

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

REVISION APPLICATION NO. 000026826/2023

(Arising from an Award issued on 13/10/2023 by Hon. Mwabeza N.L, Arbitrator, in Labour Dispute
No. CMA/PWN/KBH/23/2023/16/2023 at Kibaha)

YAPI MERKEZI..... **APPLICANT**

VERSUS

BENJAMIN BENSON HAYOLAH AND
SALUM ATHUMAN NGWENGELE **RESPONDENTS**

RULING

Date of last Order: 12/02/2024
Date of Judgement: 14/02/2024

B. E. K. Mganga, J.

When this application was called on for mention on 12th February 2024 with a view of fixing hearing date, Mr. Humphrey Aloyce Chuwa, advocate for the applicant notified the court that applicant filed this application so that the court can revise CMA Award issued on 13th October 2023 by Hon. Mwabeza N.L, arbitrator in favour of the respondent. Counsel for the applicant stated further that, applicant was served with the impugned award on 18th October 2023 and that, this

application was filed on 04th December 2023. He added that, he served respondent with the application today (12th February 2024) and prayed for date of hearing.

On the other hand, Mbwana Ally Chipaso, advocate for the respondent, confirmed that applicant served him with the application on 12th February 2024 in the morning. Based on the foregoing, counsel for the respondent prayed to be granted time to file the counter affidavit.

Based on the information disclosed by counsel for the applicant and after examination of the documents filed by the applicant, I asked the parties to address the court as to whether this application was filed within time or not.

Responding to the issue raised by the court, Mr. Chuwa, learned counsel for the applicant submitted briefly conceding that the application was filed out of the 42 days provided for under the law. He therefore prayed the court to strike out this application and grant applicant leave to refile.

On his part, Mr. Chipaso, learned counsel for the respondent briefly submitted that, the application is time barred. Counsel for the respondent prayed that the application should be dismissed because the

remedy for a time barred matter is dismissal and not striking it out. To support his submissions, counsel for the respondent cited the case of ***CHODAWU v. The Board of Trustees of Tanzania National Parks***, Revision Application No.27 of 2022, HC(unreported).

In rejoinder, Mr. Chuwa, Advocate for the applicant submitted that there is new development that, circumstances may warrant a time barred matter to be struck out instead of being dismissed. In his submissions, Mr. Chuwa did not manage to mention those circumstances after being asked by the court. More so, he stated that he has no case law to that effect.

It is clear from submissions of both counsel that they are at the same footing that this application was filed after expiry of the 42 days provided for under the provisions of section 91(1)(a) and (b) of the Employment and Labour Relations Act [Cap. 366 R.E. 2019]. Their point of departure is the consequences that follows thereafter. While counsel for the applicant was of the view that a time barred matter is liable to be struck out, counsel for the respondent submitted that it should be dismissed hence this ruling.

It is my view that this matter cannot detain me because section 3(1) of the Law of Limitation Act [Cap 89 R.E 2019] provides that a time

barred case should be dismissed. In the case of **Barclays Bank Tanzania Limited vs Phylisia Hussein Mcheni** (Civil Appeal 19 of 2016) [2021] TZCA 202 (17 May 2021), also a Labour case, the court of Appeal had an advantage of discussing the provisions of section 3(1) of Cap. 89 R.E. 2019 (supra) and the remedy available for the matter filed out time. In **Mcheni's case** (supra) the Court of Appeal held *inter-alia* that:-

"...In view of that position of the law, 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."

A similar stance of dismissing a time barred Labour Revision was taken by this court(hon. Mwaseba, J) in the case of **Chodawu vs Board of Trustees of Tanzania National Park** (Revision Application 27 of 2022) [2022] TZHC 10320 (29 June 2022) cited by counsel for the respondent.

In the above two cited cases, both this court and the Court of Appeal dismissed the Appeal and Revision respectively after finding that they were time barred. The reason and logic of dismissing a time barred matter instead of striking it out is based on jurisdiction. When the matter is time barred, the court lacks jurisdiction to adjudicate it and pronounce a judgment. See the case of **M/s. P & O International Ltd**

vs The Trustees of Tanzania National Parks (TANAPA) (Civil

Appeal 265 of 2020) [2021] TZCA 248 (9 June 2021). Therefore, the court cannot strike it out because the matter is not in its jurisdiction. The court can only strike out the matter which falls within its jurisdiction. In other words, it can only strike out the matter that if properly filed, it can adjudicate and pronounce a judgment. This is because striking out the matter does not take away the jurisdiction of the court but gives a leeway to the parties to rectify the errors or to come properly before the court. In other words, striking out the matter that was improperly filed can be a ticket to the party who filed the said matter to refile subject to the discretion of the court and the law relating to the matter itself and the law of limitation. Once all impediments or irregularities have been cleared, then, the court can thereafter adjudicate the matter and pronounce a judgment because it has jurisdiction over the matter. That cannot be done when the matter is time barred because the court is not seized with jurisdiction.

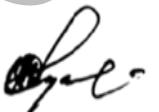
Since this application is time barred as correctly submitted by the parties, then, this court has no jurisdiction to hear the parties and pronounce the judgment thereof. Therefore, for want of jurisdiction, this court cannot grant the prayer of striking it out with leave to refile

advanced by counsel for the applicant. I therefore reject that prayer. The only remedy available for a time barred matter is dismissal and not striking it out. For the foregoing, I hereby dismiss this application for being time barred.

Dated at Dar es salaam this 14th February 2024


B. E. K. Mganga
JUDGE

Ruling delivered on 14th February 2024 in chambers in the presence of Humphrey Aloyce Chuwa, Advocate for the Applicant and Mbwana Ally Chipaso, Advocate for the Respondent.


B. E. K. Mganga
JUDGE

