

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

REVISION NO. 276 OF 2023

BETWEEN

RONALD O. JUMBALEKITI APPLICANT

VERSUS

UKOD INTERNATIONAL CO. LTD RESPONDENT

JUDGEMENT

Date of last Order: *04/03/2024*
Date of Judgement: *12/03/2024*

MLYAMBINA, J.

The dispute at hand arose from the following context: The Applicant was employed by the Respondent way back in November 2018 as a General Manager in unspecified period of contract. The same is evidenced by the offer of employment letter (exhibit D1). For the reasons which are not apparent on record, on 01/04/2021 the parties decided to enter into a fixed term contract of five years where the Applicant was retained in the same position as reflected in the employment contract (exhibit P1). For personal reasons which were not revealed in the resignation letter (exhibit P2) dated 30/04/2022, the Applicant decided to resign from employment. He further indicated in the resignation letter that his last working day will be on 31/05/2022.

Following resignation, on 01/08/2022 the Applicant went to the Commission for Mediation and Arbitration (herein CMA) and claimed for the following reliefs, salary arrears and annual leave for 2022, salary for May 2022 TZS 6,000,000/=, unpaid salary for second contract TZS 9,337,000/=, salary for April 1,500,000/=, unpaid salary for second contract TZS 4,519,500/=, annual leave for 2021 and 2022 TZS 6,000,000/=, costs of unnecessary delay to the date of payment TZS 50,000,000/=, making a grand total of TZS 215,356,000/=. After considering the evidence of the parties, the CMA dismissed the Applicant's claims on the ground that they were filed out of time.

Aggrieved by the CMA's decision, the Applicant preferred the present application on the following grounds:

- i. That, the Honourable Arbitrator erred in law and fact in deciding that referral was preferred out of time.
- ii. That, the Honourable Arbitrator erred in law and fact in failing to consider that the dispute was on unpaid employment entitlements and not resignation.

The application was argued by way of written submissions. The Applicant appeared in person, whereas the Respondent enjoyed the services of Mr. Oscar Milanzi, learned Counsel.

Arguing for the first ground, the Applicant submitted that; the Arbitrator misconceived the Applicant's last working day as the date when the dispute arose. He argued that in the matter at hand the dispute arose on 04/06/2022. Thus, it was filed timely as per *Rule 10(2) of the Labour Institutions (Mediation and Arbitration) Rules, GN. No. 64 of 2007 (herein GN. No. 64/2007)*. He further argued that time should have been calculated pursuant to *Rule 4 of GN. No. 64/2007*.

As regards to the second ground, it was submitted that the Arbitrator erred to consider that the dispute was on resignation while it was on employment entitlements which the Applicant prayed to be paid by 03/06/2022. He maintained that the dispute was timely filed. In the result, he urged the Court to revise and set aside the CMA's decision and declare that the claims were timely filed at the CMA.

In response to the first ground, Mr. Milanzi submitted that; in the CMA F1 the Applicant indicated that the dispute arose on 31st May 2022. He added that the same form shows that it was stamped at the CMA on 1st August, 2022, Therefore, the Applicant was required to comply with

Rule 10(2) of GN. No. 64/2007 to file his claim within 60 days but he did not comply with the law. He argued that, once it is counted by considering the date claimed by the Applicant that the dispute arose 03/06/2022, yet it is 62 days instead of 60 required by the law. In support of his submission, he referred the Court to the case of **Ngorongoro Conservation Area Authority v. Amiyo Tlaa Amiyo and Another**, Revision Application No. 28 of 2019 where at page 20 the Court made a clear elaboration on the significance of the CMA Form No. 1 by stating that:

CMA FORM NO .1 is part of the pleadings. It can be equated to
plaint.

Mr. Milanzi added that; at page 15 of the above cited case, there is other referred case used by the Court to explain the significance of the CMA Form No. 1, the case of **Judicate Rumishael Shoo & 64 Others v. The Gurdian Ltd** [2011-2012] in which the Court held as follows:

Referral Form is part of pleadings. Applicants' claims have to be pleaded in the referral Form, i.e Form No 1. The CMA has to make a decision on what has been pleaded in the Form No.1

It was strongly submitted that the Arbitrator was correct and reached to a just decision according to the law. Thus, the Applicant's allegation lacks merit.

