

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE DISTRICT REGISTRY OF SHINYANGA**  
**AT SHINYANGA**

**APPLICATION FOR REVISION NO 66 OF 2018**  
*(Arising from the decision/ruling by Nnembuka K. Mediator given at the  
Commission for Mediation & Arbitration of Shinyanga on 5<sup>th</sup> October, 2018 in  
labour Dispute No. CMA/SHY/319/2016.)*

**PANGEA MINERALS LIMITED .....APPLICANT**

**VERSUS**

**ZAKAYO MALULU.....RESPONDENT**

**RULING**

*Date of the last Order: 22/1/2020*

*Date of the Ruling: -27/3/2020*

**E.Y.MKWIZU, J.**

The applicant filed this application moving the Court to revise and set aside the Arbitration award issued by the commission for Mediation and arbitration of Shinyanga (Hon. Nnembuka-Arbitrator) dated 5<sup>th</sup> October, 2018 in dispute number CMA/SHY/318/2016. In that decision, the CMA declared that the respondent Zakayo Malulu was the applicant's employee thus entitled to the payment of Tsh.39,631,860 as wages unpaid to the respondent during the existence of his employment with the appellant.

The application is by Notice of Application, Chamber Summons and supporting affidavit deposed by the ONE Isack Kandonga under Section 91(1) (a) and (b), (2) (b),(c ) and 94 (1) (b) (i) of the Employment and Labour Relations Act,2004 read together with 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.

In response to the application, the respondent filled a notice of objection consisting fourgrounds which can be summarized as follows:-

- a) The application is hopelessly time barred being filed outside the prescribed time.*
- b) The application is incompetent for non-citation of enabling provision of the law*
- c) The application is vague and against the law for being made on a chamber summons and a notice of application*
- d) That paragraph 10 (10 and 11 of the affidavit are offensive and should be expanged.*

When the application was called on for hearing on 14<sup>th</sup> January,2020, the applicant was represented by Godfrey Kange learned advocate

while the respondent had the services of Mr Charles Kiteja also learned advocate.

At the outset Kiteja prayed to withdraw points of preliminary objection listed as (b),(c) and (d) and proceed to argue ground (a). Mr. Kange had no objection to the prayer made. The court grant the prayer and on the same line, allowed the counsel for the applicant to present his submission on the remaining preliminary objection.

Arguing in support of the first ground, the respondent's counsel submitted that, the revision is incompetent because it was filed outside the prescribed time. He relied on the provisions of S.91 (a) and (b) of the Employment and Labour Relation Act, 2004. To be precise Mr. Kiteja submitted that, the revision ought to be filed within six (6) weeks from the date of the award ,the award of the CMA was issued on 5<sup>th</sup> day of October,2018 and the application was filed on 12<sup>th</sup> December,2018 , a delay on 15 days without any explanation and no any extension of time was sought and granted.

Resisting the preliminary objection, Mr. Kange contended that the law as it is requiring the application for revision to be filed within six weeks after the service on the applicant of the CMA award. He also cited the provision of section 91(1) (a) of the employment and Labour Relation Act, 2004 to amplify his argument. Making reference to the stamp at the front page of the CMA award attached to the chamber summons in this application, Mr. Kange clarified that, the CMA award was served on the applicant on 27<sup>th</sup> November, 2018 and the application was filed on 12<sup>th</sup> December 2018, fifteen days after the service of the award to the applicant and therefore the revision is within time.

On rejoinder, Mr. Kiteja apart from reiterating his earlier submission, he stated that the date on the referred stamp at the front page of the CMA award filed with the chamber application is the applicant's own creation. He qualified his statement that, the CMA award was ready for collection since 5<sup>th</sup> October 2018 when parties were summoned to collect the same. He said, unfortunately, the applicant did not appear on the date he was summoned and therefore could not collect the award promptly. Respondent managed to collect the award on 5<sup>th</sup> October 2018 and on

perusal of the CMA's file, Mr. Kiteja revealed that applicant had collected the said award on 8<sup>th</sup> day of October 2018 and not on 27<sup>th</sup> November, 2018 as suggested. He therefore urged the court to make a finding of the Preliminary objection based on the information on the original records as to when the applicant received the award and not the date indicated on the stamp by the applicant on the referred award presented with the application.

I have duly considered the submission of the learned counsel for the respondent and the applicant's reply. With regard to the preliminary objection raised, in determining whether or not the application is time barred, I find it instructive to reproduce S. **91(1) (a) (b) and (c) of the Employment and Labour relations act, 2004** which states as follows:

*"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;*

*(b) if the alleged defect involves improper procurement, within six weeks of the date that the applicant discovers that fact. (Emphasis added)*

Essentially, counsels are in agreement that the application for revision under section 91 (1) (a) of the ELRA, 2004 is to be filed within six weeks after the service of the award to the applicant. The issue in dispute is as to when the applicant was served with the CMA award. While the respondent's counsel says the applicant was served with the award on 8<sup>th</sup> October 2018, the applicant says he was served with the award on 27<sup>th</sup> November 2018.

Practice of the CMA is that whenever the part is issued with the award, he or she signs at the foot of the original award. The signature creates a permanent reference as to when parties were served with the said award. The original

CMA records reveals that applicant was served with the award on 8<sup>th</sup> October,2018 and the respondent received the same on 5th October,2018.By this information therefore,there is no gainsaying that the application is time barred. The application filed on 12<sup>th</sup> december,2018 delayed for 22 days which neededexplanation and leave of the court.Having so said, the preliminary objection is upheld. The application is herebydismissed.

It is accordingly so ordered.

**DATED at SHINYANGA** this 27<sup>th</sup>day of March ,2020

  
**E.Y. MKWIZU**  
**JUDGE**  
**27/3/2020**

Right of appeal explained

