

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

REVISION APPLICATION NO. 565 OF 2020

(Originating from Labour Dispute No. CMA/ILA/KIN/767/19/370)

BETWEEN

THOMAS D. SABAI..... APPLICANT

VERSUS

TAMICO..... RESPONDENT

JUDGMENT

Date of Last Hearing: 26/01/2022

Date of Judgment: 28/01/2022

I. Arufani, J.

The applicant, Thomas D. Sabai was elected to be the respondent's General Secretary with effect from 18th October, 2016. On 17th February, 2017 he was suspended from his employment pending investigation of several allegations relating to misuse of his office directed towards him. The applicant alleged that, during investigation of the stated allegations the respondent stopped paying him different allowances he was entitled like transport, leave and other entitlements.

The said situation caused the applicant to institute a complaint before the Commission for Mediation and Arbitration (hereinafter

referred as the CMA) and registered as CMA/DSM/ILA/767/19/370 claiming for salary arrears and the said allowances. After hearing the parties' evidence, the CMA dismissed the applicant's claims for lack of merit. The applicant was aggrieved by the award, and filed the present application in this court seeking for the award to be revised and set aside.

The application was supported by the applicant's affidavit and on the other hand it was challenged by the counter affidavit sworn by Masaida Mussa Chiwinga the respondent's Acting General Secretary. Hearing of the application was conducted by way of written submission. While the applicant was unrepresented, the respondent was represented by Mr. Evold Mushi, Learned Advocate.

Having carefully considered the rival submission from both sides and after going through the record of the matter and the impugned award, the court has found that, as stated at paragraph 7 of the affidavit of the applicant supporting the application, the applicant was claiming for Tshs. 53,536,000.00 being salary arrears, transport allowance, housing allowance, security allowance, leave due but not taken and other allowances. The said claims covered the period from 2016 to October, 2019 when the dispute was filed before the CMA.

The CMA found the applicant is not entitled to the stated claims and dismissed his claims for being devoid of merit.

That being the position of the matter the court has found before going to the merit of the application for revision filed in this court by the applicant there is a doubt as to whether the CMA had jurisdiction to entertain the claims which arose from 2016 to the date of instituting the matter in the CMA on 7th October, 2019. Having entertained the said doubt and as that issue was not argued by the parties in their submission they filed in the court, the court summoned the parties to address it about the said observation.

The applicant told the court that, the matter was filed at the CMA within the time. He told the court that, on 13th August, 2019 he wrote a letter to the respondent demanding to be paid his salary arrears and the allowances he was claiming against the respondent and gave the respondent fourteen (14) days to pay him and if he would have not paid him within the stated period of time, he would have taken legal action against the respondent. He argued that, as the respondent did not pay his claims and he did not respond to his letter then the cause of action for his claims arose on 29th August,

2019 which was after expiration of fourteen days he gave the respondent to pay his claims.

He argued that, counting from the said 29th August, 2019 to 7th October, 2019 when he filed his dispute at the CMA it is crystal clear that he was within sixty days provided under the law for instituting his claims before the CMA. He told the court that, the letter he wrote to the respondent was admitted in the matter together with other letters and marked exhibit AP8 collectively. He went on arguing that, the matter was filed at the CMA within the time that is why even the respondent did not raise that issue of limitation of time at the CMA or before this court. He submitted that, as there was correspondence between him and the respondent the matter was filed in the CMA within the time. To support his argument, he referred the court to the case of **TAMICO V. Thomas Daudi Sabai**, Consolidated Revision Nos. 624 and 865 of 2019, HCLD at DSM (unreported).

In his reply, Mr. Godfrey Ngassa, learned advocate for the respondent told the court that, according to paragraph 6 of the affidavit of the applicant, the applicant was suspended from his employment on 17th February, 2017 and the said suspension was supposed to last for ninety days. He submitted that, if the applicant

had any claim, he was supposed to claim for the same in 2017. He further argued that, to the contrary the applicant filed his matter in the CMA in 2019 without asking for condonation of time and submitted that the matter was filed in the CMA out of time.

As for the issue of the respondent to fail to raise the said issue of limitation of time in this court or in the CMA the counsel for the respondent submitted that, the same cannot justify violation of the law governing limitation of time of filing the matter in the CMA. He submitted that the law is very clear that the duration of filing a dispute which is not about unfairness of termination of employment before the CMA is sixty days.

After considering the submission made to the court by both sides the court has found the issue of limitation of time for filing a dispute before the CMA is governed by Rule 10 (1) and (2) of the Labour Institutions (Mediation and Arbitration) Rules GN. No. 64 of 2007 (GN. 64 of 2007) which provides that:-

'Rule 10 (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.

