

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

**MISCELLANEOUS APPLICATION NO. 272 OF 2023**

*(Arising from Award issued on 06/07/2023 by Hon. Muhanika, J., Arbitrator in Labour Dispute No.  
CMA/DSM/ILA/202/21/120/21)*

**A-ONE PRODUCTS & BOTTLERS LTD ..... APPLICANT**

**VERSUS**

**CUTHBERT C. MASALAGO ..... RESPONDENT**

**RULING**

*Date of last Order: 05/12/2023  
Date of Ruling: 13/12/2023*

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

Facts of this application are that, on 22<sup>nd</sup> November 2017, A-One Products & Bottlers Ltd, the abovenamed applicant employed Cuthbert C. Masalago, the abovenamed respondent for unspecified period contract of employment. On 19<sup>th</sup> March 2021, applicant terminated employment of the respondent allegedly due to dishonest. Respondent was aggrieved with termination of his employment as a result, he filed Labour dispute No. CMA/DSM/ILA/202/21/120/21 before the

Commission for Mediation and Arbitration henceforth CMA. On 06<sup>th</sup> July 2023 Hon. Muhanika, J, Arbitrator, having heard evidence of the parties, issued an award in favour of the respondent. Applicant was aggrieved by the said award as a result, on 11<sup>th</sup> August 2023, she filled Revision Application No. 179 of 2023. When the application was scheduled for hearing on 20<sup>th</sup> September 2023, Mr. Jamal Ngowo from TUICO, a trade union, on behalf of the respondent raise a preliminary objection that the application was incompetent for want of the Notice to seek Revision(CMA F10). Mr. Mrindoko learned counsel for the applicant conceded to the preliminary objection as a result, the application was struck out. On 25<sup>th</sup> September 2023, applicant filed at CMA the Notice to seek Revision (CMA F10) and on 5<sup>th</sup> October 2023, she filed this application seeking the court to extend time within which she can file an application for revision.

To support the Notice of Application for extension of time, applicant filed an affidavit affirmed by Hassan Dewji, her principal officer. In the said affidavit, the deponent stated that revision application No. 179 of 2023 was filed within time and that the delay is technical and not actual.

Respondent filed the Notice of Opposition and the counter affidavit affirmed by Jamal Ngowo. In the said counter affidavit, the deponent noted almost each paragraph of the applicant's affidavit and added that the application was filed by the applicant as a delay tactic and abuse of court process.

When the application was called on for hearing, Mr. Issa Mrindoko, learned counsel appeared and argued for and on behalf of the applicant while Mr. Jamal Ngowo, from TUICO, a Trade Union, appeared and argued for and on behalf of the respondent.

Submitting on the merit of the application, Mr. Mlindoko argued that, applicant filed Revision Application No. 179 of 2023 while within time but it was struck out on 20<sup>th</sup> September 2023 due to failure to file the Notice to seek Revision (CMA F10). Learned counsel for the applicant further submitted that, the delay is technical one. He added that, applicant was supplied with the order that struck out revision No. 179 of 2023 on 25<sup>th</sup> September 2023 and that, on the same date, she filed the Notice to seek revision (CMA F10) at CMA. He went on that, the omission to attach CMA F10 was just a human error and cannot be associated with negligence. Mr. Mrindoko submitted that, applicant filed CMA F10 at CMA almost after 60 days while applicant was supposed to

file revision within 42 days. In his submissions, learned counsel for the applicant conceded that the said CMA F10 was filed at CMA out of time within which applicant can file revision. He also conceded that the said CMA F10 was filed at CMA without extension of time. He further conceded that in the notice of application, applicant has not prayed for extension of time within which to file a notice to seek revision. All in all, counsel for the applicant prayed the application be granted.

Resisting the Application, Mr. Ngowo from TUICO for the respondent submitted that, applicant has not adduced sufficient reason to enable the court to extend time. He submitted further that, Revision No. 179 of 2023 was struck out on 20<sup>th</sup> September 2023 for failure to seek notice to file revision at CMA. Upon reflection after being probed by the court, Mr. Ngowo conceded that revision No. 179 of 2023 was filed within time and that there is technical delay. He was quick to submit that, on 25<sup>th</sup> September 2023 applicant filed CMA F10 at CMA without an order for extension of time to file the said CMA F10 out time. He added that, Applicant was supposed to file an application for extension of time at CMA under Rule 29(1)(a) of Labour Institutions (Mediation and Arbitration) Rules, GN No. 64 of 2007. When further probed by the court, Mr. Ngowo conceded that, Rule 29 of GN. No. 64 of 2007(supra) is

confined only on matters/issues relating to GN. 64 of 2007 hence inapplicable in the application for extension of time to file a notice to seek revision. Mr. Ngowo submitted further that, the application should be dismissed because CMA F10 was filed out of time at CMA which has no jurisdiction. He strongly submitted that, applicant was supposed to file an application for extension of time to file CMA F10 before this court. He therefore prayed this application be dismissed for want of merit.

