

TANZANIA / JUDGMENT

## DR PONZIANO

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MUSOMA SUB-REGISTRY AT MUSOMA LABOUR REVISION NO. 13056 OF 2024 REFERENCE NO. 202406041000013056 BETWEEN DR PONZIANO RAPHAEL MPONZI..... APPLICANT VERSUS KIRIBO LIMITED..... RESPONDENT RULING OF THE COURT 18/10/2024 & 10/12/2024 Kafanabo, J.: This is a ruling in respect of a preliminary objection raised by the Respondent herein against an application for revision arising from the decision of the Commission for Mediation and Arbitration (hereinafter referred to as the 'CMA') dated 16th November 2023 in Labour Dispute No. CMA/MUS/83/488/2020 between the parties herein. The application is made by chamber summons supported by an affidavit of the Applicant. The substance of the Applicant's prayers in the present application is that: /. This honourable Court be pleased to call for records, revise, examine, and set aside the award of the CMA at Musoma in Labour Dispute No. CMA/MUS/83/488/2020 dated 10h November 2023 with a view to i satisfy itself as to the legality, propriety, rationality, and correctness thereof ii. This Honourable Court be pleased to determine the matter in the manner it deems fit and give any other relief/ order(s) it considers just to grant for the interest of justice. However, before the said application could be heard on merits, the Respondent, on 11th September 2024, raised preliminary objections to the effect that:

1. That the application for revision is hopelessly time barred, filed contrary to the provision of section 91(l)(a) of the Employment and Labour Relations Act, Cap. 366 R.E. 2019.
2. The jurat of attestation in the affidavit supporting the application is incurably defective for being a violation of Section 8 of the Notaries Public and Commissioners for Oath Cap. 12 R.E. 2019. It follows that, since preliminary points of law raised by the parties are to be heard and determined first, the matter was set for hearing of the preliminary objections. At the hearing, Mr. Samwel Kazenga, Advocate entered an appearance for the Applicant and Mr. Michael Mahende, Advocate entered an appearance for the Respondent. In support of the first limb of the preliminary objection that this application for revision is time-barred, the Respondent's Counsel submitted that the application before the court is time-barred in contravention of section 91(l)(a) of the Employment and Labour Relations Act, Cap. 2 366 R.E. 2019 which requires an application for revision to be filed within six (6) weeks from the date the award of the CMA is served on the Applicant. The CMA award was delivered on 16/11/2023 and thus a due date for filing an application for revision was 27/12/2023. The

record shows that the application for revision against the Applicant was filed on 4th June 2024 which is way beyond the statutory requirement. It was also submitted that the Courts record shows that on 15/02/2024 another application for revision was filed between the Applicant herein against Social welfare services which the Respondent was not served, but the Applicant claims it was mistakenly filed. Moreover, the Respondents learned counsel submitted that assuming 15/02/2024 was the time the Applicant filed her first application for revision, it was also beyond the six weeks prescribed by the law. It was also submitted that there was no application for an extension of time which had been filed by the Applicant requesting to file the application for revision out of time. It was thus submitted that the application before the Court is time- barred. It is a trite law that the consequence that follows an application that has been filed out of time is the dismissal of the same, and the Respondent urged the court to dismiss the present Application for being time-barred. The cases of *Flomi Hotel Limited v. Equity Bank Tanzania Ltd* Civil Case No. 106 of 2021 (unreported) and *Barclays Bank Tanzania Ltd v. Phylisiah Husein Mcheni* Civil Appeal No. 19 2016 (unreported) were cited to bolster the Respondent's submissions. Opposing the preliminary objection and the submissions in support thereof, the Applicant's learned counsel submitted that this application 3 emanates from the order of this court in Labour Revision No. 000003055 of 2024 which was mistakenly filed because of the electronic filing system malfunctioning in this Court. It was submitted that the Applicant in the said application against the Social Welfare Service is also the applicant in this matter. However, the name which appeared in the system was different from the actual name of the Applicant indicated in the document uploaded to the system. The document uploaded to the system showed that the application was between the present Applicant versus the present Respondent. Moreover, it was argued that it was not possible to serve the Respondent with the said application because the court summons did not mention her, and thereafter, the Applicant prayed to withdraw the application to refile a proper application. The Court granted the Applicant thirty (30) days within which to file a fresh application, and the Applicant complied and the present application was filed. It was further submitted by the Applicant's counsel that the Respondent's counsel addressed the dates of filing the applications in this Court. It was his view that in order to establish the said dates evidence is required, and thus preliminary objection raised cannot stand as a point of law because it requires evidence to prove. The case of *Camel Oil Tanzania Ltd v. Bahati Moshi Masabile*, Civil Appeal No. 98 of 2021 was cited to support the submission. It was thus prayed that the preliminary objection as regards time limitation be dismissed for being a demurrer. In light of the above submissions by the parties, this court is called upon to determine the merits of the preliminary objection raised by the 4 Respondent. Since the preliminary objection is hinged on the limitation of time, the relevant law prescribing the time within which to apply for revision from the decision of the CMA is section 91(l)(a) of the Employment and Labour Relations Act, Cap. 366 R.E. 2019 which reads: "Any party to an arbitration award made under section 88(10) who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for a decision to set aside the arbitration award-

