

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

CASE REFERENCE NO.20240128000001532

REVISION APPLICATION NO. 1532 OF 2024

BETWEEN

BOLT (T) LIMITED APPLICANT

VERSUS

JOHN JOHNSON SHINJI & 2 OTHERS RESPONDENT

JUDGEMENT

Date of last Order: 18/03/2024

Date of Judgement: 09/04/2024

MLYAMBINA, J.

Briefly, the parties herein had employer-employee relationship which ended on 29/02/2020 due to financial difficulties of the Applicant. After termination, the Respondents instituted a labour dispute before the Commission for Mediation and Arbitration (herein CMA) on 21/04/2020. The dispute was determined on merit and the award was issued in favour of the Applicant. Aggrieved by the CMA's Award, the Respondents preferred revision application before this Court which was registered as *Revision No. 55 of 2021*. In the referred case, the Court ordered retrial of the matter because some of the witnesses adduced testimony without taking oath. The matter was re-heard by the CMA and decided in the Respondent's

favour. Being dissatisfied by the CMA's award, the Applicant filed the present application.

The matter proceeded by way of written submission. Mr. Sunday Ndamugoba, learned counsel appeared for the Applicant. On the other hand, Mr. Tawajud Lwenduru, learned counsel appeared for the Respondents.

Arguing for the application, Mr. Ndamugoba submitted that the right of action in respect of any proceedings shall accrue on the date which the cause of action arises in terms of *Section 5 of the Law of Limitations Act, [Cap 89 Revised Edition 2019] (herein LLA)*. The Respondents' alleged that the cause of action arose on 28/02/2020, the day they signed the mutual agreement. That is on the very date when they became aware that their employment relationship with the Applicant ended. He argued that the Respondents filed their cases on 21/04/2020 being 23 days late contrary to *Rule 10(1) of the Labour Institutions (Mediation and Arbitration) Rules, GN. No. 64 of 2007 (herein GN. No. 64 of 2007)*.

Further, Mr. Ndamugoba argued that retrenchment is one of the valid reasons for termination as was held in the case of **Hawa Abuhussein v. MFI Documents Solutions Limited**, Labour Revision No. 273 of 2022 [2023] TZHCLD 1153 (17 February 2023). He stated that in the matter at

hand the Applicant faced financial constraints hence he proceeded with retrenchment as per *Section 38(1)(a)(b)(c) and (d) of the Employment and Labour Relations Act, [Chapter 366 Revised Edition 2019]* (herein ELRA). The counsel went on to submit that the Applicant issued a mutual separation agreement whereby the Respondents willingly agreed to terminate their employment contracts on 20/02/2020.

It was Mr. Ndamugoba's further argument that termination of employment contracts by mutual agreement is lawful recognized under *Rule 3(2)(a), 4(1) of the Employment and Labour Relations (Code of Good Practice) Rules, GN. No. 42 of 2007 (herein GN. No. 42 of 2007)*. In support of his argument, the counsel referred to numerous Court decisions including the case of **Heri Pius Lwena v. Ruvuma Coal Limited** (Labour Revision No. 6 of 2022) [2023] TZHC 17965 (15 June 2023). In the upshot, he urged the Court to revise and set aside the CMA's decision.

In response to the application, Mr. Lwenduru strongly submitted that the Respondents were terminated from employment on 28/03/2020. He argued that time limitation in labour disputes is well covered under *GN. No. 42 of 2007* which automatically oust the use of the *LLA*. It was the counsel's submission that since the dispute arose on 28/03/2020 it was timely filed at the CMA on 21/04/2020. Further, despite retrenchment being a recognizable

reason for termination of an employee, procedures have to be followed. As it was stressed in the case of **Andrew Michael Kahombwe v. Estim Construction Co. Ltd** (Revision Application No. 372 of 2020) [2021] TZHCLD 485 (11 November 2021), he urged the Court to dismiss the application and uphold the CMA's Award.

