

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)**

AT IRINGA

REVISION NO. 07 OF 2018

BETWEEN

FREDNAND NSAKUZI ----- APPLICANT

VERSUS

DIRECTOR GENERAL PCCB ----- RESPONDENT

Date of Last Order: 17/09/2020

Date of Ruling: 13/10/2020

RULING

MATOGOLO, J.

The applicant one Ferdinand Nsakuzi had filed an application to this court seeking for this court to call and revise the Award and proceedings of Commission for Mediation and Arbitration Njombe in Labour Dispute No. CMA/NJ/AUG/43/2016. The respondent, the Director General PCCB was served with the application documents. He filed counter-affidavit and reply to statement. But he also raised notice of preliminary objection on point of law to the following effect:-

- (1) That the application is time barred.
- (2) That the application is incurably defective for being filed without first filing a notice of intention to seek a revision.

- (3) That the application is incurably defective for containing improper verification clause and jurat.

The preliminary objection was argued by written submissions. While the applicant was represented by Mr. Philemon Msegu learned advocate, the Respondent was represented by Ms. Restituta Kessy learned counsel.

In support of the first point of objection, Ms. Restituta Kessy submitted that Section 91(1)(a) of the Employment and Labour Relations Act, No. 6 of 2004 provides for time limit to apply to the Labour Court for a decision to set aside the arbitration award, which is six weeks from the date the said award was served on the applicant unless the alleged defect involves improper procurement. She said the CMA award, the subject of the present application is dated and the Applicant was fully aware of the date of the award. The record shows that the CMA award was procured on 24/03/2020 and the applicant admitted to have received it on the said date as shown in the chamber summons and the applicant's affidavit at paragraph 9. The present application was filed on 07/05/2020 as shown on the court stamp.

Six weeks therefore expired on 05/05/2020, but the applicant lodged his application on 07/05/2020 which is out of time per Section 91(1)(a) of the Employment and Labour Relations Act No. 6 of 2004, the learned counsel prayed for the application to be dismissed.

As to the second point of objection it is the respondent's counsel submission that the application is incompetent for offending Regulation 34(1) of the Employment and Labour Relations (General) Regulations of

2017 for failure by the applicant to file notice of intention to seek revision before filing the present application.

She said the said Regulation is couched in mandatory provision due to the word "shall" which is used. She further cited Section 53(2) of the Interpretation of Laws Act, (Cap 1. R. E. 2002) which clearly provides that where in a written law the word "shall" is used in conferring a function, such word shall be interpreted to mean that the function so conferred must be performed.

The applicant did not file notice of intention to seek revision before filing this application. This therefore renders the application incompetent. With regard to the third point of objection the respondent submitted that the verification clause to affidavit filed by the Applicant in support of the chamber summons had defects. She said Order VI Rule 15(2) of the Civil Procedure Code Act, requires that the person verifying must verify to the different paragraphs separately and show which are verified according to his knowledge belief and information. The learned counsel pointed out that the verification clause to the affidavit filed by the applicant in support of the chamber summons, the deponent has verified paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 without including sub paragraphs (a), (b) and (c) of paragraph 10. She contended that the unverified subparagraphs render the application incompetent. Ms. Restituta Kessy learned counsel for the Respondent prayed for the application to be struck out.

In his reply submission Mr. Philemon Msegu learned advocate for the appellant contended that the applicant submitted the application

documents in the High Court Registry on 04/05/2020 in time before the expiry of six weeks. However due to corona virus pandemic the application documents were left unattended or on a queue until 07/05/2020 and the Registry Officer did not stamp the documents on the date they were submitted in court. He said the applicant is full aware that time is paramount to courts power to entertain the suit. However he said the delay has not been contributed by the Applicant's side but the court itself due to corona pandemic which was on the peak at the time of presentation of the application documents. He said that has happened everywhere in the public service delivery and since the Respondent is not harmed in any how and since the striking out of the application will not finalize the case on substance, the Applicant cannot be blamed on such delay.

As to the second point of objection, for failure by the Applicant to file a notice of intention to seek revision, Mr. Msegu learned counsel submitted that he has gone through Regulation 34(1) of the Employment and Labour Regulation (General) Regulations, but the same does not provide for what the Respondent has alleged. It provides for the forms, the same does not mention CMA form No. 10 and that the regulation does not impose any penalty for failure to file such a notice. The learned counsel argued that the remedy is not to strike out the entire application, the same regulation does not provide the time limit within which to file such a notice. With regard to point No. 3 of objection, Mr. Msegu argued that there is nowhere in the cited Rule 15 of Order VI of the Civil Procedure Code provides for verification of subparagraphs. Thus verification of a numbered paragraph includes also verification of a subparagraph.

The learned counsel prayed to this court to overrule the objection and proceed to determine the matter on merit.

In rejoinder, the counsel for the Respondent mainly reiterated what she submitted in her submission in chief.

Having carefully read the submissions by the respective counsel, I will start with point No. 3 on the alleged defect of the verification clause. The objection is based on the fact that the applicant did not verify on the subparagraphs of paragraph 10 of the supporting affidavit. Verification in affidavits is governed by Order VI Rule 15(2) of the Civil Procedure Code.