- (a) within six weeks of the date that the award was served on the applicant unless the alleged defect involves improper procurement; " The above provision counts six weeks from the date the award is served on the Applicant. The said interpretation was also clearly articulated by the Court of Appeal in the case of Serengeti Breweries Limited vs Joseph Boniface (Civil Appeal 150 of 2015) [2016] TZCA 305 (8 April 2016) where it was held that: "777 the light of the cited decisions, the plain and dear meaning of section 91(1) of ERLA is that, the limitation period of six weeks begins to run against the applicant after the award is served on the applicant. The law is so couched because it is not open to the applicant to know if he is aggrieved with the award unless it is served to the applicant." Reverting to the present case, there is no complaint by the Applicant that the award was served late on him, and thus the six weeks prescribed by the law are, undoubtedly, counted from 16th November 2023 when the award of the CMA was delivered. As rightly argued by Mr. Mahende, the learned counsel for the Respondent, the CMA award was delivered on 16th November 2023 and thus the final due date for filing an application for revision was 27/12/2023. It is undisputed that the record shows that the revision against the Respondent was filed on 4th June 2024 which is way beyond the statutory requirement. The learned counsel for the Respondent was also alive to the record that, it appears, on 15/02/2024 initial application for revision was filed between the Applicant herein against Social Welfare Services, which the Respondent, however, was not a party, and assuming that was the time when the Applicant filed her first revision, it was also beyond the six weeks prescribed by the law counting from 16th November 2023 when the CMA award subject was delivered. The argument of the learned counsel for the Applicant that Labour Revision No. 000003055 of 2024 was mistakenly filed against the Social Welfare Services because of the filing system problems in this Court is sound in explaining what transpired, but not a justification for the filing of this application out of time. The same would have been a valid argument if the Applicant would have preferred an application for an extension of time. Moreover, the argument by the Applicant that they prayed to withdraw the Application in order to refile the proper application, and the Court granted him thirty (30) days within which to file a fresh application, does not cure the legal defect pulverizing the present application. This is because even the withdrawn application that was filed on 15th February 2024 was filed out of time, that is after the lapse of six weeks counting from 16th November 2023 when the CMA award subject matter of this Revision was delivered. See the case of Felician Rutwaza vs World Vision Tanzania (Civil Appeal No. 213 of 2019) [2021] TZCA 2 (2 February 2021) where refiling of an application in court was accepted as valid without extension of time because the initial application for revision was duly filed within time. Besides, relevant to determining this point is the case of Geita Gold Mining Limited vs Anthony Karangwa (Civil Appeal No. 42 of 2020)
- [2023] TZCA 28 (20 February 2023) where the automatic exclusion of time was allowed, upon refiling a withdrawn application, under section 21(2) of the Law of Limitation Act, Cap 89 R.E. 2019 because the initial application was filed within the time prescribed by the law. Furthermore, with respect, the Court does not fall for the Applicant's counsel's submission

that the present preliminary objection on time limitation calls for evidence. This is because the objection is based on the Court's record on dates of filing the relevant applications, and which does not call for evidence contrary to the Applicant's argument. Under the circumstances, the case of Camel Oil Tanzania Ltd v. Bahati Moshi Masabile (supra) cited by the Applicant is distinguishable from the facts of the present case. In light of the above, it is clear that the application for revision has to be filed within six weeks from the date the decision of the CMA is served on the aggrieved party. It is not in dispute that the decision of the CMA was delivered on 16th November 2024 which means that, as per the law, the deadline for filing the application for revision was 27/12/2023. In light of the 7 record of the court, and as rightly argued by the Applicant, this application was filed on 4th June 2024 because that was the date it was submitted online and it was admitted on the same date. It follows that since the application was submitted online on 4th June 2024, this Court finds that was the date it was filed. Considering another aspect that it was, initially, filed on 15th February 2024 and later withdrawn with leave to refile, it is, again, a finding of this court that it was initially filed beyond the time prescribed by law and that the Applicant did not seek an extension of time before filing the Application. With respect, this court agrees with the Respondent's counsel's submission that the application was filed out of time prescribed by the law. In light of the foregoing, the preliminary objection that the application for revision is time-barred, as raised by the Respondent, is hereby upheld. Since the 1st limb of the preliminary objection disposes of the application, it will be an exercise in futility to determine the 2nd limb of the preliminary objection. Under the circumstances, the application for revision is hereby dismissed for being time-barred in terms of section 3(1) of the Law of Limitation Act (supra). Given that this is a labour matter each party shall bear their costs. It is so ordered. Dated at Musornu this 10th day of December 2024. 8 The ruling was delivered in the presence of Mr. Samwel Kazenga, Advocate for the Applicant (linked via teleconference) and Mr. Michael Mahende for the Respondent (linked via teleconference). K. I. Kafanabo Judge 10/12/2024 9

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