

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

APPLICATION FOR REVISION NO 60 OF 2018

*(Arising from the decision of the Commission for Mediation & Arbitration of Shinyanga in
Labour Dispute No. CMA/SHY/181/2017.)*

TUMAINI MAFURU AND 23 OTHERS..... APPLICANTS

VERSUS

REGIONAL MANAGER, TANESCO SHINYANGA..... RESPONDENT

RULING

Date of the Ruling: - 17th MARCH, 2020

MKWIZU J.

This is a ruling in respect of the preliminary objection raised by the respondent in this revision. On 25th September, 2018, Applicants herein filed a revision proceeding against the decision in Labour dispute No. CMA/SHY/181/2017 dated. The application is by way of a chamber summons brought under Section 91(2) (a) (b) and (c) of the Employment and Labour Relations Act, No 6 of 2004 and Rules 24 (1),24 (2) (a), (b), (c), (d). (e),(f) , 24(3) (a), (b), (c), (d) and 28 (1) ((c), (d) (e) of the

Labour Court Rules,2007.It is accompanied by the affidavit sworn by all the 23 applicants.

On 1st November,2018 the respondent filed a notice of preliminary objection on three points of law to wit: -

1. That, the applicant's application is hopelessly time barred
2. That, the applicant's application is bad in law for being supported by an incurably defective affidavit
3. That, this Honourable court is improperly moved.

On 15/8/2019,Ms Juliana William advocate for the respondent prayed to abandon the third preliminary point of objection while on their part the applicants through Mr Tumain Mafuru,1st applicant prayed for time to proceed with the hearing of the preliminary objection. The matter was therefore adjourned.

At the hearing of the preliminary objection today. Applicants appeared through their representative, Mr Tumaini Mafuru,1st applicant and the respondent had the services of Ms Juliana William learned advocate.

Submitting in support of the 1st preliminary objection Ms Juliana contended that the application for revision is hopelessly time barred. She

said, the CMA award was issued on 16th April,2018 and this revision was filed on 25th September,2018 almost five months contrary to section 91 (1) (a) of the Employment and Labour Relation Act. She cites the case of **Agrey Sapali Vs Mkuu wa Chuo MUST**, Civil Appeal No. 153 of 2015 to bolster her argument. She prayed that the application be struck out.

On the second point of preliminary objection, the counsel is challenging the competence of the application on account of being accompanied by a defective affidavit. The objection has two limb. *One*, she said, the verification clause did not specify the paragraphs of the affidavit which are based on their own knowledge and those which are based on their belief contrary to the law and thereby rendering the affidavit incurably defective. She cited the case of **Anatol Peter Rwebangira V. The Principal Secretary, Ministry of Defence and National Service and Another**, Civil application No. 548/04/2018. Second point on this objection was directed to the Jurat of attestation. Ms Juliana submitted that the attesting officer knew the applicants personally or whether they were introduced to him and by whom. Ms Juliana suggested that the error makes the affidavit in support of the application defective. She again sited the case of **Faith Chenga V. Group 7 OTY LTD**, Revision No. 176 of 2011.

In reply, applicant's representative, Tumain Mafuru conceded to the points of law raised. On the first preliminary objection, he said, they filed the application outside the prescribed time due to legal technicalities which they went through during the preparation of the revision. On the second point, it was Mr Mafuru's submission that, they are lay persons who are not knowledgeable in law and therefore they sworn the affidavit believing that everything is okey. He prayed that they be allowed to amend the application and proceed for hearing on merit.

I have given a serious scrutiny to the application at hand, the preliminary points of objection raised and the submission by the parties herein. The point for my determination is whether the application is properly before the court. Starting with the first preliminary objection, on whether the application for revision by the applicants is time barred or not, I find it pertinent to look onto section 91 of the Employment and Labour Relation Act, 2004 which governs the filing of revision of this nature. Section 91 (1) (a) reads:-

“91. -(1) Any party to an arbitration award made under section 8
8(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;** (*Emphasis added*)

As rightly submitted by the counsel for the respondent and conceded to by the applicant's representative, the application before me is time barred. It was filed beyond six weeks required by the law. As the record would reveal, the CMA award was issued on 16th April,2018 and the applicants were issued with the said copy on the same date. The application for revision was filed on 25th September,2018 five months and nine days. No leave to file the said application out of time was sought and granted.in the case of **Agrey Sapali** (Supra) cited by the counsel for the respondent the court had dismissed the appeal after it was found that the revision on which the appeal was premised was filed outside the prescribed time.

The first preliminary point has merit, it is hereby upheld. I would have proceeded to determine the second preliminary points but since this point is sufficient to dispose of the matter, I proceed to dismiss the application for being filed out of time prescribed by the law.

This being an employment matter, I make no order as to cost.

Order accordingly.

DATED at **SHINYANGA** this 17th day of **MARCH**, 2020.


E.Y. MKWIZU
JUDGE
17/3/2020

Court: Right of appeal explained.



E.Y. MKWIZU
JUDGE
17/3/2020