

TANZANIA / JUDGMENT

erasto mateo vs anisuma traders

2022 tzhcld 172 22 april 2022

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22 April 2022

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IN THE HIGH COURT OF TANZANIA LABOUR DIVISION AT PAR ES SALAAM REVISION
APPLICATION NO. 273 OF 2020 BETWEEN ERASTO

MATEO..... APPLICANT VERSUS ANISUMA

TRADERS..... RESPONDENT (From the decision Commission for
Mediation & Arbitration of DSM at KIN) Dated 28h November 2016 in Labour Dispute No. CMA/
DSM/ILA/R.513/15/910)

RULING

22nd February 2022 & 22nd April 2022 K. T, R, MTEULE, J, This ruling emanates from Revision Application No. 273 of 2020 which was filed by the applicant challenging the CMA award in a Labour Dispute No. CMA/DSM/ILA/R.513/15/910. This application is vehemently opposed by respondents who raised one preliminary objection, to the effect that the application is time barred. On 23rd November, 2021 in the presence of the parties, the matter was scheduled for hearing of the Preliminary objection on 22nd February, 2022. On this date, only the respondent appeared hence the Court decided to proceed ex-parte. During hearing the respondent was represented by Mr. Assey John, Learned Counsel and the hearing was done by a way of oral submissions. Arguing in support of the preliminary objection Mr. Assey John submitted that the application is improperly before this Court for being time barred contrary to Section 91 (1) (a) of the Employment and Labour Relation Act, Cap 366 R.E 2019. He stated that the present application was filed after 4 years from the date when the CMA award was issued and without any leave of the Court to allow late filing. Mr. Assey recalled existence of an order of Hon. Aboud, J. dated 14th A May, 2019 which allowed the applicant's prayer to withdraw the matter due to some irregularities so that they could file a proper application. According to Mr. Assey, on such prayer, the leave of 2 days was granted as indicated at page 2 of the last paragraph of the application for Revision No. 121 of 2019. According to the order " B •. 1 ■ ■> ' ■ issued on 14th May, 2019 in Revision Application No. 121 the applicant had only one chance to lodge the application which was to lapse on 17th May, 2019. He is of the view that even though this application was filed, so as to comply with an order issued on 14th May, 2019 in Revision Application it is apparent that they are out of time in 7 months. 2 Mr. Assey raised doubt on the applicant's statement at paragraph 8 of the affidavit, which mentioned another order asserted to have been issued by Hon. Aboud, J.

on 23rd June, 2020 which gave further leave to file the application out of time. He challenged the applicant's failure to attach the said order with this application. He thus prayed for the application to be dismissed for being time barred. *djgSr 'a, 'ey* Having considered the submissions from respondent's, the Court records, and the applicable laws and practice, I will address the issue as to whether the application before this court is time barred. The relevant provision governing this sort of application is Section 91 of the Employment and Labour Relation Act, Cap 366 R.E 2019 which 91.-(1) 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; 3
- (b) if the alleged defect involves improper procurement, within six weeks of the date that the applicant discovers that fact. Basing on the above cited provision, it is legally apparent that any person who intends to file a revision application against the CMA award, such an application must be filed within six weeks from when the award was served upon that person. In this matter the record available reveals that the CMA award was issued on 28th November, 2016 and the present application was filed on 16th July, 2020, thus means there was a delay of 4 years. It is on record that in between, the applicant filed two applications namely, Revision Application No. 12 of 2017 which was struck out on 20/2/2019 for having defective affidavit and Revision Application No. 121 of 2019 which was struck out on 14/5/2019 for contravening Rule 24 (2) of the Labour Court Rules, GN. No. 106 of 2007. It is apparent that after the striking out of the Revision Application No. 121 on 14th May 2019 the Applicant was given a leave to refile it within 2 days. From that date when the order of refiling was issued it is not certain as to whether the said application was ever filed. Furthermore, there is no better particulars of the asserted application which the applicant alleges to have been struck out on 23rd June, 4

2019. This Court has failed to have a position of ascertaining the exact time as to whether this application was filed within or out of time. It is the applicant's duty to give clear explanation to assure the court that the matter what is in court was actually timely filed. In the affidavit, the applicant named an application which was struck out on 23rd June, 2020. Surprisingly and contrary to the applicant's trend in Revision Application No. 12 of 2017 and Revision Application No. 121 of 2019, the applicant neither mentioned the Number of the I. application nor has the applicant attached the said Ruling to enable \ the court to trace its existence of the matter which granted extension of time on 23rd June, 2020. This shortfall has been addressed by this w i Court in the case of Anna Haule v. Salum Ally, Misc. Application No. 250 of 2004, High Court of Tanzania, at Dar es salaam, (unreported) where it was held: - 'In the absence of the ruling of hon. Mandia, J. I would take that the appeal was dismissed because it was filed out of time allowed to file such an appeal. If that was the case, then the issue was finally determined. But if the applicant had been allowed to withdraw the appeal so that she could first open the doors for filing the appeal, by way of

chamber summons for the grant of leave to file an appeal out of time..." 5 The above cited authority fits the circumstances of this application as no leave was granted to the applicant to file the application for revision out of time. This leads to a conclusion that the application is time barred and can't be sustained without a leave of the court. In this regard, a remedy for the application filed out of time is to be dismissed as held in Anna Haule's case (supra) & For that reason, I hereby dismiss this application for being time barred. It is so ordered. Dated at Dar es Salaam this 22nd day of April, 2022. 'ARINA REVOCATI MTEULE JUDGE 22/04/2022 6

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