

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

**LABOUR REVISION APPLICATION NO. 262 OF 2023**

*(Arising from the CMA award with reference No. CMA/DSM/KIN/605/2022/307/2022)*

**JOHN NDEKELAELI.....1<sup>ST</sup> APPLICANT**

**CHIA NGAHYOMA .....2<sup>ND</sup> APPLICANT**

**VERSUS**

**MULTI CHOICE TANZANIA LIMITED .....RESPONDENT**

**RULING**

**OPIYO, J.**

The Applicant filed an application for revision so that the CMA award be quashed and set aside. The respondent was dully served and accordingly filed their reply. They also filed notice of preliminary objection comprised of two points, namely;

1. That the revision proceedings before the court are hopelessly time barred
2. That the revision proceedings before the court is incurably defective for violating regulation 34(1) of GN No 47 of 2017 (failure to file and serve to the opposite party CMA F10 before lodging revision proceedings.



In his submissions in support of the objection, Mr. Ndanu Emanuel on behalf of the respondent submitted that, according to section 91(1) (a) of the ELR, Cap. 366 R.E. 2019, the prescribed time for aggrieved party to challenge the award of CMA is six weeks from the date the award was served on the applicant, but, this application has been lodged on 20<sup>th</sup> October 2023 while the award subject of revision before the court was delivered on the 8<sup>th</sup> September 2023. He argued that reckoning from 8<sup>th</sup> September 2023 to 20<sup>th</sup> October 2023, one finds that, it is 43<sup>rd</sup> days, which is a day extra from what the law has provided. He further submitted that, they are mindful of that, the 42 days starts to run when the award is served to the applicant. However, reading the second paragraph of page 71 of the award it is clearly shown that the award was read and served on the same day. Also, page 72 of the same award which provides a space for each party to fill their names, signature and date when the respondent received the award is blank indicating that, if the applicant received the award on a different date he could have filled that relevant space on the date he was served with the award. He therefore argued that, since the application was filed on the 43<sup>rd</sup> day from the date the award was



delivered, the application is hopelessly time barred and the only remedy available is for it to be dismissed.

On the second point of objection, he submitted that the application before the court is incurably defective for violating regulation 34(1) of GN No 47 of 2017. That, the said regulation requires that the applicant or any aggrieved party lodge a notice showing his intention to challenge the award, it is unfortunate that the applicants in their affidavit in support of the application, have not indicated if that notice was filed and they have not attached it for such proof. He referred this court to the case of **CRDB Bank PLC v. Sylvester Simon Mboje** cited in approval in the case of **Antony Massoy v China Dashen Bank Limited Revision No. 51 of 2023**, Labour Court page 8 where the court viewed that such notice is an important document, it ought to be filed at CMA by any party intending to file revision before any court. He therefore argued that, since the application was file in contravention of the above provision, it is his humble prayer that the application be struck out.

In reply to the first objection, Ms. Yusta Kibuga, Learned Counsel representing the applicant submitted that it is correct that the award was delivered and served on the applicant on 8<sup>th</sup> September 2023. And it is also correct that this application was filed on 20<sup>th</sup> October 2023. In the circumstances, it is her submission that this application was filed on the 42<sup>nd</sup> day which is six weeks as provided by the law since according to section 60 (1) (b) and (c) of the Interpretation of Laws Act, read together with section 19(1) of the Law of Limitation Act, it is provided that a day from which such period has to be computed is to be excluded. Therefore, based on the provision above the computation starts from 9<sup>th</sup> September 2023. That means application was filed on the 42<sup>nd</sup> day. He referred the court to the case of **Iddi Abeid Naibu v Yara Tanzania Ltd, Labour Rev no 7 of 2023, HC Tanzania at Moshi, Hon. Nangera J.** at page 11 and 12 held that the date of service to the applicant be excluded. In her view therefore, the preliminary objection has no merit, she prayed for the same to be overruled.

On the second point of objection, her submission is that, there are conflicting decisions of this subject, i.e. in regard to compliance with regulation 34 (1) of GN 47 of 2017. That, some decisions stand on the fact that, it is

mandatory to lodge the form before filing such application while others say it is not mandatory before lodging revision. The decisions in support of the first legal position she cited the cases of **Godwin Rwegoshora v Mantract Tanzania Limited, Labour Revision 26 2022** where Itemba, J held that filing CMA no 10 is not mandatory. She continued to state that she has considered the authorities the other side's counsel have cited, but she is of the view that, being the decision of the same court, the same is not binding on this court. She added that, failure to file CMA form number 10 does not prejudice the respondent or any other party. She therefore, argued that striking out the application will increase number of applications in court, which is not in the spirit of the law for speedy disposal of labour disputes. Thus, to her, this point of objection also lacks merit, it should accordingly be dismissed. it should be equally overruled.

