

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

**CIVIL APPLICATION NO. 28331 OF 2023**  
**CASE REFERENCE NO. 20211227000028331**

**BETWEEN**

**BARAKA MOHAMED ..... APPLICANT**

**VERSUS**

**AFRICA HEALTH CARE NETWORK ..... RESPONDENT**

**JUDGEMENT**

**Date of last Order:** 06/03/2024

**Date of Judgement:** 22/03/2024

**MLYAMBINA, J.**

When the matter came for hearing, Mr. Peter Manjanjara, the Applicant's Counsel notified the Court that there were two CMA Form No. 1 filed at the CMA. The first one was filed on 13/01/2023 while the second form was filed after seeking an amendment to change cause of action from unfair termination to breach of contract. That form was filed on 27/04/2023 outside the time limitation prescribed for filing complaints of breach of contract. He added that; the mediated dispute was based on unfair termination before the amendment was sought. After the amendment took place, they proceeded with the hearing of the complaint instead of going back to mediate the new cause of action which is breach of contract. On the basis of the pointed irregularities which goes to the

jurisdiction of the CMA and breach of mandatory procedure, he urged the Court to nullify the proceedings and award rendered by the CMA subject to the law of limitation.

In response to the mentioned irregularities, Ms. Nasra Songoro, the Respondent's Counsel conceded with the Applicant's Counsel submission. He also urged the court to nullify the CMA's proceedings.

I have gone through the records, as rightly submitted by Mr. Manjanjara, there are two CMA Form No. 1 which were filed at the CMA. The first one was filed on 13/01/2023 in which the Applicant claimed for unfair termination. The second CMA F1 was filed on 27/04/2023 after the Applicant prayed before Hon. Ng'washi, Arbitrator to change the nature of dispute from unfair termination to breach of contract. Therefore, when the form was amended the parties proceeded with the arbitration stage without the matter being mediated.

The circumstances of this case may be similar to the case of **EFFCO Solution (T) Ltd v. Juma Omari Kitenge**, Revision No. 753 of 2019, High Court Labour Division at Dar es Salaam (unreported). In the case of **EFFCO Solution (T) Ltd** (*supra*), the Respondent raised a preliminary objection at the CMA that the CMA had no jurisdiction to entertain the

matter on the ground that the cause of action filed was improper. The CMA upheld the preliminary objection, struck out the application and proceeded to grant extension of time for the Applicant to file a new cause of action. The Court held as follows:

In my view, after the Arbitrator ruled that he had no jurisdiction and proceeded to strike out the application, he had no mandate over a new dispute which was to be filed by the Respondent. Therefore, the Respondent was required to follow proper procedure and file an application for condonation as rightly submitted by the Applicant's Counsel.

Similarly, in this case, though the Arbitrator did not strike out the application, the fact that the dispute placed before him was for unfair termination, he had no jurisdiction to order change of cause of action and proceed to determine the dispute in question. It is a settled position of the law that the time limit for filing a dispute about unfair termination is different from breach of contract. That position of law is set under *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 arose.

As clearly stipulated above, the limitation for filing disputes for unfair termination is 30 days while the time limit for filing disputes concerning breach of contract is 60 days. As rightly conceded by both parties, initially, the Applicant referred the dispute at the CMA concerning unfair termination. The amended form indicates that the cause of action arose on 15/12/2022 while the dispute of breach of contract was filed on 27/04/2024 without proper extension of time. Thus, the same was filed out of time and the CMA lacked jurisdiction to entertain the same.

The relevance of limitation of time was well elaborated in the case of **Tanzania Fish Processors Ltd v. Christopher Luhangula**, Civil Appeal No 161/1994, Court of Appeal of Tanzania at Mwanza (unreported) where it was held that:

The question of limitation of time is a 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 chooses.

On the irregularity that the dispute was not mediated, it is the law's position that upon receipt of a referral form, the dispute shall first be mediated and if mediation fails then the matter will proceed to Arbitration. This is in accordance with *Section 86 of the Employment and Labour Relations Act, [Cap 366 RE 2019]*. Therefore, since the amended dispute was not first mediated, the above stipulated procedure was violated.

In the result, for the irregularities pointed herein above, I find the matter was improperly determined at the CMA. Consequently, the CMA's proceedings and the subsequent Award are hereby nullified as prayed by both parties. It is so ordered.

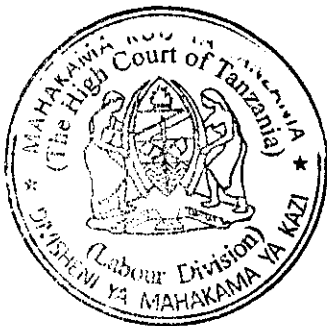


Y. J. MLYAMBINA

**JUDGE**

22/03/2024

Judgement pronounced and dated 22<sup>nd</sup> March, 2024 in the presence of Counsel Peter Manjanjara for the Applicant and in the absence of the Respondent.



Y. J. MLYAMBINA

**JUDGE**

22/03/2024