IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: LILA J.A., MWANGESI J.A. And SEHEL, J.A.)

CIVIL APPEAL NO. 185 OF 2017

WILLIAM MWAKITALU AND 29 OTHERS.....APPELLANTS

VERSUS

PPF PENSION FUNDS .....RESPONDENT

(Appeal from the ruling and drawn order of the High Court of Tanzania Labour Division at Dar es Salaam)

(Mashaka, J.)

dated the 27th day of October, 2016

in

Revision No. 416 of 2015

JUDGMENT OF THE COURT

29th Apr. & 22nd May, 2020

MWANGESI J.A.:

The appellants herein, were the applicants in Labour Revision No. 416 of 2015, which was lodged in the High Court of Tanzania Labour Division at Dar es Salaam, on the 8th day of October, 2015 supported by

sworn affidavit, praying it to revise the award which had been rendered in their favour, by the Commission for Mediation and Arbitration (**the CMA**), on the 24th day of August, 2015 and served on them, on the 31st day of August, 2015.

In response to the application lodged by the applicants, the respondent, filed a counter affidavit and in addition, raised a preliminary objection founded on two grounds. The first ground which is relevant to the appeal at hand, was to the effect that the application for revision had been hopelessly filed out of time, while the second ground was to the effect that, the application had been supported by an affidavit incurably defective. The trial Court, sustained the first point of the preliminary objection and struck out the application, for being time barred.

The appellants felt aggrieved by the ruling of the trial Court, and have come to this Court, armed with one ground of appeal only namely;

> *"That, the Honourable Judge, erred in law and in fact, in construing and/or interpreting the provisions of section 91 (1) (a) of the Employment and Labour Relations Act No. 6 of 2004 hereinafter to be referred to as* ***the ELRA****, by holding that, in*

ascertaining the time limit for filing of an application for revision in the Labour Division of the High Court, from the award delivered by the Arbitrator, days start to count not from the day of receipt of the award, but from the date of delivery of the award."

Complying with the requirement stipulated under the provisions of rule 106 (1) of the Tanzania Court of Appeal Rules, 2019 **(the Rules**), on the 19th day of October, 2017 the applicants, lodged a written submission in support of the application, which was responded to by the respondent, vide the reply to the written submission, which was filed in Court, on the 20th day of November, 2017 in terms of rule 106 (7) of **the Rules.** The respondent did also raise a preliminary point of objection, founded on the ground that, the appeal is fatally defective for being accompanied by a defective Notice of Appeal and thereby, infringing the provisions of rule 84 (1) of t**he Rules**.

On the date when the appeal was placed for hearing before us, Mr. Hassan Kilule, learned counsel, held brief for Mr. Salehe Ramadhani, learned counsel, with instruction to proceed in representing the appellants.

Mr. Iman Daffa, also learned counsel, on the other hand represented the respondent.

At the very outset Mr. Daffa, rose to inform the Court that, he was praying to withdraw the preliminary point of objection which the respondent had raised, so as to pave way for the hearing of the substantive appeal, a prayer which was not resisted by his learned friend. We accordingly marked the preliminary objection withdrawn.

When Mr. Kilule, was invited by the Court, to take the floor and expound the ground of appeal, he prayed to adopt the written submission which had been lodged plus the list of authorities, which had also been filed with nothing more. The position taken by Mr. Kilule, was followed by Mr. Daffa, who also asked us to adopt the lodged written submission in reply, with nothing to add.

According to the written submissions of the appellants, the learned trial Judge, is faulted in the way she interpreted the wording in the provisions of section 91 (1) (a) of **the ELRA** in that, in computing the limitation period for lodging an application to challenge the award rendered by **the CMA**, it has to commence from the date of the decision. The

learned counsel did submit that, according to the practice pertaining in the CMA, the award is normally not pronounced to the parties, instead thereof, it is served on them on the date the CMA appoints.

