

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

REVISION APPLICATION NO. 108 OF 2023

*(Arising from the Ruling issued on 5th December, 2022 by Hon. Wilbard G.M. Arbitrator
in Labour Dispute No. CMA/DSM/ILA/424/2022)*

BETWEEN

TANZANIA SHIPPING AGENCIES CORPORATION APPLICANT

VERSUS

LUCAS MACHIMU 1ST RESPONDENT
OMARY K. MDEE 2ND RESPONDENT
UMMY A. HALFANI..... 3RD RESPONDENT
HUSSEIN J. KUHINDA 4TH RESPONDENT
FRANK PHILBERT 5TH RESPONDENT
HAIKA Y. MBWAMBO 6TH RESPONDENT
ABEID A. MLULA 7TH RESPONDENT
HENRY C. VENANCE 8TH RESPONDENT
LUGANO DUNKAN 9TH RESPONDENT
RAYMOND A. TAYARI 10TH RESPONDENT
JOSEPH S. MHAMILWA 11TH RESPONDENT
JUSTINE H. YUSTINE 12TH RESPONDENT
JULIAN JUSTINE 13TH RESPONDENT
AMINA O. MHEZI 14TH RESPONDENT
JULIETH LUSAJO MWAKYOMA 15TH RESPONDENT
STEVEN A. MWAKASAKA 16TH RESPONDENT
HASSAN H. SIDY 17TH RESPONDENT
KHALFAN S. KHALFAN 18TH RESPONDENT
MARTINE J. LUSEKELO 19TH RESPONDENT

FADHILI B. MWANGUO	20TH RESPONDENT
ALFRED B. MSENGI	21ST RESPONDENT
MACHUMU MAGANGA	22ND RESPONDENT
ABUBAKAR ISSA	23RD RESPONDENT
MARKO B. MGAYA	24TH RESPONDENT
MARIAGORETH NAMGUZA	25TH RESPONDENT
AISHA J. MONKO	26TH RESPONDENT
SUZANA HAMISI	27TH RESPONDENT
GEORGE S. NGASEKA	28TH RESPONDENT
ELISHA T. BAITAN	29TH RESPONDENT
EMMANUEL MWAKIPUNDA	30TH RESPONDENT
ROBERT SAIMON MADUNDO	31ST RESPONDENT
KUDRA SHING'WENDA	32ND RESPONDENT

COURT RULING

Date of last Order: 22/06/2023

Date of Ruling: 22/06/2023

MLYAMBINA, J.

This is an application for revision of the decision of Commission for Mediation and Arbitration (herein CMA) in *Labour Dispute No. CMA/DSM/ILA/424/2022* dated 5th December, 2022 before Hon. WILBARD, G. M. (Arbitrator).

The Respondents herein were the Complainants before the CMA against the Applicant herein on breach of contract. Prior hearing, the Respondent (Applicant herein), raised a preliminary objection to the effect that the application was time barred. Thus, in terms of *Rule 10(1) of the*

Labour Institutions (Mediation and Arbitration) Rules, G.N. No. 67 of 2007,
the application was supposed to be filed within 30 days.

Upon hearing the preliminary objection, the Arbitrator sustained the objection but instead of dismissing the application, he struck out the same based on the earlier conflicting position. To be precise, the Arbitrator stated:

Tume inakubalina na hoja ya Mlalamikiwa (Mleta Pingamizi kuwa mgogoro unaoletwa kimakosa mbele ya Tume unapaswa kufukuzwa (dismissal). Lakini kwa mgogoro huu kwa minajili ya kutenda haki Tume inaona busara kuondoa (struck out) mgogoro na kuwapa nafasi wadaawa kutafuta haki yao kama inafaa. Sababu ya kufikia Uamuzi huo ni kutokana na mkanganyiko uliokuwepo awali ambao Wadaawa waliamini kuvunjwa kwa Mkataba ni sawa na migogoro mingine inayofatwa katika *Kanuni ya 10(2) ya G.N. No. 64/2007.*

The Respondent (Applicant herein) was dissatisfied with such decision. The main argument of the Applicant is that the Arbitrator ought had dismissed the application and not striking out as he did in the matter.

On 22nd June, 2023, when the application was called for hearing, learned Counsel Lemister Mtoni for the Respondent conceded to the application.


I have taken some time to go through the impugned records. I noted the main complaint before the CMA was on breach of contract. As properly conceded by the Respondent, *Rule 10(1) of G.N. No. 64 of 2007 (supra)* requires a matter or complaint on unfair termination to be referred before CMA within 30 days. The Court of Appeal of Tanzania in the case of **Stella Lyimo v. CFAO Motors Tanzania Limited**, Court of Appeal of Tanzania at Dar es Salaam Civil Appeal No. 378 of 2019 (unreported) was of the position that a complaint based on unfair termination is one and the same as a breach of contract. For that reason, the complaint before CMA ought had been filed within 30 days.

Since it was undisputed that the complaint was filed beyond 30 days statutory time, as conceded by the Respondent herein, in terms of *Section 3(1)* read together with *Section 46 of the Law of Limitation Act (supra)*, the remedy was to dismiss the application. Reference may be made to the cases of **Hashim Madongo & 2 Others v. Minister for Industry and Trade & 2 Others** Court of Appeal of Tanzania at Dar es Salaam Civil Appeal No. 27 of 2003 (unreported), **Sarbjit Singh Bharya & Another v. NIC Bank**

Tanzania Ltd & Another, Court of Appeal of Tanzania at Dar es Salaam
Civil Appeal No. 94 of 2017 (unreported) and **Festo Gabriel Dindili v.
Regency Medical Centre**, High Court, Labour Division at Dar es Salaam,
Revision Application No. 398 of 2022 (unreported).

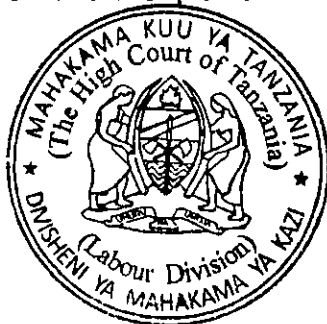
In the end, therefore, I hereby revise the impugned proceedings of the
CMA in *Labour Complaint No. CMA/DMS/ILA/424/2022* by replacing the order
of "Struck out" with "dismissal" order. Being a labour matter, I order each
partly to bear his/her own costs.

It is so ordered.



Y.J. MLYAMBINA
JUDGE
22/06/2023

Ruling delivered and dated 22nd June, 2023 in the presence of learned
State Attorney Boaz Msofe for the Applicant and learned Counsel Lemister
Mtoni for the Respondent.



Y.J. MLYAMBINA
JUDGE
22/06/2023