

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

REVISION NO. 32 OF 2019

(Originated from CMA/ARS/ARB/102/2016)

JOBORTUNITY..... APPLICANT

VERSUS

EDWARD POROKWA (As a legal representative

Of the late FLORA LAIZER RESPONDENT

RULING

16/6/2021 & 11/8/2021

ROBERT, J:-

The applicant, Jobortunity, moved this Court to revise and set aside the decision of the Commission for Mediation and Arbitration (CMA) in Employment Dispute No. CMA/ARS/ARB/102/2016 dated 18/04/2018. The application supported by an affidavit sworn by Winnie Evarist Muruve, Learned counsel for the Applicant.

Briefly, the relevant background of this matter reveals that, the late Flora Laizer was employed by the applicant on 11th January, 2016 under fixed term contract of one year expiring on 10/1/2017 and renewable upon expiry by employer's consent. On 3/2/2016 the Applicant terminated the employment contract. Aggrieved with her termination, the late Flora Laizer filed a labour dispute at the CMA alleging unfair termination of employment. Unfortunately, she passed on while the matter was still pending. Her husband, Edward Thomas, was appointed as administrator of estate and took over the conduct of this matter. The CMA made a finding that Ms. Flora Laizer was unfairly terminated and ordered the applicant to pay compensation for the remaining months of the contract which amounted to TZS 21,100,000/=. Aggrieved by the CMA award, the applicant filed the present application.

Prior to the hearing of the application, the respondent filed a Notice of Preliminary Objection to the effect that:

1. The Applicant's Revision is time barred thus it has to be dismissed.
2. The Applicant's Revision is defective as no proper parties to the suit.
3. That, this Honourable Court is improperly moved.
4. That, the Applicant's Revision is incurably defective for contravening Rules 24 (1), (2) (f), 24 (3) (c) and 43 (1) (a) and

(b) of the Labour Court Rules. G.N 106/2017; and it has to be strike out.

As a matter of practice, I invited parties to address the Court on the points of objection raised by the Respondent before proceeding with the application, in case the points of objection are not sustained. Parties in this matter were represented by Messrs Bashiri I. Mallya and Lecktony L. Ngeseyan, learned counsel for the Applicant and Respondent respectively. At the request of parties, the court ordered the matter to be argued by way of written submissions.

Submitting in support of the objections, Mr. Ngeseyan abandoned the second point of preliminary objection and proceeded to argue the remaining points.

Highlighting on the first point, he submitted that, the application for revision is time barred and it has to be dismissed. He made reference to section 91.(1) (a) of the Employment and Labour Relations Act, No. 6 of 2004 which requires an application for revision of the CMA award to be filed to a labour court within six weeks from the date the award was served to the applicant. He maintained that, in the present case the applicant filed this revision beyond the time prescribed by the law because the CMA award delivered on 18/4/2018 and the applicant filed the present

application (Revision No. 32/2019) on different dates to wit, 3/5/2019 and 20/6/2019 whereas the affidavit in support of the application was signed and verified on 31/5/2019. He maintained that, the applicant was late in filing the application for more than a year from the date the award was delivered at CMA which is contrary to the law. He noted that, this is the second time the applicant is filing application for revision out of time without leave of the court. Prior to this application, the Applicant filed Revision No. 55/2018 on 28/6/2018 and conceded to the preliminary objection raised by the Respondent including the objection that the application was time barred. Hence, the application was struck out for being incompetent. Accordingly, Mr. Ngeseyen prayed for this revision to be dismissed for being time barred.

Submitting on the 3rd and 4th grounds together, Mr. Ngeseyan contended that, stated that the Court is not properly moved by the cited provisions and further that this application is incurably defective for contravening Rules 24 (1), (2) (f), 24 (3) (c) and 43 (1) (a) and (b) of the Labour Court Rules. G.N 106/2017.

He faulted the applicant for citing, in her Notice of Application, section 91 (2) (c) of the Employment and Labour Relations Act which does not exist in the laws. Further to this, he argued that, the applicant violated

rule 24 (1) of the Labour Court Rules which requires a notice of application to be made by a person who has interest to make an application. He observed that, the notice of application in the present application was prepared by Bashiri Malya, learned advocate who is not the applicant and the law does not allow any other person to do so including an advocate. He maintained that, the alleged violation makes the application defective.

Further to that, he submitted that, the applicant's application lacks the list of documents that are material and relevant to the application contrary to the requirement of Rule 24 (2) (f) of the Labour Court Rules, 2007 which makes the whole application defective.

