules, GN No. 106 of 2007 ("the Rules"). The application is supported by an affidavit of Prof. David Alfred Mfinanga, the applicant's Deputy Vice Chancellor responsible for administration, dated 27th July, 2021. On the other hand, the respondent filed his counter affidavit opposing the application.

Basically, the applicant is urging the court to revise and set aside the proceedings and decision of the Commission for Mediation and

Arbitration ('CMA') in Labour Dispute No. CMA/DSM/KIN/R69/14/1197
("the Dispute") on the following grounds:-

- i. That the honourable Arbitrator erred in facts and at law by entertaining the complaint which required condonation.
- ii. That the honourable Arbitrator erred in facts and at law by basing his decision on hearsay and inadmissible evidences and testimonies of the respondent.
- iii. That the honourable Arbitrator erred in facts and at law by wrongly awarding the respondent;
 - (a) Tanzania Shillings seven million two hundred thousand (7,200,000) as compensation of twelve months without its legal base.
 - (b) Tanzania shillings thirty-five million four hundred thousand (Tshs. 35,400,000) as payment of salaries of 59 months from the final decision to terminate being 10/12/2013 to the date of the award 12/11/2019 without any colour of legal base.
 - (c) Tanzania shilling six hundred thousand (Tshs. 600,000) as one month salary in lieu of the notice without its legal base.

- (d) Tanzania Shillings four million eight hundred thousand (Tshs. 4,800,000) as half pay salaries from 30/08/2005 to December 2006 under the Security of Employment Act.
 - (e) Tanzanian shillings Forty-nine million eight hundred thousand (Tshs. 49,000,000) as a full pay pending disciplinary action and appeal for eight three (83) from January, 2007 to 10/12/2013.
 - (f) Tanzanian shillings one million six hundred thousand fifteen thousand three hundred eighty-four and sixty-one cents eight (Tshs. 1,615,384.61) as severance pay without its legal base and proof thereof.
 - (g) Tanzanian shillings fifty million (Tshs. 50,000,000) as general damages without its legal base.
- iv. That the honourable Arbitrator erred in facts and at law by making his award in total disregard of the applicants' evidences and testimonies adduced during the hearing of the matter before him.
- v. That the Honourable Arbitrator erred in facts and at law by awarding the respondent an amount of alleged salary arrears for the respondent without a base of its computation and the proof thereof.

The application was disposed by way of written submissions. Before this court, the applicant was represented by Ms. Janeth Makondo, Learned Counsel whereas Ms. Agnes Ndazi, Learned Counsel, appeared for the respondent. I appreciate the comprehensive submissions of both counsels which shall be taken on board in due course of constructing this judgement.

Starting with the first ground Ms. Makondo submitted that the law governing time limits for filing disputes at the CMA is Rule 10 of the Labour Institutions Act (Mediation and Arbitration) Rules, G.N 64 of 2007 ('GN 64 of 2007') which require dispute of unfair termination to be filed within 30 days from the date of termination or from the date the employer made the final decision to terminate. She stated that the respondent was terminated on 02/03/2006 as indicated in the termination letter, dissatisfied by the termination decision, the respondent appealed to the applicant's Staff Appeal Committee on 01/06/2006. That the appellate committee referred the respondent to Muhimbili National hospital to bring evidence after the alleged sickness. Ms. Makondo continued to submit that while waiting for evidence from Muhimbili National Hospital, on 16/04/2010 the respondent referred the complaint of unfair termination to the CMA.

It was further submitted that the final decision to terminate the respondent was made on 10/12/2013 which was also the date referred by the Arbitrator. Ms. Makondo argued that in line with the cited provision, the dispute of unfair termination was supposed to be filed at the CMA on or before 09/01/2014 however, the respondent referred the same on 13/04/2014 thus, in terms of Rule 10 of GN. 64 of 2007 the dispute was filed out of time without an application for condonation. The counsel argued that under the circumstances, the CMA had no jurisdiction to entertain the matter. To support her submission, she cited the cases of **Yussuf Vuai Zyuma v. Mkuu wa Jeshi la Ulinzi TPDF and 2 others, Civil Appeal No. 15 of 2009** (unreported) and the case of **University of Dar es salaam v. Amon Lazaro & 3 others, Labour Revision No. 782 of 2018** (unreported). Ms. Makondo urged the court to nullify the proceedings and subsequent decision of the CMA.

