

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

AT MOSHI

LABOUR REVISION NO. 22 OF 2019

BETWEEN

ARUSHA ART LIMITEDAPPLICANT

VERSUS

CONSOLATA MICHAEL WOISO.....RESPONDENT

RULING

23/11/2020, 15/12/2020

MWENEMPAZI, J

The applicant was the Respondent in the Labour Dispute No. CMA/KLM/ARB/30/2019. The Respondent was complaining for unfair termination of her employment with the applicant. A decision, an award was issued on 13/8/2019. The same day the record was ready and the Respondent received her copy on 16/8/2019 through one Emmanuel Ngaiza and the applicant received her copy on 6/9/2019 at 15:00 hours through Gaspel Sanava.

The applicant was ordered to pay the respondent a total of Tshs. 4,861,538/= including in the sum, notice, leave not taken in 2019 and

severance allowance and compensation of Tshs. 3,200,000/=. She was aggrieved and on 29/10/2019 filed this application for Revision. The Respondent is opposing the application. She has filed a counter affidavit and a notice of preliminary objection. Among the points of objection is that the application contravenes the provision of section 91(1) (a) of the ELRA, 186 of 2004. The matter is time barred. The other defects are in an affidavit.

Parties were ordered to file written submissions in hearing of the application; according to the order dated 13/8/2020. Only the Respondent has complied to the order.

In the submission the counsel for the Respondent one Emmanuel Antony has submitted on all points. I have opted to deal first one, that of time as per section 91(1) (a) of ELRA.

The counsel has submitted that the decision of an award was made on 13/8/2019. Copies were ready on the same days. Parties therefore were able to receive the same on the same day (13/8/2019). The counsel argues that if the applicant was to obtain the copies of an award from the CMA on the 13/8/2019 by virtue of law was supposed to file an application for revision on 24/9/2019. This application was filed on 25/10/2019, which is 29 days after the expiry of 42 days. The applicant contents that she obtained the copies on the 12th September, 2019 so the time started to run on the 13/9/2019. Section 91(1) (a) and (b) requires an application for revision to be filed within six weeks from the date of the decision sought to be challenged or six weeks after a party has discovered a defect in the award.

The applicant submits that, on the first requirement six weeks started to run on the 14/8/2019 and ended on the 24/9/2019.

On the other side, assuming the date which the applicant purports to obtain a copy of an award, is the date time starts to run, 13/4/2019, it will end on 24/10/2019. In both situation the application was filed out of time. This application was filed on 25/10/2019. The applicant was out of time for one day.

The applicant was supposed to apply for leave, she did not do that hence the application is unmaintenable as the court is deprived of jurisdiction. The Respondent prays for application to be dismissed.

I have checked the facts and confirmed that the matter was decided on 13/8/2019 in the CMA. This application was made on 25/10/2019. In either way as argued by the Respondent this application was filed out of time. In the case of **MANAGING DIRECTOR BERKELEY ELECTRICAL LTD VS. JOHN MORIS & 3 OTHERS**, Labour Division Dar es salaam, Revision No. 438 of 2013, 3/3/2015 Mashaka of held that: -

"It is mandatory requirement of law under section 91(1) (a) of the employment and labour Relations Act No. 6 of 2004 that any party aggrieved by the decision of the CMA may apply for revision to this court within six weeks from the date of the award was issued...The court is ousted with jurisdiction to entertain the any matter brought out of prescribed time under the law.

"It is established principle of law that once the prescribed time has lapsed this court had no jurisdiction to determine the matter, unless this court abridged and extend the required time"

Under the circumstances this application cannot be entertained, basing on the fourth ground of objection the application is dismissed. I will not deal with the other grounds as it will be an academic exercise.



A handwritten signature in black ink, appearing to read "T. Mwenempazi".

T. MWENEMPAZI

JUDGE

15/12/2020

Ruling delivered in court in the presence of the Respondent and Mr. Emmanuel Anthony, her advocate.

A handwritten signature in black ink, appearing to read "T. Mwenempazi".

T. MWENEMPAZI

JUDGE

15/12/2020