He continued to submit that, the applicant violated article 24 (3) of the Labour Court Rules, 2007 which requires the notice of application to be supported by an affidavit which sets out the statement of legal issues arising from the material facts. Further to that, he maintained that, the applicant violated Rule 43 (1) (a) of the Labour Court Rules, 2007 which requires the name of the person representing the applicant to appear in the application. He stated further that, the application also contains chamber summons which is not provided for by the applicable laws cited in the applicant's application.

He prayed for this application to be dismissed with costs on the basis of the points of objection raised.

Responding to the first point of preliminary objection, Mr. Malya submitted that, the respondent's submission is misconceived and misleading. He argued that, the issue of this application being time barred is not a pure point of law as it calls for records of this matter to establish when the applicant was served with the CMA award. He submitted further that, section 91 (1) (a) of the Employment and Labour Relations Act, requires an aggrieved party to the arbitration award to apply to the labour court within six weeks from the date the award was served to the applicant. He maintained that, the first application was struck out for want of a correct award. Thus, it was prudent for the applicant to proceed with the application after correction of the award. The corrected award was served to the applicant on 16th May, 2019 and the application was filed on 3rd June, 2019 which means the applicant was within the prescribed time.

On the issue of different dates of filing the application as indicated in the application, he submitted that it was a typing error which has nothing to do with the applicant. It was the mistake of the receiving authority which failed to indicate the proper dates of filing the application

and decided to follow the date in which the document was signed by the applicant. He argued that, for the sake of justice it is prudent for this application to be heard on merit. He prayed for the points of preliminary objection raised by the Respondent to be overruled.

Coming to the third and fourth grounds of objection, Mr. Mallya contended that, these points are misdirection and misapplication of the appropriate provisions of the law. He argued that, Rule 24 (1) of the Labour Court Rules, 2007 clearly provides that notice of application shall be made to all persons who have an interest in the application and not to be made by a person who has interest to make an application as pointed out by the Respondent.

He disputed the argument that the applicant contravened the provisions of Rule 24(2) (f), 24 (3) (c) and 43 (1) (a) and (b) of the Labour Court Rules, 2007. He argued that the cited rules are complied with and provided for in the Notice of Application.

He prayed for the preliminary objection to be dismissed for lack of merit and the case to proceed with hearing.

In a brief rejoinder, the respondent's counsel reiterated his argument that this application is time barred. He clarified that, the CMA award was corrected on 3rd October, 2018 and the current application was

filed on 3/5/2019 that is a period of 240 days which the applicant failed to account for.

On the variation of dates of filing this application, he argued that the applicant failed to indicate if it the said typing error was caused by the Court or the applicant. He argued that, the applicant's application indicated seven times that it was dated and signed on 3rd May, 2019, similarly, it indicated four times that the court received the application on 3rd May, 2019 and these dates are handwritten not typed as alleged by the applicant.

Having gone through the submissions of both parties and records of this matter, I will now make a determination on the points of objection raised by the respondent against this application.

On the point that the applicant's revision is time barred, section 91 (1) (a) of the Employment and Labour Relations Act, 2004 requires an application for revision against an arbitration award to be filed within six weeks of the date the award was served to the applicant.

In the present case records indicate that the CMA award was delivered on 18/4/2018 and the present application was filed on 3/5/2019 as indicated on the Court seal attached to the application. As correctly

argued by the learned counsel for the Respondent, the applicant was late in filing the revision for more than 240 days.

Having perused the records of this matter, I have noted that this is not the first application for revision filed by the applicant in respect of the said impugned award. The first application was Labour Revision No. 55 of 2018 which was struck out on 6/5/2019 for being incurably defective. The applicant argued that, they were late to file the present application because they received a copy of the corrected award on 16/05/2019. However, it is apparent that the corrected award was ready for collection on 3/10/2018. Accordingly, the reason adduced by the applicant that he was late in filing this application due to late supply of the corrected copies of the award could have been a good reason to be considered by the Court in granting him extension of time. Unfortunately, that was not done as the applicant opted to file this application without seeking the requisite extension of time.


It was not proper for the applicant to argue the reasons for delay in the application for revision. He was supposed to file an application for extension of time prior to the present application.

In the circumstances, I find and hold that the applicant's revision was filed out of time without leave of this court. Accordingly, I

proceed to strike it out. I find no pressing need to deliberate on the remaining points of objection.

It is so ordered.




K.N. ROBERT
JUDGE
11/8/2021