(2) All other disputes must be referred to the Commission within sixty days from the date when the dispute aroused. [Emphasis added].

As the claims of the applicant was not about unfair termination of his employment, the applicant's claims were supposed to be governed by the bolded sub-rule (2) of Rule 10 of the GN. No. 64 of 2007 quoted hereinabove. The wording of the said provision of the law is very clear that the applicant's dispute about non-payment of his salary arrears and allowances was supposed to be filed in the CMA within sixty (60) days from the date when the dispute arose.

The court has considered the argument by the applicant that the cause of action for his claims arose on 29th August, 2019 as that is when fourteen days, he gave the respondent through his demand letter dated 13th August, 2019 to pay his claims expired but failed to see any merit in the said argument. The court has arrived to the above finding after being of the view that, the limitation of time to institute a dispute in the CMA starts to count from the date on which the dispute arises. It does not wait until when a party demand to be paid his claims which has already arisen and the other party refused to pay or to respond to the demand as intimated by the applicant.

The court has been of the view that, as some of the claims of the applicant involves claim of salary arrears and allowances arose in 2016 which was even before being suspended from his employment and other claims arose in the years 2017, 2018 and 2019 it is crystal clear that the claims of the applicant arose out of sixty days provided by the law for institution of a dispute of claiming for the same before the CMA. Under that circumstances the applicant was required to apply for condonation of time before filing the said claims at the CMA out of the time provided by the law.

The court has further considered the argument by the applicant that, as there was correspondence between him and the respondent then the cause of action arose on 29th August, 2019 when the respondent refused to pay his claims but found exhibits AP5 and AP8 shows the applicant wrote several letters to the applicant claiming for the reliefs he was claiming before the CMA. The said letters were written on 22/11/2017, 03/07/2018, 16/10/2018 and 13/08/2019 and the applicant has not stated if the respondent replied to any of the said letters. Under that circumstances it cannot be said the applicant's cause of action arose on 29th August, 2019 as some of the claims arose from 2016 which is far from the mentioned date.

The court has gone through the case of **TAMICO** (supra) cited to the court by the applicant to support his submission but find the said case is distinguishable from the case at hand. The court has found in the cited case the applicant wrote his letter to his employer requesting to be paid his gratuity for the time he was serving as Deputy General Secretary. The said letter was replied by the employer and he was promised by his employer that he would have been paid by instalment as the respondent's financial position was not good. After the employer failed to fulfill his promise is when the applicant took the employer to the CMA. The position in the matter at hand is different because although the applicant wrote several letters to the respondent to claim for his salary arrears and allowances as appearing in exhibits AP5 and AP8 but he was neither paid his claims nor replied by the respondent as to whether he would have been paid his claims or not.

It is the view of this court that, under that circumstances the applicant was required to initiate his dispute before the CMA within the time prescribed by the law instead of waiting to be replied his letters by the respondent while the time was not waiting him. As he did not do so and waited until 7th October, 2019 it is obvious that he

would have not been allowed to initiate his claim at the CMA before asking for condonation to file his claims in the CMA out of time prescribed by the law. In the premises the court has found the applicants claim from 2016 to July, 2019 were time barred hence the CMA had no jurisdiction to entertain the same.

The court has considered the argument by the applicant that the respondent has not raised before the CMA or before this court an issue of his dispute to be out of time but find that argument is without merit. The court has arrived to the stated finding after seeing the issue of limitation of time to institute a dispute before the CMA is an issue which is touching jurisdiction of the CMA to entertain the dispute. Therefore, even if that issue was not raised by the respondent but the court has power to raise it *suo moto* at this revisional stage as is touching jurisdiction of the CMA to entertain the matter.

The above finding makes the court to find there is no need of going to the merit of the application as the application is based on a matter which was wrongly entertained by the CMA without jurisdiction as it was filed at the CMA out of time. Consequently, the dispute filed at the CMA by the applicant against the respondent is

hereby dismissed for being initiated at the CMA out of time prescribed by the law and without an order of condonation of time as required by the law. Having dismissed the dispute filed at the CMA by the applicant it follows as day follow the night that the application at hand is supposed to crumble for lacking legs to stand on. It is so ordered.

Dated at Dar es Salaam this 28th day of January, 2022.



I. Arufani

JUDGE

28/01/2022

Court: Judgment delivered today 28th day of January, 2022 in the absence of the applicant who is fully aware that the matter is coming for judgment today as he was present when the matter was scheduled to come for judgment today. The judgment has also been delivered in the presence of Mr. Godfrey Ngassa, Advocate for the Respondent. Right of appeal to the Court of Appeal is fully explained.



I. Arufani

JUDGE

28/01/2022