Mr. Ndanu was quick to make rejoinder arguing that the counsel by citing provision of section 61 of the interpretation of Laws Act in justifying that the date when the award was delivered and served should be excluded has misconstrued and misapplied the application of the said section. To him, the section is to the effect that where there is a specific day specifically specified, computation does not reckon from that day. But unfortunately,

section 91(1)(a) of ELRA does not provide for specific day, but rather, it has provided that it shall be filed within six weeks upon being served with the award. Therefore, section 61 does not apply to this application. He also distinguished the case of Iddi Abeid Naibu with the matter at hand because in that case, the 42<sup>nd</sup> day fell on the public holiday, that is why the days were excluded. Therefore, the scenarios are not the same with our case. He insisted that, the application was filed not on time and urged to its dismissal.

In making rejoinder for the second point, he insisted that Going to the rejoinder for the second objection, the counsel admitted that, there are conflicting decision regarding filing CMA form No 10, but he wished to reiterate their submission and insist that this court being a court of record should be consistent on its decisions that non filing the form is fatal. Therefore, regardless of the fact that the case of **Mantract** cited that filing CMA form no 10 is not mandatory, there are numerous cases of this honourable court which was delivered before this case was delivered, including **Unilever Tanzania Limited v Paul Basondole, Labour revision No 14 of 2020** where it was also held that the form is important as it commences the whole process of revision and without it the

application becomes incompetent. He insisted that, that was the position of this court since 2020 and it is still the position of this court in the case of **Massoy**. Therefore he maintains the position that failure to file CMA form no 10 is a fatal irregularity which make the application incompetent. At this point he also reiterated his prayer for the application to be struck out.

The basis of first point of objection is that the application was out of time by one day, on that, it was filed on the 43<sup>rd</sup> day instead of 42<sup>nd</sup> day prescribed by the law counting from the date the award was issued and served on the applicant.

The applicant admits that he was served with the award on the same day it was delivered. He also admits that, if computation of prescribe includes the day of service, it is 43<sup>rd</sup> day. However, he argues that in terms of S 60(1)(b) of the Interpretation of Laws Act (supra), the day of service is excluded in computation making application to have been filed within time, on the 42<sup>nd</sup> day. The section he referred to provides that:-

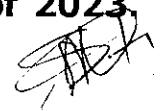
*(1) In computing time for the purposes of a written law-*

*(b) where a period of time is expressed to be reckoned from, or after, a specified day, that day shall not be included in the period;*



From the above provision, it is obvious the date of service which is a date from which is reckoned from is excluded. If the date of service is excluded, the application stand filed on the 42<sup>nd</sup> day, hence within time. That leaves the respondent's argument that the section does not apply in our situation unfounded as the said section is very clear, requiring no complicated interpretations. For the reason the first objection is overruled.

The second point of objection that the application is incompetent for failure to file notice of intention to file revision (CMA form no. 10) The issue of filing CMA Form 10 is currently under debate as noted by both counsels as there are various conflicting decision of this court on the matter. I am alive to the fact that both cases referred to by the parties on this issue are this court's decisions and they are not binding on me on the matter. (the case of Godwin Rwegoshora's, advocating for non-mandatory requirement for the form and the case of **Antony Massoy v China Dashen Bank Limited (supra)**, promoting for mandatory requirement of the filing of the form before filing revision. However, I as part of this court, I was already asked to choose a stand on the matter in the case of **CRDB Bank PLC v Sylvester Samson Mboje, Misc. Application no. 66 of 2023**,





The position I took in that case was to join hands with those advocating for mandatoriness of the filing the form before filing the application for revision. This stand is what is binding me today as I cannot depart from it lightly. In the circumstances, I am bound to maintain the position that the filing CMA form no 1 is mandatory prior to filing the revision. It follows therefore that, the application that has been filed without filing CMA form no. 1 is incompetent before this court. It is therefore prone to be struck out, as I hereby do.



**M. P. OPIYO**

**JUDGE**

**28/2/2024**