As regards the second ground, Mr. Milanzi reiterated his submission on the first ground. He added that; the issue of limitation always goes to affect the whole case or dispute. Thus, as per the nature of the claims filed at the CMA, they fall under *Rule 10(2) of 2007 GN. No. 64/2007*.

Mr. Milanzi argued that the Applicant filed his claim against the Respondent out of time without leave. He was of the view that it is a duty of the Applicant to take a due diligence during filing his claims and should know that the consequence to file the matter out of time is dismissal. In support of his submission, he referred to the case of **John Cornel v. Agrevo (T) Ltd**, Civil case No. 70 of 1988, where the Court held that:

However unfortunate it may be for the Plaintiff, the law of limitation on actions knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web.

He further maintained that the dispute arose on 31st May, 2022 and the claim was filed before the CMA on 1st August, 2022, which is almost

more than 60 days. The Applicant failed to comply with the mandatory requirement of the law, thus, the matter was correctly dismissed.

In rejoinder, the Applicant reiterated his submission in chief.

I have dully considered the rival submissions of the parties, CMA and Court records as well as relevant laws. It is my view that all grounds can be determined in one issue; *whether the dispute was timely filed at the CMA.*

Disputes at the CMA are initiated through referral form (CMA F1), as rightly argued by Mr. Milanzi. In the CMA F1, the Applicant indicated several claims as analysed at page 2 of this decision. To start with the claims arising out of the first contract, the record shows that the first contract was entered by the parties since November, 2018 (exhibit D1). Such contract automatically expired on 01/04/2021 when the parties entered into another fixed term contract of five years ending on 31/03/2026 (exhibit P1).

Therefore, the first contract expired on 30/03/2021. As the record speaks, the matter was filed at the CMA on 01/08/2022 which was after 16 months from the said expired contract. Thus, the claims arising thereto were time barred and the Applicant ought to have sought for

extension of time before filing the same as rightly found by the Arbitrator.

As regards the claims of annual leave of 2021 and 2022, salary for May, 2022 and unpaid salaries for the second contract, they were also supposed to be filed at the CMA within 60 days from the date the cause of action arose as per *Rule 10(2) of 2007.GN. No. 64/2007*. Annual leave is generally paid after the employee completed one year.

Therefore, the claim of annual leave for 2021 was out of time because the dispute was instituted on 01/08/2022. On the payment of unpaid salary for May, 2022 the same was also filed out of time. In the CMA F1, the Applicant indicated himself that the dispute arose on 30/05/2022. Therefore, since the matter was filed on 01/08/2022, it was after lapse of 60 days required by the law. On this aspect, I join hands with the Respondent's submission that parties are bound by their own pleadings. The Applicant himself pleaded that the cause of action arose on 30/05/2022. He cannot rebut his pleading. The claim that the cause of action arose on 03/06/2022 is an afterthought and not substantiated with evidence. This is also the Court's position in the case of **Judicate Rumishael Shoo & 64 Others v. The Gurdian Ltd** (*supra*).

In the event, since the dispute was filed out of time without leave of the CMA, it was properly dismissed as per **Barclays Bank Tanzania Limited v. Phylisiah Hussein Mcheni**, Civil Appeal No. 19 of 2016, Court of Appeal of Tanzania, Dar es Salaam (unreported).

On the basis of the above analysis, it is my view that the present application has no merit. The Arbitrator properly dismissed the dispute because the Applicant filed the same out of time without seeking for extension of time. I therefore find no justifiable reasons to depart with the CMA's decision. In the event, the application is hereby dismissed for lack of merit. It is so ordered.



Y.J. MLYAMBINA

JUDGE

12/03/2024

Judgement pronounced and dated 12th March, 2024 in the presence of the Applicant and Oscar Milanzi for the Respondent. Right of Appeal explained.



Y.J. MLYAMBINA

JUDGE

12/03/2024

