

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**REVISION APPLICATION NO. 61 OF 2023**

*(Arising from an award issued on 06/2/2023 by Hon. Nyagaya, P, Arbitrator, in Labour dispute No. DSM/ILA/960/20/40/21 at Ilala)*

**HUSSEIN YAHAYA ALLY ..... APPLICANT**

**VERSUS**

**INTERTZ LOGISTICS COMPANY LIMITED ..... RESPONDENT**

**RULING**

*Date of last Order: 20/07/2023  
Date of Ruling: 11/08/2023*

**B. E. K. Mganga, J.**

On 14<sup>th</sup> March 2023, Hussein Yahaya Ally, the abovenamed applicant, filed this application so that the court can revise the CMA award that was issued on 06<sup>th</sup> February 2023 by Hon. Nyagaya, P, arbitrator, in Labour dispute No. DSM/ILA/960/20/40/21 that he filed at the Commission for Mediation and Arbitration (CMA) at Ilala complaining that respondent terminated his employment unfairly. In the said award, the arbitrator found that, there was no employment relationship

between the parties as a result, applicant was aggrieved hence this application.

When the application was called on for hearing, the court *suo moto* asked the parties to submit whether, the dispute was filed at CMA within time or not.

Responding to the issue raised by the court, Mr. Hussein Yahaya Ally, applicant submitted that, he remembers to have filed the dispute in time, which is why, respondent did not raise objection. He went on that; he filed the dispute in November 2020 and amended CMA F1 two times. He added that, he filed the last amended CMA F1 on 22<sup>nd</sup> December 2020. In his submissions, applicant conceded that, at the time of filing the amended CMA F1 on 22<sup>nd</sup> December 2020, he did not file an application for condonation (CMA F2). He conceded further that, in the CMA record, there is no affidavit in support of the application for condonation. Applicant submitted further that, respondent terminated his employment on 31<sup>st</sup> October 2020 and that, at the time of filing the amended CMA F1 on 22<sup>nd</sup> December 2020, thirty (30) days had already expired.

On the other hand, Mr. Edrick Ruhimuka, learned Advocate for the respondent submitted that, on 22<sup>nd</sup> December 2020, applicant served the respondent with the CMA F1 showing that the dispute arose on 31<sup>st</sup> October 2020. Counsel for the respondent submitted further that, the dispute relates to termination of employment and that it was filed out of time. He went on that; applicant did not file an application for condonation (CMA F2) and an affidavit in support thereof. He concluded that, CMA had no jurisdiction to hear and determine the dispute because it was time barred. He therefore prayed the application be dismissed for lack of jurisdiction.

In rejoinder, applicant maintained that the application was filed within time and there was an application for condonation.

I have examined the CMA record and find that applicant filed CMA F1 on 22<sup>nd</sup> December 2020 showing that respondent terminated his employment on 31<sup>st</sup> October 2020. In the CMA record, there is neither an application for condonation (CMA F2) supported with an affidavit nor a ruling granting condonation. Since the dispute relates to termination of employment, in terms of Rule 10(1) of the Labour Institutions (Mediation and Arbitration) Rules, GN. No. 64 of 2007, applicant was supposed to file the dispute within thirty (30) days from the date of

termination of his employment. In CMA F1, applicant indicated that the dispute arose on 31<sup>st</sup> October 2020. Therefore, at the time of filing the dispute on 22<sup>nd</sup> December 2020, thirty days had already expired. Since the dispute was time barred and there was no application for condonation and no condonation was granted, the dispute was improperly heard at CMA because, CMA had no jurisdiction. See [Barclays Bank T. Ltd vs Jacob Muro](#) (Civil Appeal 357 of 2019) [2020] TZCA 1875.

For the foregoing, I hereby nullify CMA proceedings, quash, and set aside the award arising therefrom because CMA had no jurisdiction.

Dated at Dar es Salaam on this 11<sup>th</sup> August 2023.



B. E. K. Mganga  
**JUDGE**

Ruling delivered on 11<sup>th</sup> August 2023 in chambers in the presence of Hussein Yahaya Ally, the Applicant but in the absence of the Respondent.



B. E. K. Mganga  
**JUDGE**