

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

APPLICATION NO 31 OF 2019

BETWEEN

PETRO MAGORI _____ **APPLICANT**

VERSUS

FOUR SEASONS SAFARI LODGE _____ **RESPONDENT**

(Arising from the Decision and Orders of the Commission for Mediation and Arbitration at Musoma, Hon. Samwel, Arbitrator in Labour Dispute no. CMA/SER/138/2014, dated 06. 01. 2015)

RULING

Date of last order: 25. 3. 2020

Date of Ruling: 24. 04. 2020

GALEBA, J.

This is an application for extension of time for the applicant to file revision so that he can challenge the award delivered by the Commission for Mediation and Arbitration (the CMA) in labour dispute no CMA/SER/138/2014 which award dismissed his claims on 06.01.2015.

The background to this application is that the applicant was an employee of the respondent and his employment was terminated on 28.10.2013. Being aggrieved by the termination, the applicant filed labor dispute no **CMA/SER/172/2013** to challenge the termination but that application was struck on 27.05.2014 on grounds that the applicant had sued a wrong party. Following the termination of that first application the applicant filed Labour Dispute no **CMA/SER/138/2014** which application was **was dismissed** on 06.01.2015. Following that dismissal several applications have

been filed and terminated in this Court including Revision Application No 04 of 2015, Revision Application No 14 of 2015 and Revision Application No. 7 of 2019. Issues with these matters are not immediately relevant to this ruling.

When this matter came up for hearing Mr. Robert Mosi, learned advocate for the respondent raised a preliminary objection that the application was incompetent for failing to cite **section 14(1) of the Law of Limitation Act [Cap 89 R.E 2002] (the LLA)** so the court was not properly moved. Arguing the objection he submitted that the application is incompetent for non-citation of the above section of the LLA because the Labor Court Rules (LCR) do not provide for extension of time to file revision. The application has been filed under rule 56(1) of the LCR which provides for extension of time for matters whose time frame have been specifically provided for in the LCR. He prayed that the court ought to strike out the application for non-citation of enabling provision of the law.

In reply, Mr. Salehe Nassoro learned advocate for the applicant submitted that the proper and specific provision necessary to move this court is rule **56(1) read together with rule 24 (1), (2) and (3) of GN 106 of 2007** which they cited in the chamber summons. Therefore, he stressed, his application was properly lodged in court and based on those provisions of law the court ought to overrule the objection.

In this application, the issue for determination is whether the court was properly moved by citing laws excluding section 14(1) of the LLA.

I have gone through all the sections of law as referred to this Court by both counsel and I agree with Mr. Mosi in his submission that the Labor Court Rules are silent on the issue of extension of time for filing an application for revision which means the relevant law applicable is the Law of Limitation and to be specific, it is section 14(1) of that Act.

As a buffer to the stance this Court is minded to take in this matter, it is important to observe that as per the law and practice, every case must be decided on its own merits. With that remark in mind, it is of utmost importance also to note that the main thrust in the judiciary in current years and going forward is to administer substantive justice by hearing real complaints of parties and give answers to their substantive issues of justice for which they came to court to seek resolution rather than courts being excessively restricted by strict techniques of procedure or evidence which might stand in the way to hinder or obstruct a seamless flow of litigants' process of justice administration. That is the direction towards which justice delivery in Tanzania is gaining momentum drifting to. It is more so where the court has jurisdiction to determine the matter in question and where neither of the parties has ability to demonstrate that there would be occasioned an injustice or prejudice to either of them.

The above shift in legal and court practice is now backed by codification of the Overriding Objective Principle which was introduced by the **Written Laws (Miscellaneous Amendments) (No.3) Act, 2018** which amended the **Appellate Jurisdiction Act [Cap 141 RE 2002]** and **Civil Procedure Code [Cap 33 RE 2002]** in late 2018. The Court of Appeal has already had opportunity to interpret the above doctrine in **CIVIL APPEAL NO 55 OF 2017, YAKOBO MAGOIGA GICHERE VERSUS PENINAH YUSUPH** CAT (unreported) at page 13 of the type judgment where that Court held:

"with the advent of the principle of overriding objective brought by the Written Laws (Miscellaneous Amendments) (No.3) [Act No. 8 of 2018] which now requires the courts to deal with cases justly, and to have regard to substantive justice; section 45 of the Land Disputes Courts Act should be given more prominence to cut back on over-reliance on procedural technicalities."

Based on the above discussion, this case will adopt the same direction as advised by the Court of Appeal in the above case,

because **first**, in this case, this Court has jurisdiction to hear an application to extend time for the applicant to file the application for revision only that he did not insert the applicable law and **secondly** it was not demonstrated that any grave injustice or prejudice might befall the respondent in case this court overrules the objection. Because of those reasons all participants in this matter shall insert in the chamber summons the appropriate section 14(1) of the LLA so that we can proceed to hear the main application. In the circumstances the preliminary objection is overruled, but because the applicant is represented he is condemned to pay costs of this application to the respondent because, had he inserted the proper provision of law, the respondent would not have gone through the whole course of preparing for and hearing of this matter.

This application therefore will be heard on merits by way of written submissions as per the orders bellow.

DATED at MUSOMA this 24th April 2020



Z. N. Galeba

JUDGE

24.04.2020

Court; This ruling has delivered today the 24th April 2020 in the absence of parties but with leave to be absent following the corona virus outbreak globally and the medical advice to maintain social distance between individuals.

ORDER

1. Sufficient copies of this ruling be deposited at the Judgment Collection Desk for parties to collect their copies free of charge.

2. On or before 04.05.2020 the applicant shall file written submissions in support of the application.
3. On or before 15.05.2020 the respondent shall file written submissions in reply to the submission filed by the applicant.
4. On or before 20.05.2020 the applicant may file rejoinder submissions (if any).
5. Ruling shall be delivered or collected from the Judgment Collection Desk on 05.06.2020 at 9.00 o'clock in the morning.

It is so ordered.



Z. N. Galeba
JUDGE
24.04.2020