

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

AT ARUSHA

LABOUR REVISION NO. 17 OF 2020

(Arising from Labour Dispute No. CMA/ARS/ARB/85/2019)

MWANAIDI SHABANI DUE APPLICANT

VERSUS

LEOPARD TOURS L.T. D..... RESPONDENT

RULING

6/10/2021 & 20/10/2021

ROBERT, J

The Applicant, **Mwanaidi Shabani Dule** filed a complaint at the Commission for Mediation and Arbitration (CMA) at Arusha against her erstwhile Employer, Leopard Tours Ltd, claiming damages due to employment discrimination on grounds of pregnancy. The CMA made a finding that the Applicant failed to prove discrimination allegations against the Respondent and ordered the Applicant to report back to work. Aggrieved, the Applicant filed this application inviting the Court to revise

the award. This is contrary to section 91 (1) (a) and (b) of the **Employment and Labour Relation Act**, Cap 366 R.E 2019 which requires an application for revision to be filed within six weeks from the date of the award.

He submitted further that, the court lacks jurisdiction to entertain an application which was filed out of time without seeking condonation. To support his argument, he referred the Court to the case of **Sichone Samwel Afred vs Tanzania Tobacco processors Ltd**, Revision No. 13 of 2013, LCCD of 2013 and **Hamis Hemed Kawewe vs Athwal's Transport and Timber**, Revision No. 72 of 2008 (unreported).

He argued further that, considering that the award was signed and procured on 27/01/2020 the court should believe that the award was ready for collection on 27/1/2020. Therefore, whether the delay to collect the award was attributed to the Applicant or Respondent cannot be ascertained. As the days prescribed by the law had already lapsed by the time of filing this application, the Applicant was supposed to file an application for extension of time prior to the filing of the present application for revision. To buttress his argument, he cited the case of **Interchick Company Limited vs Mwaitenda Ahobokile Michael**, Civil Application No. 218 of 2016 (unreported) where the court decided

barred or not. The duty lies on the Respondent under section 110(2) of the Evidence Act, Cap. 6 R.E. 2002.

He clarified that, after the award was delivered at the CMA, the Applicant went to the CMA on 28/1/2020 where she was told to collect the award on 30/1/2020 and the respondent collected it on 6/1/2020. He maintained that the Arbitrator dated the award 27/1/2020 while it was delivered to the applicant on 30/1/2020, the Applicant could not be able to file revision without a copy of the said award.

Further to that, he maintained that, counting from the date the award was procured, that is 30/1/2020 to the date this application was filed 12/3/2020, the Applicant was within the prescribed time. See the case of **Ebrahim Haji Charitable Health Center vs Mashaka Kawimba**, Rev. 264 of 2017 and **Serengeti Breweries Limited vs Joseph Boniface**, Civil Appeal No. 150 of 2015 (Unreported and attached). Thus, as the Applicant intended to delay this matter, he implored the court to dismiss the preliminary objection for lack of merit.

In the rejoinder, the Respondent's representative reiterated what he submitted in the submissions in chief. He added further that, the Applicant failed to prove if he had received a copy of the award on 30/1/2020 as that was not featured anywhere in the affidavit supporting

(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."

In the present case, the Respondent alleged that the application was filed out of the six weeks provided by law whereas the Applicant maintained that the application was filed within the time as they received the copy of the award on 30/1/2020 and not 27/1/2020 as alleged by the Applicant.


I am aware that the prescribed period for filing applications for revision in labour matters commences from the date of receipt of the award by a party. This makes the date of receipt of an award by parties very essential. However, sufficient caution must be exercised by the Court not to leave it open for parties to fix their own period of limitation by choosing to approach the CMA for receipt of a copy of the award long after the copies are ready for collection.

The affidavit in support of this application does not state the date of receipt of the award by the Applicant although the argument from the bar sought to state that the award was received on 30/1/2020. The CMA award indicates at page 5 that the award was delivered on 27/1/2020 and

In the end, I sustain the preliminary objection raised by the Respondent and strike out this application for being filed out of time. This being a labour dispute, I give no order for costs.

It is so ordered.




K.N. ROBERT
JUDGE
20/10/2020