In response to the relevant ground, Ms. Ndazi submitted that the application was filed on time because the respondent was terminated on 27/09/2005, he then pursued his rights through internal dispute mechanism after failure of the same he then referred the matter to the CMA. She stated that while the matter was at the CMA, the applicant requested the same to be suspended to allow the parties to settle the

same amicably. That upon failure to settle the relevant dispute the respondent went back to the CMA to proceed with this matter which was pending. The counsel insisted that the respondent did not file a fresh suit after the Staff Disciplinary Committee's decision rather he made follow up for the application which was previously filed.

Ms. Ndazi continued to submit that at the CMA, the dispute was determined in favour of the respondent on 03/11/2016 by Hon. Mwakisopile. Aggrieved by such decision the applicant filed application for revision where the matter was ordered to start afresh. Following the court's order, the matter was heard by Hon. Mpulla whose decision is the subject matter of this revision. She added that the cases cited on time limitation are irrelevant in this application.

After considering the rival submissions of the parties the question to be addressed is whether this matter was timely referred at the CMA. As rightly submitted by Ms. Makondo, the time limit for filing disputes of unfair termination at the CMA is governed by Rule 10(1) of G.N No. 64 of 2007 which provides as follows:-

*"(1) Disputes about the fairness of an employee's termination of employment must be referred to the Commission **within thirty days from the date of termination** or the date that*

the employer made a final decision to terminate or uphold the decision to terminate.”


In this application both parties are in agreement that the respondent was terminated on 27/09/2005 where he appealed against such decision therefore the final decision to terminate his employment was made on 10/12/2013 as evidenced by the letter of Notification of Appeal (exhibit D3). The respondent's counsel alleges that after the respondent did not succeed in his appeal, he went back to the CMA to proceed with his previously filed application. However, the counsel's submission is contrary to the evidence available in record. The CMA F1 which initiates disputes at the CMA indicates that it was signed by the respondent on 13/02/2014. Again, the first page of the relevant form shows that it was received by the applicant on the same date signed by the respondent. Although it does not clearly indicate when the same was received by the CMA, on the basis of the evidence on record, the court believes that this dispute was referred at the CMA on 13/02/2014. In his opening statement at the CMA, the respondent himself admitted that after failure of his appeal on 10/12/2013 he decided to file the present application. I hereunder quote his statement in his own verbatim:-

'Baada ya kutoridhika na majibu ya barua ya mlalamikiwa ya tarehe 10/12/2013 mlalamikaji aliamua kutafuta haki kwa kuwasilisha mgogoro mbele ya TUME na ambapo mgogoro huu ulipokelewa mbele ya Tume ya Usuluhishi na Uamuzi na kupewa namba CMA/DSM/KIN/R.69/14/1197 katika hatua za awali.'

The above quotation and further evidence on the record indicates that this was a new dispute filed by the respondent after failure of his appeal. The allegation that the respondent proceeded with his previously filed dispute is not backed up with any evidence. It was submitted that the respondent filed another CMA F1 to initiate another dispute which was registered differently from the previously filed one. The position of the law quoted above is clear that a dispute of unfair termination must be filed 30 days from the date of termination or from the date the employer made the final decision to terminate. As I have indicated earlier, the final decision to terminate the respondent was made on 10/12/2013 therefore as correctly submitted by Ms. Makondo, the respondent's dispute of unfair termination was supposed to be filed at the CMA on or before 10/01/2014. Since it is proved this matter was filed on 13/02/2014, it was lodged out of time prescribed by the law.

In conclusion, the CMA had no jurisdiction to entertain this matter because it was filed out of time without condonation of time. Since the first ground has disposed of the application, I find no relevance to labour on the remaining grounds. In the result, I nullify the CMA's proceedings and the subsequent award.

Dated at Dar es Salaam this 11th day of July, 2022.


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S.M. MAGHIMBI
JUDGE

