

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

AT ARUSHA

APPLICATION FOR REVISION NO. 57 OF 2020

(C/F Labour Dispute No. CMA/ARS/ARB/476/2019 and CMA/ARB/244/2019)

BETWEEN

BONIFACE MBUNDA OJAMBO..... APPLICANT

VERSUS

ARUSHA TEACHERS COLLEGE..... RESPONDENT

JUDGMENT

9/3/2022 & 29/6/2022

ROBERT, J:-

This is an application for revision of the ruling of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/ARS/ARB/476/2019 delivered on 14/11/2019. The Applicant, Boniface Mbunda Ojambo, filed a complaint at the CMA against the respondent, his former employer, alleging unfair termination.

Briefly stated, the applicant was employed by the respondent as a teacher on a two years contract starting from 1st August, 2017. However, his contract was terminated on 8th April, 2019 allegedly without notice or specific reason for the termination. Hence, he preferred his complaint at the CMA against the employer. Prior to the hearing of the dispute on merit,

the respondent raised objection regarding the competency of the CMA F1 used by the applicant to lodge his dispute. The CMA sustained the objection and struck out the matter. Thereafter, the applicant filed another application which was equally struck out but the CMA gave him 14 days to file another application. Still determined, the applicant filed another application vide Labour Dispute No. CMA/ARS/476/19 which was dismissed on 14/11/2019 for being time barred. Aggrieved, he preferred this application seeking to revise the CMA Ruling.

When this application came up for hearing the applicant appeared in person without representation whereas the respondent enjoyed the services of Mr. Sabato Ngogo, Learned counsel. At the request of parties, the Court allowed hearing to proceed by filing written submissions.

Submitting in support of the application, the applicant submitted that his dispute at the CMA having been struck out by the on 16th day of August, 2019 he was given 14 days to re-file another dispute if he wished to do so. On 21st day of August, 2019 he filed another Dispute No. CMA/ARS/ARS/476/19 which was tabled before Hon. Mourice E. Sekabigwa who dismissed the same for the reason that it was filed out of the prescribed time. He argued that, it was wrong for Hon. Sekabigwa to

dismiss his application since the delay was a technical one and the first application which was struck out was filed within the prescribe time.

He submitted further that, a dismissal order by the CMA was contrary to Rule 12 (3) of the **Labour Institutions (Mediation and Arbitration)** GN 64/2007, as the mediator was required to receive the claim and not to dismiss it for the reason that it was not attached with the application for condonation. Thus, he prayed for the dismissal order to be quashed and set aside and for the Court to order that the matter be remitted to the CMA for proper hearing of the matter.

In response, counsel for the respondent submitted that, this application for revision is time barred as it was filed out of the time prescribed by law. He maintained that, on 3rd day of August, 2021 Hon. Gwae J, granted the applicant leave to file another application for revision within 10 days from the date of the said order. Counting from 3rd day of August, 2021 to 13th day of August, 2021, the applicant was late for one day therefore he was supposed to pray for extension of time before filing this application. To support his argument, he cited the case of **Lohay Akonaay & Joseph Lohay vs The Attorney General**, Civil Application No. 43 of 1994, CAT at Arusha (unreported).

With regards to the merit of this application, he submitted that, the applicant did not dispute that he was out of time by the time of filing his referral form at the CMA or the fact that he did not attach the condonation form at the time of filing his referral form as required by Rule 12 (2) (c) of GN 64/2007 therefore, the CMA was in no position to know why the applicant was late to file his referral form and proceeded to dismiss the claim. Further to that, he maintained that, the trial Arbitrator is not the one who is receiving referral forms filed at the CMA, that is the function of the recording officer as the Arbitrator deals with the file only after being assigned. Therefore, he submitted that the applicant's application for revision is devoid of merit and prayed for it to be dismissed.

In his brief rejoinder, the applicant reiterated the arguments in his submissions in chief and maintained that this application was filed within the time as require by Section 19 (1) of the law of Limitation Act, Cap. 89 (R.E 2019) and Rule 4 (1) of GN No. 64 of 2007. He prayed for this application to be allowed and the court to set aside the decision of the CMA.

Having examined the records of this matter and submissions made by both parties, this court is now in the position to determine the merit of this matter.

Starting with the argument that this application is late for one day. The Respondent cited Rule 4(1) of GN 64 of 2007 which provides as follows:-

"Subject to sub rule (2) for the purpose of calculating any period of time in terms of this rules, the first day shall be excluded and the last day shall be included."

Further to that section 19 (1) of Cap. 89 also provides that;

"In computing the period of limitation for any proceeding, the day from which such period is to be computed shall be excluded"

Guided by the cited provisions, this court is agreement with the applicant that this application for revision having been filed on 13th August, 2020 was filed within the prescribed time counting from 3rd August, 2020 when Hon. Gwae, J gave an order allowing the applicant to refile the application within 10 days.

Coming to the merit of the application, the records and Ruling of the CMA indicates that the trial Arbitrator did not dismiss the dispute due to failure of the applicant to attach a condonation form. The dispute was dismissed for being time barred. Page 2 of the CMA Ruling reads as follows:-

*"To know the reasons why it is delayed, they are nowhere to be found as the condonation is not referred. Indeed, it is a clear position that **the Applicant being given 14 days to refile by Hon. Lomayan did not exempt them from complying with the law of time***

limitation. *The condonation application was a must. Since this dispute is time barred the only remedy is to dismiss this application."*

The excerpt above shows that the Arbitrator was aware that the applicant was already given 14 days to refile the application, looking at the date of filing the last application, the applicant was within the time given by the CMA for file another application. The question is whether the applicant having been given 14 days leave to file another application was required to file another application for extension of time before the expiry of the time given by the CMA. The answer to that question cannot be in affirmative. It was a misdirection to think the applicant was required to apply for extension of time while he was still within the time extended by the CMA to lodge another dispute.

That said, this Court finds the decision of Hon. Mourice E. Sekabila in CMA/ARS/ARS/476/19 to be inaccurate. As a consequence, I hereby quash and set aside the ruling of the CMA in Labour Dispute No. CMA/ARS/ARB/476/2019 delivered on 14/11/2019 and remit this file back to the CMA for the parties to be heard before another competent Arbitrator.

It is so ordered.



A handwritten signature in black ink, appearing to read "K.N. Robert", is written over the seal.

K.N.ROBERT
JUDGE
29/6/2022