

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

**AT DAR ES SALAAM
REVISION NO. 91 OF 2023**

(Originating from the Labour Dispute No. CMA/DSM/MISC/64/21)

GOLDEN SANDS SERVICES APARTMENTS LIMITED.....APPLICANT

VERSUS

SAMM ABDALLAH OBATHANY.....RESPONDENT

JUDGEMENT

Date of last order 13/7/2023

Date of judgment 19/7/2023

OPIYO, J.

The matter was heard orally on 13/07/20223. During the hearing the applicant was represented by Kalasha Daniel, the applicants Principal Officer, Legal Secretary and the respondent by Emily Laus, learned counsel.

In the application the applicant prays for this court to revise the decision of the CMA in Labour Dispute No. CMA/DSM/MISC/64/21. In the impugned decision the CMA upheld the preliminary objection by the respondent that the application for setting aside *ex parte* award was time barred. The gist of the applicant's prayer as per submission by Mr. Daniel and affidavit in

Kimani Mineral Ltd., Rev. No. 161, 2020, High Court, Labour Division, where it was held that in computing time, public holidays falling on the last days of the period are excluded.

In accordance to the above authority as 13th and 14 were holiday the application could not be filed so it was proper for him to file the application on 17th which was a following working day.

He argued that the decision of the CMA Page 3, 2nd paragraph, in replying to the objection the applicant had raised before CMA of the issue of the last date of filing being public holiday, but it did not pick this point in reaching its decision. That CMA just proceeded with the dismissal of the application which was within time. He therefore, prayed for application to be granted by quashing decision of the CMA.

In reply, Mr. Laus submitted that, it is true the decision was issued on April, 30th, 2021 and within the same year around September he was served with the copy of application seeking to set aside the *ex parte* award. That, upon examining the notice of application it came to their knowledge that the notice of application and affidavit differed on dates of filing. That, the notice of application was filed on 17th May 2021 and

On the issue that the notice of application was received on 17th and affidavit on 23rd May, he stated that the entire application before CMA is usually supported by affidavit. In normal practice there is no way the applicant would have submitted notice and affidavit differently. It is possible the court clerk mistakenly wrote that the application was filed on 23/05/2023. To him that is the reason the CMA noted that the application was filed on 17th May.

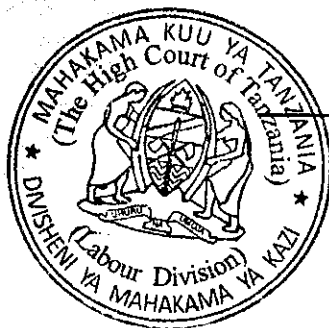
He continued to argue that, if there was such issue of variation of dates would have been discussed by the CMA but it was not there so the CMA did not discuss it in reaching its decision. He therefore reiterated their prayer

I have considered the submission of both sides. The main issue is whether a public holiday falling on the last day of filing is counted off in computing limitation period. No dispute that the prescribed time was lapsing on the 14th, but the application for setting aside the *ex parte* award was filed on the 17th as noted above. The applicant had put it before CMA as he is putting it here that the last day when the applicant was to file the application fell on the public holiday, thus the law allowed them to file the application on the next working day. The CMA seemingly did not consider

days as well. Therefore, based on the above discussion, the 17th day of April 2021, being a last day was a proper day for filing the application. That makes the application that was dismissed for being time barred to have been filed within time.

The respondent argued that the date of filing notice differed with the date of filing an affidavit. Perusal of the records before the court indicates the same date of filing for both the notice and affidavit, that is 17th May 2021, making such argument redundant. I will therefore not dwell on the discussion of this point.

For the reasons, the decision by the CMA is therefore, quashed and set aside. The file is remitted back to the CMA for the Labour Dispute No. CMA/DSM/MISC./64/21) to be heard on merits.



**M.P. OPIYO,
JUDGE
19/07/2023**