With regard to the award under scrutiny, even though it indicates to have been ready for collection by the 24th August, 2015 the appellants, were served with its copy on the 31st August, 2015 as reflected on page 566 of the record of appeal. Under the circumstances, the computation of the limitation period, commenced to count from then and not otherwise as the learned counsel for the respondent, tries to put. To fortify the contention, refuge was sought from the decision in **Serengeti Breweries Limited Vs Joseph Boniface**, Civil Appeal No. 150 of 2015 (unreported).

In view of the foregoing, the learned counsel for the appellants, urged us to allow the appeal, and let the application for revision which was lodged in the High Court, to be determined on merits.

On the other hand, the submission in reply by the respondent, is to the effect that the word "served" as used in the provisions of section 91 (1) (a) of **the ELRA**, means the date on when the determination of the application was delivered. In any event, the learned counsel for the

respondent went on to submit, the fact that there is no specific law prescribing on how the award rendered by the CMA, should be presented to the parties and when, the learned trial Judge, was justified in using the date on when the award was delivered, as the date to commence computing the limitation period.

With regard to the authority which was relied upon by his learned friend in support of his submission, the learned counsel for the respondent was of the view that, even though the Court noted that there was a lacuna in the laws governing resolution of labour disputes, it did not provide a solution on the way forward. That being the case, the said authority was of no assistance to the appellant.

When the learned counsel was probed by the Court, as to what was the fate of the appeal which was before the Court of Appeal, in the decision which was relied upon by his learned friend, he in the first place fumbled to answer it. And after some recollection, he stated that the appeal was allowed. With such answer, he seemed to lower his urge to resist the appeal.

From the submission of either side above, the issue that stands for our determination, is whether the application which was lodged by the appellants in the High Court, to challenge the award of **the CMA**, was lodged out of the time prescribed by the law. To begin with, we reproduce the provisions of section 91 (1) (a) of **the ELRA** in which, the dispute between the parties arises. It reads: -

> *"Any party to an arbitration award made under section 88, 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".*
>
> [Emphasis supplied]

While the appellants, interpret the bolded words in the provision quoted above, to mean the period after being supplied with the copy of the award by **the CMA,** the interpretation given by the respondent, is that it means the period from when the award was delivered by **the CMA.** The

Court had an occasion of encountering a similar problem in the case of **Serengeti Breweries Limited Vs Joseph Boniface** (supra), wherein, it was discovered that, there was a lucana in the rules guiding labour arbitration proceedings. In that regard, it made the following observation: -

> *"However, there is no rule in the Labour Institutions (Labour and Arbitration Guidelines) Rules G.N No. 67 of 2007, which prescribes the duty and the manner in which the Arbitrator or the CMA, shall serve the award on the parties. This is the inadequacy in the employment laws. We are of the considered view that, this uncertainty, is not conducive for the timely delivery adjudication of labour disputes. As such, we hereby direct that, the respective labour legislation be amended to require the arbitrator to notify the parties, on the date of delivery of the award and the arbitrator be required to serve the award to the disputing parties so as to enable them to pursue their rights in case they are aggrieved."*

After having made the above comment, the Court, proceeded to allow the appeal, by directing the High Court to proceed with the hearing

the Court in the previous appeal, remains to be the proper applicable law. As we held in the earlier case, we allow the appeal by directing the High Court, to hear the application and determine it on merit.

Order accordingly.

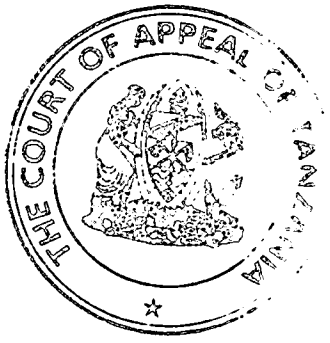
DATED at **DAR ES SALAAM** this 21st day of May, 2020.

S. A. LILA
JUSTICE OF APPEAL

S. S. MWANGESI
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

The Judgment delivered this 22nd day of May, 2020 in the presence of 1st appellant, and in present of Mr. Imam Daffa for the respondent, who also holding brief for Mr. Salehe Njaa for Appellants, is hereby certified as a true copy of the original.



E. G. MRANGU
DEPUTY REGISTRAR
COURT OF APPEAL