The same provides:-

"15(2) the person verifying shall specify, by reference to the numbered paragraphs of pleading, what he verifies of his own knowledge and what he verified upon information received and believed to be true."

The above quoted rule as was correctly submitted by the counsel for the applicant, has no any requirement to verify for subparagraphs. The verification of paragraphs includes verification of subparagraphs contained in the paragraphs as they are part of those paragraphs. The objection in this point in my view has no legal base the same is overruled.

The second point of objection is that the application is incurably defective for being filed without first filing a notice. The learned counsel for the Respondent cited Regulation 34(1) of the Employment and Labour

Relation (General) Regulations, 2017 GN. No. 47 of 2017, as it was submitted by Mr. Msegu this is on the form. The same provides:-

"34(1) The form set out in the third schedule to these Regulations shall be used in all matters to which they refer.

(2) The forms made under these Regulations may be modified adopted or altered by the Minister in expression to the suit the purpose for which they were intended"

Usually Notice of application in the Labour court is made under Rule 24 of the Labour Court Rules G. N. No. 106 of 2007. The Rule provides:-

"24(1) Any application shall be made on notice to all persons who have an interest in the application.

(2) The notice of application should substantially comply with form No. 4 of the schedule to these Rules, signed by the party bringing the application and filed and shall contain the following information:-

(a) the title of the matter.

(b) the case number assigned to the matter by the Registrar.

(c) the reliefs sought.

(d) an address at which that party will accept notice and service of all documents in the proceedings.

(e) a notice advising the other party that if he intends to oppose the matter that party shall deliver a counter affidavit within fifteen days after the application has been served failure of which the matter may proceed ex-parte, and

(f) a list and attachment of the documents that are material and relevant to the application.”

The objection raised has therefore no relevancy to the notice of application. As it is trite law that an application for revision in Labour dispute is made by Notice of Application, chamber summons and an affidavit supporting the summons. The point of objection lack merit the same is overruled.

The first point of objection is that the application by the applicant is time barred as the same was lodged after the expiration of six weeks in contravention of Section 91(1)(a) of the Employment and Labour Relations Act.

As rightly submitted by both learned counsel, the time limit to apply to the Labour Court for a decision to be set aside the arbitral award is six weeks from the date that award was served on the applicant. The

respondent's counsel contended that the CMA award subject of this application was supplied to the applicant on 24/03/2020. The applicant's counsel did not dispute to that. But the present application was lodged in this court on 07/05/2020 beyond six weeks. The respondent's counsel contended that the same was filed two days after the expiry of six weeks. Mr. Msegu learned advocate came up with an argument that the application documents were submitted in the High Court Registry Iringa on 04/05/2020 before the expiry of six weeks. However due to corona virus pandemic which was at the peak at that time the application documents were left unattended or on queue until 07/05/2020 and the Registry officer did not stamp those document on the date of receiving them that is on 04/05/2020.

That assertion by the learned counsel is not supported by any proof. The application documents shows that they were dated at Iringa on 4th day of May, 2020 although on the space for date it appears was arased by colleting fluid and figure 4 was inserted. But the documents show that were presented for filing on 9th day of May, 2020 which is the date stamped on the first page of the documents. There is no any document Mr. Msegu learned advocate attached to show that the documents were lodged in the Registry of this court on 04/05/2020 as alleged. The learned counsel could not even attach an affidavit of the said Registry officer who received them to the effect that the documents were lodged at the Registry on 04/05/2020. Without any proof the applicant assertion cannot be accepted.

As the period provided under Section 91(1)(a) of the Employment and Labour Relations Act No. 6 of 2004 is six weeks, and the applicant did

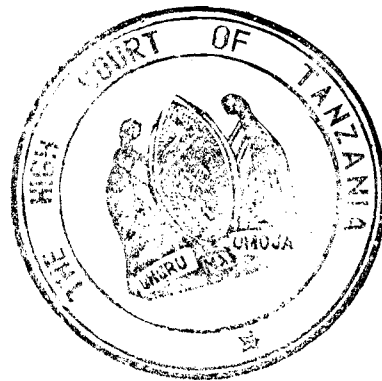
not meet such period, the only remedy for him was to apply for extension of time in order to file an application out of time. But not just to lodge it regard less the fact that is filed out of time. The same is therefore time barred which cannot be entertained by this court as issue of time limitation goes to the jurisdiction of the court. As the application was filed out of time without leave of the court this court lacks jurisdiction to entertain the same. For that reason therefore this application is hereby dismissed.



F.N. MATOGOLO

JUDGE

13/10/2020.



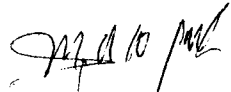
Date: 13/10/2020
Coram: Hon. F. N. Matogolo – Judge
Applicant: Absent
Respondent: Restituta Kessy
C/C: Grace

Restituta Kessy - Advocate:

My Lord I am the appearing for the Respondent. The matter is for Ruling on our party we are ready.

COURT:

Ruling delivered this 13th day of October, 2020 in the absence of the applicant but in the presence of Restituta Kessy for the Respondent.



F.N. MATOGOLO

JUDGE

13/10/2020.

