

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(LABOUR DIVISION)
AT DAR-ES-SALAAM**

LABOUR REVISION NO. 63 OF 2023

(Originating from Labour Dispute No. CMA/DSM/KIN/554/17/130/2022)

BETWEEN

WARIANDE NDEMFOO SHOO APPLICANT

VERSUS

THE GURDIAN LIMITED RESPONDENT

JUDGEMENT

Date of last Order: 22/09/2023

Date of Judgement: 09/10/2023

MLYAMBINA, J.

The Applicant was employed by the Respondent as an Assistant Accountant from 01/01/1999 but accused of stealing on 31/12/2009. Following the said criminal allegations, the Applicant was suspended from employment as of 14/01/2010. The accusation led the Applicant to be brought before the Court and charged with *Criminal case No. 72 of 2010 before Kisutu Resident Magistrate's Court*. The Court acquitted the Applicant. Following the acquittal, on 14/11/2011 the Applicant alleged to have reported back to work. Unfortunately, he was restricted and informed to wait until further notice.

The Applicant claimed that he visited National Social Security Fund (NSSF) offices on 06/03/2017. The purpose was to check if the

Respondent submitted his contributions. However, he was astonished to find out that the Respondent did not submit the same. He therefore decided to inquire from the Respondent by way of a letter on 07/03/2017 and another reminder letter on 24/04/2017 but with no reply.

Further, the Applicant alleged that at the time of his suspension, his wife and him agreed not to withdraw his salary for two years for the purpose of purchasing a vehicle. Therefore, when all of his letters sent to the Respondent were not replied, he decided to cross check to his account if his salary was still paid. He was surprised to find out that his salary has been stopped for unknown reasons.

Again, the Applicant wrote another letter to the Respondent questioning about his salary on 05/05/2017. Thereafter, the Respondent decided to call the Applicant through his phone number and informed him to visit the office on 11/05/2017. Upon visit, the Applicant was served with a termination letter which indicated that he was terminated from employment on the ground of absenteeism way back on 31/03/2015. Being aggrieved by the termination, the Applicant rushed to the Commission for Mediation and Arbitration (herein CMA) and successfully filed a dispute of unfair termination on 17/05/2017. Such

decision aggrieved the Respondent. He successfully filed an application for revision before this Court. The Court quashed the CMA's proceedings and ordered a trial de novo before another Arbitrator.

When the matter commenced afresh at the CMA, among the issues framed for determination was; *whether the Applicant's claims were timely brought before the CMA*. The CMA found that the matter was filed out of time and proceeded to dismiss the same. Again, the Applicant was unhappy with such decision. He filed the present application urging the Court to revise and set aside the CMA's decision on the following grounds:

- i. That, the Honourable Arbitrator erred in law and in fact by not giving proper weight to the facts, evidence and circumstances surrounding this matter, hence reached unjust decision by dismissing the complaint.
- ii. That, the Honourable Arbitrator erred in law and fact for failing to take into account the fact that it was Respondent's wrong doings and acting unreasonably for fraudulently purporting letters to un-existing addresses and wrong address while its agents and employee had other means of easily contacting him and the employer knew his phone number and home address.

- iii. That, the Honourable Arbitrator erred in law and fact for dismissing the matter while ignoring evidence that shows that complainant/Applicant obtained knowledge of his termination on 11th May, 2017 when he was given the letter referring to the letter of termination of 31st March, 2015 which the Applicant never received until today.
- iv. That, the Honourable Arbitrator erred in law and fact failed miserably in interpreting the employer's evidence who by word and writing said that he sent letters by EMS while the exhibits proved otherwise and there was no signed delivery note to prove that they were delivered.
- v. That, the Honourable Arbitrator erred in law and fact by delivering an Award that does not take the Applicant as the victim rather as the Respondent's scapegoat of what transpired.

The matter proceeded by way of written submissions. Before the Court, the Applicant was represented by Mr. Nyaronyo Mwita Kicheere, Learned Counsel. On the other hand, Mr. Mbuga Emmanuel, Learned Counsel appeared for the Respondent.

