

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

REVISION APPLICATION NO. 398 OF 2022

*(Arising from an order issued on 30th September 2022 by Hon. Lucia Chrisantus Chacha, Arbitrator, in
Labour dispute No. CMA/DSM/ILA/582/2021/28/2022 at Ilala)*

FESTO GABRIEL DINDILI APPLICANT

VERSUS

REGENCY MEDICAL CENTRE RESPONDENT

RULING

*Date of last Order: 8/2/2023
Date of Ruling: 10/2/2023*

B. E. K. Mganga, J.

Brief facts of this application are that Festo Gabriel Dindili, the applicant, was employed by Regency Medical Centre, the respondent for one-year fixed term contract renewable. It happened that employment relationship between the two did not go well, as a result, he filed labour Dispute No. CMA/DSM/ILA/41/2021/33/2021 before the Commission for Mediation and Arbitration (CMA) at Ilala. While at CMA, Mr. Frank Kilian,

Advocate for the applicant informed the Arbitrator that the Referral Form(CMA F1) filed by the applicant was defective because the nature of the dispute was breach of contract but applicant also filled part B of the said Form that relates only to unfair termination. Counsel for the applicant prayed to withdraw the dispute and file a proper CMA F1. Mariam Ismail, counsel for the respondent objected the prayer. On 13th December 2021, Hon. Kiwelu, L, Arbitrator, struck out the dispute filed by the applicant and granted 14 days leave to the applicant to file a new CMA F1.

On 22nd December 2021, applicant filed another CMA F1 but on 30th September 2022, the same was struck out by Hon. Lucia Chrisantus Chacha, Arbitrator, who found that the said CMA F1 was defective. In the said order striking out the said CMA F1, the arbitrator gave applicant option of refiling a new CMA F1 but subject to the Law of Limitation.

Aggrieved by the order dated 30th September 2022 striking out the dispute, on 16th November 2022, applicant filed this revision application through e-filing system. When the application was called on for hearing on 8th February 2022, Mr. Frank Kilian, learned advocate appeared for the applicant while Ms. Prisca Nchimbi, learned advocate appeared for the

respondent. Before the parties has conversed the grounds raised by the applicant, the court *suo motto*, asked the parties to address whether the application was filed within the prescribed period by the law or not.

Responding to the issue raised by the court, Mr. Kilian counsel for the applicant submitted that applicant was served with the impugned order on 03rd October 2022 and filed this application through e-filing on 16th November 2022 hence out of time for two (2). Counsel for the applicant prayed that the application be struck out so that applicant can find a proper remedy.

On her part, Ms. Nchimbi, counsel for the respondent submitted that the application is time barred and prayed that it should be dismissed.

In rejoinder, Mr. Kilian, counsel for the applicant maintained that the application should be struck out and not dismissed. He submitted further that, a dismissal order can be issued after hearing the matter on merit of which, in the application at hand it was not.

It is a common ground from submissions of both counsels that, the application was filed out of the 42 days provided for under the provisions of section 91(1)(a) of the Employment and Labour Relations Act, [Cap. 366

RE. 2019]. The only issue in controversy between counsels is the consequences thereof. While counsel for the applicant is of the opinion that it should be struck out, counsel for the respondent's views is that it should be dismissed. It is my view that this issue cannot detain me because it has been held several times by both this Court and the Court of Appeal that Limitation of time goes to the jurisdiction of the Court and that once the matter is out of time, the court ceases to have jurisdiction. See the case of *Abdulrasul Ahmed Jaffer and 2 Others vs Parin A. Jaffer and Another* (Civil Appeal 5 of 1994) [1995] TZCA 51, *Ali Shabani & Others vs Tanzania National Roads Agency (tanroads) & Another* (Civil Appeal 261 of 2020) [2021] TZCA 243, *Sarbjit Singh Bharya & Another vs Nic Bank Tanzania Ltd & Another* (Civil Appeal 94 of 2017) [2021] TZCA 212, *Swila Secondary School vs Japhet Petro* (Civil Appeal 362 of 2019) [2021] TZCA 169, and *Barclays Bank Tanzania Limited vs Phylisiah Hussein Mcheni* Civil Appeal No. 19 of 2016 [2021] TZCA 202 to mention but a few. In ***Bharya's case*** (supra), the Court of Appeal held *inter-alia* that:-

*"...The Court has pronounced itself in numerous cases involving time bar. For instance, in the case of **Hezron M. Nyachiya v. Tanzania Union of***

Industrial and Commercial Workers and Another, Civil Appeal No. 79 of 2001 (unreported), the Court emphasized that under section 3 (1) of the Law of Limitation Act, the consequences for any proceedings instituted out of time without leave of the court is dismissal whether or not limitation has been set up as a defence. The effect of an order for dismissal is that it connotes that the matter has been concluded - see ***Ngoni - Matengo Corporation Marketing Union Ltd v. Ali Mohamed Osman***, [1959] E.A. 577. Besides that, if the matter is dismissed, the party cannot come back on the same matter to the court - see ***VIP Engineering and Marketing Ltd v. SGS Generale De Surveillance SA and Another***, Civil Reference No 32 of 2006; and ***Cyprica Mamboleo Hizza v. Eva Kioso and Another***, Civil Application No 3 of 2010 (both unreported).

In the case of **Swila Secondary school's case** (supra), the Court of Appeal held *inter-alia*:-

"...The law is settled that the issue of jurisdiction for any court is basic as it goes to the very root of the authority of the court or tribunal to adjudicate upon cases or disputes. Courts or tribunals are enjoined not to entertain any matter which is time barred and in any event they did so, the Court unsparingly declared the proceedings and the consequential orders a nullity..." see also the case of ***Barclays Bank (T) LTD vs Jacob Muro***, Civil Appeal No. 357 of 2019 (unreported)..."

Again, in **Mcheni's case** (supra), the court of Appeal having found that the complaint was filed out of time and having discussed the provisions of the Law of Limitation Act, held :-

"...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".

Guided by the aforementioned Court of Appeal decisions, I hold that the remedy for a time barred matter is dismissal and not striking it out. It is my view that, the court can only strike out the matter that it had jurisdiction to determine but found, at that particular time, to be incompetent. The logic is clear, that; after striking it out, the same matter can be properly filed before the same court for determination. In the application at hand, both counsels correctly submitted, in my view, that, the application is time barred. In other words, they submitted that the court has no jurisdiction. That being the position, the prayer by counsel for the applicant that the application be struck out to allow him to seek more remedy is a misconception. Again, submissions by counsel for the applicant that dismissal order can only be issued after hearing the parties on merit, is a great misdirection and cannot be accepted. It is clear in my mind that,

dismissal order is not only limited to matters heard on merit. That order can be issued if the matter is time barred as pointed hereinabove.

That said and done, I hereby dismiss this application for being time barred.

Dated in Dar es Salaam on this 10th February 2023.



B. E. K. Mganga
JUDGE

Ruling delivered on this 10th February 2023 in chambers in the presence of Festo Gabriel Dindili, the Applicant and Prisca Nchimbi, Advocate for the Respondent.



B. E. K. Mganga
JUDGE