

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

REVISION NO. 442 OF 2022

(From the decision of the Commission for Mediation and Arbitration at Ilala in Labour
Dispute No. CMA/DSM/ILA/167/21, Makanyaga, A.A.: Arbitrator, Dated 11th
November, 2022)

BETWEEN

CHINA DASHENG BANK LIMITED APPLICANT

VERSUS

NUNU SAGHAF RESPONDENT

RULING

17/4/2023 & 2/5/2023

OPIYO, J

This Ruling is in respect of a preliminary objection raised in Revision Application filed on 27th January, 2023 to the effect that the application is time barred for having filed on 47th day which is beyond six weeks as required under section 91(1)(a) of the Employment and Labour Relations Act [CAP 366 R.E. 2019].

Both parties were represented by Learned Advocates. Mr. Bernard Nkwabi represented the applicant and Mr. Juventus Katikiro appeared

for the respondent. The hearing proceeded by way of written submission as prayed by the Learned Advocates and agreed by the court. In support of the application, Mr. Katikiro stated that this application is time barred and so it should be dismissed. He submitted that the award intended to be revised was delivered on 11th November, 2022 and that parties were served their copies on the same day. He continued that this application was filed on 28th December, 2022 being 47 days from the date the award was delivered and served to them contrary to section 91(1)(a) of CAP. 366 R.E. 2019 which allows the revision application to be made within 42 days from the day the award was served to the party.

Mr. Katikiro continued that even though there is a requirement of electronic filing under G.N. 148 of 2018 the applicant had acquired with rule 3 and 5(1) of the Court Fees Rules, 2018 [G.N. 247 OF 2018] which require the document to be filed in Court upon payment of filing court fees. In his view, the document is said to be properly filed at the registry once the document its self is presented at the registry for physical registration. Thus, the applicant after being time barred was to seek for leave to of the court to file the same out of time. He drew attention of this court to the case of **Maliselino B. Mbipi Vs. Ostina Martine Hyera**, Civil Application No. 08 of 2022, High Court of Tanzania at



Songea District Registry for the holding that submission and admission of document electronically is not a conclusive proof of filing. For him the matter filed out of time has to be dismissed as held in the case of **Johnson Amir Garuma Vs. The Attorney General and 2 Others**, Civil Appeal No. 206 of 2018, Court of Appeal of Tanzania, he cited. He then prayed for this application to be dismissed for being filed out of time without leave of the Court.

In responding to it, Mr. Nkwabi submitted that the applicant received a copy for the award on 11th November, 2022 and so was supposed to file in Court on 22nd December, 2022 as per section 19(1) of the Law of Limitation Act [CAP. 89 R.E. 2019] and section 90(1)(a) of CAP. 366 R.E. 2019. He stated that this application was electronically filed on 22nd December, 2022 and a copy of it was attached.

Mr. Nkwabi continued that, rule 21(1) of the Judicature and Application of Laws (Electronic Filing) Rules G.N. No. 148 of 2018 provides for a document to be considered to have been filed on the day when it was submitted through the electronic filing system. To support his point, he referred cases of **Finca Microfinance Bank Ltd Vs. Patrick Joshua Sanga**, Revision Application No. 97 of 2021, **GGN Construction Ltd**



Vs. George Johansen T/I Magefa Timber Supply, Misc. Civil Application No. 33 of 2020, **Mohamed Hashil Vs. National Microfinance Bank Ltd (NMB)**, Labour Revision No. 106 of 2020 and **Dangote Cement Limited Tanzania Vs. Sufian Mohamed Gau & Juma Mteta Juma**, Labour Revision No. 13 of 2021.

He submitted further that, this application was filed within the prescribed time and so prayed for the preliminary objection to be dismissed for lack of merit. For this he referred the case of **CHODAWU Vs. Board of Trustees of Tanzania National Parks**, Revision Application No. 27 of 2022. He then stated that in labour disputes there is no requirement for payment of Court fees, thus the date on which the document was electronically admitted in Court becomes the date of filing. To support his point, he referred the case of **Stephano Mollel and 4 Others v. A1 Hotel and Resort Ltd**, Revision Application No. 90 of 2020. He then prayed for the preliminary objection to be dismissed for lack of merit.

Upon scrutiny of both parties' submission, the matter for determination is whether the applicant was time barred in filing this application. There is no dispute between the parties that the award at CMA was



pronounced on 11th November, 2022 and on the same day they were all supplied with copies of the decision.

Section 91(1)(a) of CAP. 366 R.E. 2019 provides for revision application to be filed within six weeks from the day, a copy of the award was received by the party. The advocate for the applicant stated that the applicant filed the revision application via electronic filing on 22nd December, 2022. For him the applicant was within time limit of filing the revision application, the argument that is highly contested by the respondent's advocate, to whom, filing in this context is not concluded by submission of the document electronically. He argued for a stand that, for filing to be complete, the documents have to be admitted at the registry physically. Considering that the documents show that the applicant was filed at the registry on 28th December, 2022. For him the applicant was out of time.

As per section 91(1)(a) of CAP. 366 (supra) from the date the applicant received a copy of an award (11th November, 2022) to the date of filing via electronic filling (22nd December, 2022) 41 days had elapsed. If we bank on that, it shows that the applicant was within time as the application was filed a day before lapse of prescribed time. But if the



days were to be counted to the date the application was filed physically at the court registry, on 28th December, 2022, it is on the 47th day, then it will be time barred.

The question that follows requiring this courts answer is whether electronic filing is a sufficient filing or until the corresponding hard copies are filed at the registry. There is no dispute that cases are filled electronically in order to be submitted. This has been provided under rule 8 of Judicature and Application of Laws (Electronic Filing) Rules, 2018 that: -

"All pleadings, petitions, applications, appeals and such other documents shall be filed electronically in accordance with these Rules."

In the matter at hand the advocate for the respondent contended that for the application to be properly filed it should also be submitted in a hard copy in Court. That contention seems to be in contrast with provision of rule 21(1) of Electronic Filing Rules of 2018 which provides that: -



"A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the date it is submitted, unless a specific time is set by the Court or it is rejected."

This provision means that; the application acquires a status of being admitted after being filed via electronic system and being submitted thereof. The circumstances in case of **Maliselino B. Mbipi (supra)** referred by the advocate for the respondent is different to the matter at hand. This is so because the referred authority dealt with the case which needed Court fee to be paid when filing the application. The situation is different to this; where payment of Court fee is not a requirement in terms of rule 51(1) of the Labour Court Rules, G.N. No. 106 of 2007.

This shows that, in High Court Labour Division when the matter is filed via electronic filing and admitted, it is considered to be admitted on that date as rule 21(1) of Electronic Filing Rules of 2018 provides.

Based on the above observation, the application is within time. The preliminary objection therefore, lacks merits. It is consequently dismissed. Hearing of application on merits shall proceed for it is



competently before the court. This being a labour matter, each party has to bear his/her own costs.



A handwritten signature in blue ink, appearing to be 'M. P. Opiyo', written over a horizontal line.

M. P. OPIYO,
JUDGE
2/5/2023

Labour Court TZ.