The above grounds of revision were jointly argued. Mr. Kicheere submitted that the Arbitrator erred miserably in interpreting and weighing properly the evidence on record. He went on to submit that the reinstatement letter dated 27/02/2015 (exhibit D4) alleged to have been sent to the Applicant through his postal address of 60164 Dar es Salaam and 2033 Moshi. However, no proof was tendered to establish that the same was sent to Moshi. Mr. Kicheere contended that exhibit D4 shows the addresser is of P.O Box 310242 while the Respondent's address is 31042. As such, the letter was written by unknown person. However, the Arbitrator did not address such anomaly.

As regards the reminder reinstatement letter dated 11/03/2015 (exhibit D5), Mr. Kicheere went on to submit that it was addressed to P.O. Box 60164 but posted to P.O. Box 60124 which is a new address to both parties. He strongly submitted that the purportedly reinstatement letter and its reminder never reached the Applicant. Further, the notification letter (exhibit D6) never reached the Applicant.

As regards the termination letter, Mr. Kicheere submitted that the same was also purportedly to be sent to the Applicant through his postal address of 60164 Dar es Salaam and 2033 Moshi. However, the proof of delivery note or EMS receipt sent to Moshi address were never tendered.

It was maintained by Mr. Kicheere that the Respondent's way of effecting service was not proper. He evaluated at length how the Arbitrator did not analyze properly the evidence on record. Thus, it was wrong for the Arbitrator to term the postal receipt tendered as EMS receipt. He insisted that the receipt tendered were neither EMS nor delivery notes. Mr. Kicheere also tried to establish how the Respondent should have contacted the Applicant through other means such as telephone or even calling his referees identified in his personal particular form. He therefore persuaded the Court to re-evaluate the evidence properly and revise the CMA's Award.

In response to the application, Mr. Mbuga submitted that the time limit for filing disputes at the CMA is governed by *Rule 10 of GN. No. 64/2007* as rightly held by the Arbitrator. Regarding the claim of salary arrears, he argued that the cause of action arose on March, 2015 when the Respondent stopped paying the Applicant his salary. To support his submission, Mr. Mbuga relied to the case of **Pee Pee (T) Limited v. Shabani Juma Omari**, Revision No. 33 of 2013 High Court Labour Division, Dar es salaam [2015] LCCD 1.

As to the claim of unfair termination, Mr. Mbuga argued that the cause of action for the claim in question commenced in 2011 when the

Applicant was discharged from the criminal case. He maintained that immediately after being acquitted by the Court, the Applicant was supposed to go back to work, the position which was also held in the case of **Ally Farahani v. Geita Gold Mining Ltd**, Civil Appeal No. 54 of 2020 as well as in the case of **Pee Pee (T) Limited** (supra).

Regarding the allegation that the Applicant was not aware of the termination, it was argued by Mr. Mbuga that the liberal interpretation the law does not consider issue of awareness or correspondences rather the Applicant was supposed to initiate his claim in April, 2015. He was of the view that the reasons stated can be used as ground for extension of time and not automatic filing dispute at the CMA. To strengthen his submission, Mr. Mbuga referred the Court to the case of **Tanzania Revenue Authority v. Kotra Company Ltd**, Civil Case No. 12 of 2009 (unreported).

Mr. Mbuga strongly submitted that the matter was filed out of time. Thus, the Arbitrator was right to dismiss the same.

In rejoinder, Mr. Kicheere reiterated his submission in chief. He added that the case of **Pee Pee (T) Limited** (supra) is distinguishable to the case at hand in the sense that in the cited case there was no standing order restraining the Respondent from entering to his work

premises which is quite different from the case at hand where the Applicant was suspended.

It was further rejoined that the right of action arose the day the purported termination letter was written whereas the cause of action arose the day when the termination letter reached the Applicant. He insisted that the Applicant became aware of the termination on 11/05/2019. To cement his submission, Mr. Kicheere referred the Court to Commercial cases which I will herein comment on the same. In the upshot he urged the Court to revise the CMA's Award.

From the submissions of the parties, Court records and applicable laws, I find the Court is called upon to determine only one issue; *whether the matter was timely filed at the CMA.*

Before I proceed with the determination of the issue in question, as emphasized in range of decisions in this case, I also insist that the issue of time limitation is very crucial as it gives the Court or Tribunal with jurisdiction to adjudicate a matter tabled before it. This was also stated in the case of **Tanzania Fish Processors Ltd v. Christopher Luhangula, Civil Appeal No 161/1994 Court of Appeal of Tanzania, at Mwanza** registry (unreported) the Court held that:

... the question of Limitation 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 wishes.

