

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

REVISION NO. 377 OF 2022

(From the decision of the Commission for Mediation and Arbitration, Mwidunda: Arbitrator, dated 30th
January, 2014, in Labour Dispute No. CMA/DSM/MIS/08/12)

SAMWEL R. SEMWETA & 21 OTHERS APPLICANTS
VERSUS
TANZANIA FEDERATION COOPERATIVE LTD RESPONDENT

RULING

29th – 29th March, 2022

OPIYO, J

This Ruling is in respect of a preliminary objection raised in Revision Application filed by the applicants against the respondent on 09th November, 2022 to the effect that the application is time barred for being filed after expiring of 21 days, the time given as per the order of this Court.

Both parties were represented. Mr. Daudi Maziku, Personal Representative was for the applicants whereas Mr. Sylvester Shayo, Learned Advocate, appeared for the Respondent.



The hearing of the preliminary objection proceeded orally. Originally there was three points of objection that were raised against the application. However, during his submission in chief, Mr. Shayo abandoned two points of objection and remained with only one on time limitation as noted above. To bring the point of objection on time limitation home, Mr. Shayo submitted that this application is time barred. He stated that, the order of Hon. Mteule, J in Misc. Application No. 464 of 2021 dated 29th September, 2022 gave the applicants 21 days to file the application for revision, but the applicants filed this application on 09th November, 2022 after the lapse of 41 days. Therefore, according to the Law Limitation Act, Cap. 89 RE 2019 the application filed out of time ought to be dismissed. He then prayed for the current application to follow the same path.

In reply Mr. Maziku, personal representative, submitted that this application has been filed within 21 days as decided by Hon. Mteule, J. He stated that, indeed the decision giving them 21 days within which to file application for revision was on made on 29th September, 2022. He submitted that, they filed their application in time, because according to the provisions of Cap. 89 RE 2002, time starts to run from the date the party receives a copy of the decision. That, the that applicant's applied



for copies of the decision extending time via a letter that was replied to through court's letter 13th October 2022. They received the copies of the decision on the same day and then filed this application on 09th November, 2022.

He finalized by stating that applicants' were therefore within given time of 21 days as they filed their application on 18th day from the date they were supplied with the copies.

Mr. Shayo in rejoinder submitted that, the drawn order attached by the applicants' shows that it was extract on 29th September, 2022 and they (applicants) received their copy on 11th October, 2022. He contended, the letter submitted by the Deputy Registrar does not show when they were supplied with copies. In his view the drawn order is the one which is used to show when the copies were issued to parties.

He submitted further that even if the copies were received by the applicants on 13th October, 2022, still filing the application on 09th November, 2022 is out of time as it was filed on 28th day from the day of receiving the copies.



After reflection on both parties' submission, this court has been called to determine whether applicants were time barred in filing this application. There is no dispute that the decision of the application for extension of time was made on 28th September, 2022. Also, there is no dispute that in that application the time was extended for 21 days from the date of the decision. And also it is undisputable that the current application was filed on 09th November, 2022.

Applicants' personal representative argument that they are within time as they received copies for the decision on 13th October, 2022, backed with the provision of Cap. 89 (supra) allowing exclusion of the days spent in waiting for the copies in calculation of limitation period is, in my view, misconceived. The provision of law insinuated by the applicants' representative, section 19(2) of Cap. 89 (supra) is not applicable in waiting for the copies of the order allowing the parties to file an application within a specified time. It applies for the period waiting for the copies of the impugned decision or order. It is expected that when time is extended for someone to file an application within a specified time, he gets ready with his application for which time has been extended awaiting for the copy of the order extending time, so that whenever the copy of the order is issued to him before extension period

lapses, he files the application attaching a copy. Waiting for order or decision extending time is not necessary in taking the action for which the time has been extended. The action can still validly be taken without procuring a copy of the decision extending time because the fact that time was extended will not change even if the copies of the decision is provided beyond the time extended. The said section provides that:-

19.-(1) N/A

*(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, **the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded.** (emphasis mine)*

From the above observation, courts determination is that, the applicants chose to file their application out of time under pretext of counting from the day they received a copy of the order extending time. In all, even if the calculation was to be made from the day they allegedly received a copy, 13th October 2022 as their representative submitted; their application is still out of time being filed on the 9th November 2022. It is



still out of time as it was filed on the 27th day from the day of allegedly receiving the copy.

In the case of **Barclays Bank Tanzania Limited Vs. Phylisiah Hussein Mcheni, Civil Appeal No. 19 of 2016** the remedy when the application is filed out of time is for it to be dismissed. In that case it was held that: -

"... if a time – barred will be struck out with leave to refile instead of being dismissed. ... Accordingly, we allow the appeal, quash and set aside the order of striking out the complaint with leave to re-file, and replace it with an order of dismissal."

By not abiding to the Court order the applicants indeed filed this application out of time. For that reason, the preliminary objection is sustained. This application is therefore dismissed. This being a labour matter, each party has to bear their own costs.



M. P. OPIYO,

JUDGE

29/03/2023