

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION**

AT DAR ES SALAAM

REVISION NO. 11 OF 2023

(From the decision of the Commission for Mediation and Arbitration at Ilala in Labour Dispute No. CMA/DSM/ILA/535/2022, Chengula, M.: Arbitrator, Dated 02nd December, 2022)

BETWEEN

METAPLAN INTERNATIONAL CO. LTD.....APPLICANT

VERSUS

FELIX JULIUS.....RESPONDENT

RULING

19th – 31th May, 2023

OPIYO, J

The applicant filed this revision application requesting the court to revise and set aside the ruling of the Commission for Mediation and Arbitration (CMA) on the dispute No. CMA/DSM/ILA/535/2022 held by Hon. Chengula, Arbitrator on 02nd December, 2022.

The application was supported by the applicant's affidavit sworn by Tawajud Lwenduru, applicant's advocate with the ground for revision as to whether it was proper for the arbitrator to strike out the matter instead of dismissing it for being time barred.



The hearing proceeded orally. Only the applicant had an opportunity to be represented by Mr. David Kasanga, Learned Advocate; who submitted that the respondent was employed on 20th September, 2019 as Human Resource Manager by the applicant under a fixed term contract which was ending on 19/09/2022. He continued that, the respondent was issued with notice of non renewal on 19th August, 2022 and was paid all his dues but the respondent on 19th October, 2022 filed a dispute at CMA claiming unfair dismissal.

He submitted further that upon due diligence the applicant realised that the application was filed out of time and he filed a preliminary objection to that effect. He stated that the matter was heard and ruling was on 2nd December, 2022 whereby the arbitrator struck out the application. He continued that the applicant brought this matter for revision to find out whether it was proper for arbitrator to struck out the matter or he was supposed to dismiss it.


Again, Mr. Kasanga submitted that the issue of time limitation is governed under rule 10(1) of the Labour Institutions (Mediation and Arbitration) G.N. No. 64 of 2007 which provides that the matter has to be referred to the CMA within 30 days from the date of decision. He continued that the same



law under rule 11(2) provides that if one is time barred he has to file condonation. He submitted further that, section 3(1) of the Law of Limitation Act [CAP. 89 R.E. 2019] provides for any matter instituted after the limitation period expired shall be dismissed whether or not limitation has been set up as a defence.

To support his point the learned advocate referred to the case of **Export processing Zones Authority Vs. Musa Fikiri Mahimbi** Rev. No. 632 of 2019 where the matter was dismissed after it was filed within 40 days instead of within 30 days prescribed. In his view, CMA erred in striking out the matter instead of dismissing it as per the law.


He also referred to cases of **Barclays Bank Tanzania Ltd Vs. Phylisian Hussein Mchemi** Civil Appeal No.19 of 2016 Kitusi, JA Pg 15 para 2 where it was held that time limitation leads to dismissal and not struck out. Also the cases of **K.K.Security Ltd Vs. Matho John Samburu** Rev. No. 169/2021, High Court Labour Division Pg 13- 14, **Joffrey Jambiri Vs. Dawasa & 3 Others** Misc. Labour Application No. 115 of 2020, High Court Labour Division Aboud, J. where referred to on the same matter.



He then stated that in this matter the respondent filed the matter out of time before the CMA, while he was to apply for condonation before referring the matter to CMA. For him, the arbitrator was wrong because his award was contrary to section 3 of CAP 89 R.E. 2019. He then prayed for the decision of CMA to be quashed and set aside.

In opposition, the respondent submitted that the arbitrator was right to struck out the application instead of dismissal based on the reason he enumerated in his ruling. In his view; in making decision circumstances of the matter has to be looked into. He stated that on 18th October, 2022, he went to the applicant with form No. 1 and handled it to one Amasha, Human Resource Manager. He continued that the reason for his delay; Mr. Amasha was communicating with his advocate for the purpose of holding him back to delay and asked him to wait until the next day. When he went to the CMA offices and it was already closed.

For him those circumstances showed the applicant intended to make him delay. He submitted further that it is true that he filed the form within 30 days and prayed to the court not rely on legal technicality as it hinders his rights.




In rejoinder Mr. Kasanga submitted that applicant did not refused to sign the documents, but it is just that the office procedures required some approval of directors before signing receipt of any documents. He finalized by stating that it was not a conspiracy to delay him.

Parties' submission has dully bein considered. The issuse for determination in this matter is the consequence of holding the matter time barred. CMA F.1 shows that the respondent's labour dispute was on unfair termination.

In the case of **Tanzania Fish Processors Ltd vs Christopher Luhangula, Civil Appeal No. 161 of 1994, CAT at Mwanza** as cited in the case of **Whipaz vs Amina Salum and 2 Others**, Miscellaneous Application No. 674 of 2019 at page 4 it was held that: -

"The question of limited of time is fundamental issue involving jurisdiction ... it goes to the very root of dealing with civil claims, limitation is a material point in the speedy administration of Justice. Limitation is there to ensure that a party does not come to Court as and when he chooses."

There is no dispute between parties that the respondent was out of time when filing his labour dispute at CMA as both sides conceded to that fact.



What is in dispute is the outcome of the matter that is filed out of time, like the one at hand. Whether it leads to dismissal or struck out

The applicant stated that the matter before CMA was supposed to be dismissed as it was filed out of time. While the respondent stated that even though the application was out of time but circumstances of the matter that was to be considered necessitated making sure that the respondent get his right; and so for him the arbitrator was right to strike out the application instead of dismissing it.

Laws and principles in many cases have been made on the depth of non compliance with the law of limitation. In the case of **John Cornel vs A. Grevo (T) Ltd**, Civil Case No. 70 of 1998 as it has been cited in the case of **Nyanza Folklore Research Institute (NFRI 1985) vs Mwanza City Council and Others**, High Court at Mwanza, Land Case No. 04 of 2020 at page 14 it was held that: -

"However unfortunate it may be for the plaintiff; the law of limitation is on action knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web."



This case eraborate clearly that laws when made has to be followed no symphath to it will be easily tolerated. As records shows that the respondent filed a matter at CMA while being time barred, the law requires it to be dismissed not struck out in terms of section 3(1) of CAP. 89 (supra). No allowance for consideration of circumstances of each case has been given in the above provision to circumvent this settled principle. All authorities cited by the counsel for the applicant are in support. Specifically in the case of **Barclays Bank Tanzania Limited vs Phylisiah Hussein Mcheni**, (supra) in referred to by the applicant emphasis was put at page 15 in the following words:-

"Finally, therefore, there was no basis for the learned High Court Judge to strike out the complaint that had been presented in court after expiration of 60 days... In view of that position of the law, it is our conclusion that the learned High Court Judge should have resorted to section 3(1) of the Act to dismiss the complaint instead of stricking it out as she did."

Therefore,, it is my settled view that the reason the arbitrator used to struck out the application in circumvention of the law is not justifiable. He was to put the law in motion to the letter.



Therefore, I hereby find this application to have merit. I quash and set aside CMA ruling. The matter that was filled out of time remain dismissed not struck out as it did. No order as to costs this is a labour matter.



M.P. OPIYO

JUDGE

31/05/2023