In rejoinder, Mr. Mrindoko, learned counsel for the applicant reiterated his submissions in chief and added that, if this court finds that the application is incompetent for failure to file CMA F10, the remedy is to strike out and not to dismiss this application.

I have considered the affidavit and the counter affidavit together with rival submissions of the parties. Before considering whether applicant adduced sufficient reason for the court to grant extension of time, I find it important first to determine competence of this application.

It is clear in the Notice of Application that applicant is seeking extension of time within which to file revision against the CMA award. It is not disputed by the parties that initially, while within time, applicant filed revision No. 179 of 2023 but the same was found to be

incompetent for want of a notice to seek revision. Applicant was supposed to file the Notice to seek Revision (CMA F10) at CMA prior to filing revision before this Court. It was correctly submitted by counsel for the applicant that, applicant was supposed to file the said notice to seek Revision (CMA F10) at CMA before expiry of 42 days available within which applicant to file revision. In the application at hand, applicant filed the said CMA F10 at CMA after 60 days well out of the 42 days available for her to file revision. In short, the said CMA F10 was filed at CMA on 25<sup>th</sup> September 2023 out of time. CMA F10 is made under the provisions of Rule 34(1) of the Employment and Labour Relations (general ) Regulations, GN.N0. 47 of 2017. The said Rule or Regulations does not provide timeframe within which the said notice to seek Revision can be filed at CMA. It is my view that, the period within which a party can file the Notice to seek Revision(CMA F10) cannot exceed 42 days within which an applicant can file an application for revision. Therefore, applicant was supposed to file the Notice to seek Revision(CMA F10) at CMA before expiry of 42 days.

It was submitted by Mr. Ngowo that applicant was supposed to file at CMA under the provisions of Rule 29 of GN. No. 64 of 2007 (supra) an application for extension of time within which to file a Notice to seek

Revision. With due respect to Mr. Ngowo, Rule 29 of GN. No. 64 of 2007 is not applicable because the scope of the said Rule is provided under Rule 29(1)(a), (b) and (c). Rule 29(1)(a), (b) and (c) of GN. No. 64 of 2007 provides:-

*"29(1) Subject to Rule 10, this Rule shall apply to any of the following:-*

*(a) condonation, joinder, substitution, variation or setting aside an award;*

*(b) jurisdictional disputes;*

*(c) other applications in terms of these Rules."*

As pointed out hereinabove, CMA F10 is made under Rule 34 of GN. No. 47 of 2017 hence it cannot be covered by Rule 29(1)(c) of GN. No. 64 of 2007 (supra) quoted hereinabove. More so, an application for extension of time within which to seek revision is neither covered under the provisions of Rule 29(1)(a) nor 29(1)(b) of GN. No. 64 of 2007 quoted hereinabove. It is worth to point out that, there is no Rule in GN. No. 47 of 2007 providing timeframe within which the said notice to seek revision must be filed at CMA. More so, the said GN. No. 47 of 2017 does not create a room for an application for extension of time within which to file a notice to seek revision to be filed at CMA. That being the position, the only option available is for the applicant to file an application before this court. It is my view therefore that, the notice to

seek revision that was filed at CMA by the applicant on 25<sup>th</sup> September 2023 is useless because (i) it was filed out of time and (ii) there is no order that was issued granting extension of time at CMA. In short, there is no order granting applicant an extension of time within which to file a notice to seek revision. The said Notice to seek revision is mandatory hence its absence makes the application for extension of time to file revision meaningless. Applicant jumped to the application for extension of time within which to file a revision without prior filing an application for extension of time within which to file the notice to seek revision. In the case of [Farouk Abdalla vs Mohaed Maulid Mussa](#) (Civil Application 104 of 2009) [2010] TZCA 92 (26 November 2010), the applicant was seeking leave to file an appeal out of time but the Court of Appeal noted that the appeal itself required leave to be obtained, of which, applicant did not apply for and at the time of filing the application to seek leave to appeal out of time, there was no leave granted to the applicant to appeal before the Court. After deliberation, the Court of Appeal found that the application was incompetent for want of leave to file an appeal.

Since the Notice to seek revision was filed out of time and there is no order granting extension of time within which to file the said notice



out of time, as correctly conceded by counsel for the applicant, I find this application incompetent. The remedy available as it was correctly submitted by counsel for the applicant is to strike out this application and not to dismiss it.

For the foregoing, I hereby strike out this application for being incompetent.

Dated at Dar es Salaam on this 13<sup>th</sup> December, 2023.



B. E. K. Mganga

**JUDGE**

Ruling delivered on this 13<sup>th</sup> December 2023 in chambers in the presence of Mngumi Samadani, advocate holding brief of Issa Mrindoko, Advocate for the Applicant and Jamal Ngowo, from TUICO for the Respondent.



B. E. K. Mganga

**JUDGE**