

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 88 OF 2023

(From the decision of the Commission for Mediation and Arbitration at Kinondoni in Labour Dispute No. REF: CMA/DSM/ILA/17/2023, Ngaruka, O.W.: Mediator, Dated 22nd March, 2023)

EQUITY BANK TANZANIA APPLICANT

VERSUS

INNOCENT MTENGWA RESPONDENT

JUDGEMENT

12th – 19th July, 2023

OPIYO, J

The applicant being dissatisfied with the order made by the Commission for Mediation and Arbitration (CMA) under the Labour Dispute No. CMA/DSM/ILA/17/2023 delivered by Hon. Ngaruka (Mediator) dated 22nd March, 2023 prayed to this court to revise and set it aside. The application was supported by her affidavit sworn by the applicant's counsel Mr. Shepo Magirari.



Factually; the respondent was employed by the applicant on 13th December, 2016 until 20th October, 2022 when he was terminated for gross misconduct. The respondent being unhappy with it filled for the labour dispute at the CMA alleging for unfair termination. During mediation stage the matter was determined to be time barred. It was struck out with leave to re-file. Dissatisfied, the applicant opted for this application for revision on the following grounds:-

- i. Whether the arbitrator was right to struck out application with leave to re-file instead of dismissing it after finding that the complaint is time barred.*
- ii. Whether the matter which is found to be time barred can be resurrected through an application for extension of time.*

The hearing was by way of written submission. Both parties were represented. Mr. Shepo Magirari appeared for the applicant and Mr. Hashimu Ramadhani Shafii from FIBUCA Trade Union represented the respondent.

For the application, starting with the first ground, Mr. Magirari submitted that labour laws do not provide for the remedy of the matter which is time barred, but the law that prescribe the consequences of any proceeding instituted out of time is the Law of Limitation Act [CAP. 89 R.E. 2019]. This law under section 3 provides that, the consequence of the matter being time

barred for the same to be dismissed. To support his point, he referred to cases of **TanESCO Limited vs Bakari Mayongo**, Revision No. 2 of 2015, LCCD 2015, **Sichone Samwel Alfred vs Tanzania Tobacco Processor Ltd**, Revision No. 13 of 2011 at Morogoro, **Yordan John Sanga vs Governing Body of College of Business Education**, Revision No. 568 of 2019 which referred the case of **DED Sengerema D/Council vs Peter Msungu & 13 Others**, Misc. Appl. No. 27 of 2013 at Mwanza and **Barclays Bank Tanzania Limited vs Phylisiah Hussein Mcheni**, Civil Appeal No. 19 of 2016, CAT at Dar es Salaam. In which the time barred proceedings were dismissed. Therefore, in his view, the labour dispute that found to be time barred was supposed to be dismissed not struck out as the CMA did.

Against the application on the first ground Mr. Shafii submitted that the remedy of the application which have not been heard on merit is to struck out. He supported his argument by referring to cases of **Kyariko Village Council vs Kiseru Savings and Credit Co-Operative Society Ltd**, Land Appeal No. 24 of 2021 at page 5 and **Albert Eligi Shirima vs Kizito Eligi Shirima**, Pc Civil Appeal No. 05 of 2019 which referred the case of **Mabibo Beer Wines & Spirit Ltd vs Fair Competition Commission & 3 Others**, Civil Application No. 132 of 2015 [2018] TZCA 277. He added that the matter

was struck out by technicalities reasons while it has to be heard on merit. He continued that section 3 of CAP. 89 R.E. 2019 as cited by the advocate for the applicant only applies to every proceeding described in the first column of the schedule to the same Act.

What to be looked into in respect of this ground is whether the mediator was right to strike out the time barred application? It is a well-established principal that when the matter is time barred the only remedy is dismissal. For that reason, I on the onset agree with the advocate for the applicant in citing the case of **Barclays Bank Tanzania Limited vs Phylisah Hussein Mcheni** (supra) where it was categorically decided that: -

"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 similar situation in the case of Hezron M. Nyachiya v. Tanzania Union of Industrial and Commercial Workers and Another, Civil Appeal No. 79 of 2001 (unreported), cited to us by the appellant's counsel, this court held that, although the Law Reform (Fatal Accidents and Miscellaneous Provisions) Ordinance set the time limit for instituting actions to be six months, but did not provide for the consequences of filing a matter out of time, section 3 of the Act was applicable in dismissing the petition. 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 striking it out as she did.

Accordingly, we allow the appeal, quash and set aside the order of striking out the complaint with leave to refile, and replace it with an order of dismissal."

Basing on the above clear and precise authority the decision in determination of a time barred matter is limited to dismissal once it is found that it is time barred and not to be struck out. The same applies in this application, since the matter was declared to be time barred, the only remedy available for the mediator was to dismiss and not striking it out.

Limitation of time is placed in order to ensure litigations come to an end timely and avoid parties to come to court as they wish. The same has been held in the case of **Tanzania Fish Processors Ltd vs Christopher Luhanga**, Civil Appeal No. 161 of 1994 as referred in the case of **Rui Wang vs Eminence Consulting (T) Ltd.**, Revision No. 306 of 2022, High Court at Dar es Salaam at page 16 that: -

"The question of limitation of time is fundamental issue involving.. jurisdiction as held by the Court of Appeal, it goes to the very root of dealing with civil claims. Limitation is 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."



Therefore, I find this application to have merit. CMA decision and order of struck out the application is hereby quashed and set aside. The time barred application stand dismissed. as the first ground disposes the matter, I need not dwell on the remaining ground.



M.P. OPIYO

JUDGE

19/07/2023