IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

REVISION APPLICATION NO. 90 OF 2020

(Arising from Labour Dispute No. CMA/ARS/ARS/367 &368/2020)

STEPHANO MOLLEL .....1ST APPLICANT

PETER JUSTINE .....2ND APPLICANT

JOSEPH NGOWI ..... 3RD APPLICANT

ZUWENA NGOMA ..... 4TH APPLICANT

NASMA HASSAN ..... 5TH APPLICANT

VERSUS

A1 HOTEL AND RESORT L.T.D ..... RESPONDENT

RULING

04/11/2021 & 16/12/2021

KAMUZORA, J

The applicants preferred this application under section 91(1) (a), 92(2) (b) &94(1) (b) (i) of the Employment and Labour Relations Act No. 6 of 2004 and Rule 24(1), 24(2) (a)(b)(c)(d)(e) &(f) and Rule 224(3) (a) (b) (c) & (d), 28(1)(b)(c)(d) & (e) of the Labour Rules, G. N No 106 of 2007. In responding to the application, the respondent filed a counter

affidavit deponed by Eric Stanslaus together with a notice of preliminary objection on point of law that: -

1) The Application for Revision is time barred and there is no application for leave to file the said application out of time.
2) That the Application is fatally incompetent for lacking a proper Jurat.

Hearing of the preliminary objection was conducted orally whereas the respondent enjoyed the representation of Mr. Erick Stanslaus, learned advocate while the applicants enjoyed the service of Mr. Frank Maganga, a personal representative.

In supporting the first point of preliminary objection, Mr Stanslaus submitted that, The Employment and Labour Relations Act, section 91 (1)(a) is clear that revision application has to be filed within six weeks which is equivalent to 42 days. He explained that the revision application by the applicants was admitted in court on 12/10/2020 while the award was issued by CMA on 28/08/2020. That, from the date of the award to the date of filing there were 45 days with extra three days. To prop his submission, he cited the case of **Wambele Mtumwa Shahame Vs Mohamed Hamis,** Civil Refence No.8 of 2016, where the CAT held that a delay of even a single day has to be accounted for.

He finalised by stating that, in this revision application there is nowhere the applicants stated the reasons for the delay. That, the applicants were out of time and there was no application for leave to file the application out of time and the application did not state why it was not filed on time. He thus prayed for this application to be dismissed and applicants to follow the legal procedures to file the proper application.

Replying to the first point of preliminary objection, Mr. Maganga submitted that, the same does not qualify as a preliminary objection as it needs evidence to prove. He also submitted that, under section 91 of the Labour Relations Act Cap 366 RE 2019 read together with the Judicature and Application of Laws (Electronic Filling) Rules, 2018, a party aggrieved by the decision of CMA has to file the revision within six weeks to be accounted from the date the award is served to the applicants or the aggrieved party and not the date of being issued with the decision.

Mr. Maganga stated that, the PO needs evidence to prove as to when the applicants were served with the award so as to compute from there. That, as that needed evidence it cannot be pure point of law.

Referring Rule 21 of the Electronic Filing Rules, Mr. Maganga submitted that there is a need for evidence as to when the documents were submitted in court so as to count the dates. He explained that, the

applicants filed the revision within 39 days not 45 as claimed by the counsel for the respondent. That, the CMA decision was delivered on 28/08/2020 and the applicants submitted in court the application on 05/10/2020 through the electronic filing system and print out proving the date of filling was well submitted in court showing that this court admitted the application on 06/10/2020 at about 12:49:05hrs.

Mr. Maganga concluded by stating that, under Rule 21 of the Electronic Filing Rules, the date the document is submitted in the system is when the document is duly filed. Thus, he prayed that the preliminary objection be dismissed.

In his rejoinder, the counsel for the respondent submitted that, the preliminary objection on time limitation is a pure point of law. That, Revision Application No. 90 was admitted in court 12/10/2020 as per the court stamp and signature of registry officer. That, the decision of the CMA was delivered on 28/08/2020 and it does not indicate as to when the copies were issued thus the same was issued on the same date. That, if the same was supplied on the date different from the date of delivery the copy as to the date it was supplied could have been attached. The respondents counsel insisted that the electronic filing document submitted by the applicants' representative does not justify what is started as it is a

mere paper not supported by anything. He thus prayed that the application to be dismissed.