Again, in the case of **Dr. Ally Shabhay v. Tanga Bohora**

Jamaat [1997] TLR 305 it was held that:

It is settled law that those who seek justice in Court of law must file proceedings within the prescribed time, otherwise they will face the law of limitation as a bar. Parties cannot conduct litigation as they deem fit. Limitation clause is there to speed truck proceedings. To the contrary, Court will have endless litigations at the whims of the parties.

As rightly submitted by Mr. Mbuga, the time limit for filing disputes at the CMA is governed by *Rule 10(1) and (2) of GN 64 of 2007* which provides as follows:

Rule 10(1) Disputes about the fairness of an employee's termination of employment must be referred to the commission within thirty days from the date of termination or the date that the employer made a final decision to terminate or uphold the decision to terminate.

(2) All other disputes must be referred to the Commission within sixty days from the date when the dispute arise.

The wording of the provision of *Rule 10(1) and (2) of GN 64 of 2007 (supra)* is very clear. An employee claiming for unfair termination must file his/her dispute within 30 days from the date of termination or the date when the employer made the final decision to terminate. In case of disputes other than unfair termination, they must be referred to the CMA within 60 days from the date when the dispute arose.

In the instant matter, the dispute referred to the CMA was on unfair termination as it is reflected in the referral form (CMA F1). The final decision to terminate the Applicant was issued since 31/03/2015 whilst the Applicant filed the application at the CMA on 18/05/2017.

In the case of **John Cornel v. A. Grevo (T) Ltd**, High Court Civil Case No. 70 of 1998 (unreported) cited in the case of **Nile Healthcare Ltd T/A Uhuru v. Filbert John Mpogoro**, Labour Revision No. 07 of 2022, High Court Mwanza it was held that:

Law of limitation on actions, knows no sympathy or equity.
It is a merciless sword that cuts across and deep into all
those who get caught in its web.

In the matter at hand, the Applicant strongly argued that the matter was timely filed at the CMA on 18/05/2017 because he was served with the termination letter on 11/05/2017. In light of the provisions of *Rule 10(1) and (2) of GN 64 of 2007*, it is my view that the matter was filed

out of time as rightly found by the Arbitrator. As stated above, the cause of action arose from the date of termination which in this case was 31/05/2015. I also agree with the Applicant's claim that he was served with the termination letter on 11/05/2017. However, such allegation alone cannot automatically grant the Applicant with an extension of time to refer his complaint out of time prescribed by the law. As rightly submitted by Mr. Mbuga, the allegation would have been good ground for an application for extension of time but not on this application.

Under the circumstances of this case, it is my view that the Applicant was supposed to preface his complaint of unfair termination to the CMA with an application for condonation. All other reasons of failure to file the complaint within 30 days from the date of termination ought to have been adduced therein. To the contrary, no application for condonation was filed by the Applicant. He filed his application out of time without being granted leave of the Court. Therefore, this Court cannot bless such an action since it is against the law of limitation. In the case of **Barclays Bank Tanzania Limited v. Phylisiah Hussein Mcheni**, Civil Appeal No. 19 of 2016, Court of Appeal of Tanzania, Dar es salaam, the Court held that:

... it would be inequitable if we allowed one party to an employment contract to disregard time in instituting a

complaint against the other party. We think matters would not come to finality as required if a party who allows grass to grow under his feet and delays in instituting an action, would only be given an order to refile it. The very object of the law of limitation would be defeated for...

In the premises, since the application was filed out of time without leave, the same was rightly dismissed by the Arbitrator. This is also the Court of appeal position as was held in the case of **Barclays Bank Tanzania Limited** (supra). Henceforth, the application is dismissed for lack of merits.

It is so ordered.


Y. J. MLYAMBINA

JUDGE

09/10/2023

Judgement pronounced and dated 9th day of October, 2023 in the presence of the Applicant in person and learned Counsel Alfred Rweyemamu for the Respondent. Right of Appeal explained.




J. MLYAMBINA

JUDGE

09/10/2023