As the record speaks, before the Court the Applicant raised the issue of time limitation which is so fundamental, and it involves the jurisdiction of a Court or Tribunal. This was also stated in the case of **Tanzania Fish Processors Ltd v. Christopher Luhangula**, Civil Appeal No 161/1994 Court of Appeal of Tanzania, Mwanza Registry (unreported), the Court held that:

...the question of Limitation of time is 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 wishes.

As rightly argued by both counsel, the time limit for referring disputes at the CMA is governed by the provision of *Rule 10(1) and (2) of GN. No. 64 of 2007. Rule 10 (supra)* provides as follows:

10 (1) Disputes about the fairness of a 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.

In the matter at hand, the dispute initiated at the CMA was about termination of employment. As quoted from the above provision, the dispute ought to have been filed within 30 days from the date of termination or the date the employer made the final decision to terminate the employment contract. The Respondents indicated in the CMA F1 that the dispute arose on 28/03/2020.

I have critically examined the records which speaks loudly. The Respondents were terminated from employment on the ground of retrenchment. With a letter dated 18/02/2020 (exhibit D5 collectively), the Respondents were informed of the intended retrenchment process. The meeting was also conducted on the same date of the notice as evidenced by the minutes (exhibit D1). For the reasons and discussions which is not relevant at this juncture, the parties concluded a mutual separation agreement on 28/02/2020 (exhibit D8 collectively). At clause 3.1 of the separation agreement the parties agreed as follows:

The employee's employment with the Company will terminate by mutual consensus with effect from 29 February 2020.

Again, the termination letters served to the Respondents on 28/03/2020 (exhibit D11 collectively) clearly indicated that the Respondents were terminated from employment with effect from 29/02/2020. Therefore, the record shows that the date of termination was 29/02/2020 and the Respondents were aware of such date from the time when the separation agreement was concluded. On the alleged 28/03/2020, it was only the date the Applicants were served with the termination letters which also referred to the agreed date of termination of employment.

Furthermore, even the certificates of services (exhibit D9 collectively) were dated 28/02/2020. Thus, gathering from the records, the Respondents were terminated from employment since February, 2020.

It is undisputed that the matter was filed at the CMA on 21/04/2020. Counting from 29/02/2020 when the Respondents were terminated from employment to 21/04/2020, it is crystal clear that the dispute was filed after lapse of 30 days as per *Rule 10(1) supra*. On the basis of the above analysis, it is my view that the matter was filed out of time as rightly raised by the

Applicant. Therefore, the CMA wrongly proceeded to determine the same since the dispute was not accompanied with an application for condonation.

In numerous Court decisions, the remedy for time barred applications have been discussed in various cases including the case of **Barclays Bank Tanzania Limited v. Phylisiah Hussein Mcheni**, Civil Appeal No. 19 of 2016, Court of Appeal of Tanzania, Dar es salaam in which the Court held that:

... it would be inequitable if we allowed one party to an employment contract to disregard time in instituting a complaint against the other party. We think matters would not come to finality as required if a party who allows grass to grow under his feet and delays in instituting an action, would only be given an order to refile it. The very object of the law of limitation would be defeated for...

In the result, I find the present application has merit. Since the application was filed out of time without leave, the same deserves to be dismissed in terms of the Court of Appeal position in the case of **Barclays Bank Tanzania Limited** (*supra*). For the reasons stated, the CMA's proceedings and the subsequent award are hereby quashed and set aside.

It is so ordered.

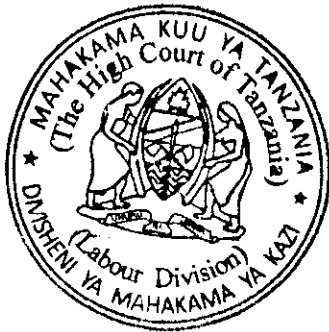


Y. J. MLYAMBINA

JUDGE

09/04/2024

Judgement pronounced and dated 9th April, 2024 in the presence of
Elisante Frank Advocate for the Applicant and Jackson Mgonja, Advocate for
the Respondent. Right of Appeal explained.



Y. J. MLYAMBINA

JUDGE

09/04/2024