Having considered the arguments by the counsel and the representative for the parties, it important to ascertain if the matter filled before the court is time barred.

It is not disputed that the law governing this revision application is section 91 (1) (a) of the Employment and Labour Relations Act which provides that,

> *"Any party to an arbitration award made under section 88(8) 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."*

Guided by the above provision, any party aggrieved by the award of the CMA ought to file revision application before this court within 6 weeks of the date that the award was served to him or her.

In this application the attached award which is subject of the revision by this court shows that the award was issued on 28/08/2020. There is no other date indicated on document or in the affidavit by the representative of the applicants to which the award was supplied to the parties thus leading to a presumption that the award was supplied on the same date it was pronounced. Had the applicants provided a different date to which the copy of the award was served to them then this court would have excluded the days within which the applicants were not supplied with the copy of the award. But much as that fact was not revealed, the time limit starts to run from 28/08/2020 when the award was pronounced by the CMA.

In supporting the argument that the application was lodged on time before this court, the applicants' representative relied on Rule 21 of the Electronic Filling Rules, to insist that the application was filed on the 39th day. He alleged that the date to which the document was submitted in the system is regarded as the filling date. That was strongly disputed by the respondent who insisted that the date to which the hard document was endorsed to be received by the court is the date of filing and that was on 45th day from the date of the award.

The court standpoint in most cases is that the date of filing is the date the court fee is paid. See the case of **Adamson Makondaya & another v Angelika Kokutona Wanga (As an Administratix of the estate of the late STEPHEN ANGELO RUMANYIKA)** Misc. Land Application No. 521/2018 (Unreported) where it was held that,

> *"It is a cardinal principle that, as long as court fees are paid, the date of the court stamp indicating as to when it was presented for filing may conveniently be taken as the date of filing. However, that is not the case if that date is earlier than the date of payment of court fees. If the date of filing is earlier than the date of payment of court fees, then the date of payment of court fees has to be taken as the date of filing. A matter may be taken to have been properly filed in court only after court fees are paid. The date of presentation of the application for filing cannot be treated as the date of filing the appeal because the Court of Appeal has held from time to time that, it is the date of payment of filing fees and not of lodging a document, which amount to the date of filing an action."*

It should also be noted that, submission of document through electronic filing system does not do away with the requirement for payment of filing fees. This was also held in the case of **John Chug Vs Anthony Sizya** [1992] T L R where it was held that,

> *"The date of filing a document in a court is a day of paying court fees and not receiving of documents."*

With the above observation, it is my view that where no court fees are prescribed by law, then the date the document is presented for filing and admitted becomes the date of filing. The records shows that the hard documents of the application were endorsed with the court stamp on 12/10/2020. It is however contended by the applicant's representative that prior to submitting the hard copy in court, the soft copy was already submitted via electronic filing system in compliance with Rule 21 of the Electronic Filling Rules. He submitted a copy of printout of the system to justify that the document was clearly filed in time.

I agree with the representative of the applicants that the document was filed in time. As pointed out above, in labour dispute no requirement for court fees. thus the date to which the document was electronicallv admitted in court becomes the date of filing. That was so proved by the printout of the electronic filing system, and it cannot be ignored in anyway. As there is no requirement for filing fees in labour dispute, the date of filing is the date the document is presented and received by court. The present application was submitted electronically on 05/10/2021 and admitted on 06/10/2021. I therefore regard the application to have been filled in this court on 05/10/2021 and that was still within the time. I

therefore find that the first point preliminary objection is of no merit and is hereby dismissed.

Regarding the second point of preliminary objection that the jurat of attestation is defective, Mr. Stanslaus submitted that, the application before the court in incompetent for lack of proper jurat and he stated that, going through the application, the jurat indicates clear that it was sworn at Arusha by the said Frank without stating the surname or other names. That, the affidavit was drafted by Frank Maganga and the verification was by Frank Maganga but the person indicate in the Jurat is Frank. For him, the jurat is different from the person who drafted and verified the affidavit. For that reason, he submitted that the jurat was defective under the law for showing two different people.

In his reply to submission Mr. Maganga admitted that the second name is missing in the jurat of attestation. But he insisted that the same cannot stop this court from determining the case on merit. He added that, the missing of the second name is human error and can be referred as technical issue because there is no two Frank in the affidavit. That, by missing the second name it was a typo error. He implored this court to refer to Article 107 (2) (c) of the constitution of the United Republic of Tanzania of 1977 as amended from time and dismiss this PO as it is

technical and will result into the delay and backlog in court. He insisted that the applicants complied to the provision of Rule 24 (3) of the Labour Court Rules thus prayed for the objection to be dismissed.

In a brief rejoinder Mr. Stanslaus submitted that the Rules are clear, and they need be adhered to because if not, they will open pandora box for filing defective applications. He insisted that refuge cannot be sought under Article 107 of the constitution to hide the defects and non-compliance to the legal requirement.

Regarding Rule 24 of the Labour Court rules he re-joined that, it does not deal with jurat rather it deals with contents of the affidavit. He added that Rule 55(1) of the Labour Court Rules allows the applicability of other laws for anything not covered by the labour Rules. He therefore referred the Notary Public and Commission for Oath Act, as the law which specifies on how the jurat should be.

I agree that jurat of attestation is governed by the Notaries Public and Commissioner for Oaths Act [CAP 12 RE 2019]. Section 8 of the Act, read: -

> *"Every notary public and commissioner for oaths before whom any oath or affidavit is taken or made under this Act shall insert his name*

and state truly in the jurat of attestation at what place and on what date the oath or affidavit is taken or made."

In the case of **Thabitha Mugwani Vs. Pangea Minerals Ltd, Lab. Rev. No. 48 of 2014**, it was held that: -

"The identity of the deponent in supporting the affidavit must be stated truly in the jurat of attestation. Whether the Commissioner for Oaths knew the deponent in person or has been identified to him by x the later being personally known to the Commissioner for Oaths all that has to be stated truly in the jurat of attestation. That information of identification has to be clearly shown in the jurat."

In the present application, the name of the deponent was included but not the full name. While the name of the deponent was indicated in the first paragraph of the affidavit as well as on the verification clause as Frank Maganga, the jurat of attestation only indicated the name Frank. The applicants' representative in his submission admitted that there is a missing name in the jurat of attestation, but he insisted that it was a human error in typing and the same should not hinder the administration of justice.

I agree with the applicants' representative that this error is not fatal and does not go the merit of the case. The same can be cured by allowing the party to insert full names in the jurat of attestation. The court of Appeal in **Sanyou Service Station Ltd. Vs. BP Tanzania Ltd (Now**

Puma Energy (T) Ltd, Civ. Appl. No. 185/17 of 2018 was faced with the defective affidavit not containing verification clause and it held as follows: -

> *"I wish to emphasize that from the foregoing, it can be safely concluded that the Court's powers to grant leave to a deponent to amend a defective affidavit, are discretionary and wide enough to cover a situation where a point of preliminary objection has been raised and even where the affidavit has no verification clause. Undoubtedly, as the rule goes, the discretion has to be exercised judiciously. On the advent of the overriding objective rule introduced by the Written Laws (Miscellaneous Amendments) (No. 3), Act, 2018, the need of exercising the discretion is all the more relevant."*

Although in the present application the defect is not on verification as in the above cited case, I subscribe to the above reasoning of the Court of appeal to conclude that by not containing full name of the deponent in the jurat of attestation, the application cannot be regarded as incurably defective. Based on the spirit of overriding principle, the same can be cured by amendment.

Consequently, I order the applicants to amend the affidavit before the Court to wit, to insert the full name of the deponent so as the matter can proceed on merit. In the result, I uphold the second preliminary objection raised by the respondent and order the applicants to rectify the

defects by manual insertion in Court chambers of the missing name for the matter to proceed on merit without wasting valuable time of the Court.

Order, accordingly,

DATED at **ARUSHA** this 16th Day of December 2021

D.C. KAMUZORA

JUDGE