

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

LABOUR REVISION NO. 09 OF 2021

(From Labour Complaint No. CMA/MBY/06/2018)

SHABANI RASHID ATHUMANI.....APPLICANT

VERSUS

TRANS HIGHWAY TRUCKING COMPANY LTDRESPONDENT

RULING

Date of last order: 16/05/2022

Date of ruling: 30/05/2022

NGUNYALE, J.

The applicant was the employee of the respondent as a mechanic. The dispute arose in February 2018 when the respondent terminated the applicant for what it was termed as constructive termination after not paying salary three months and making working environment intolerable. The applicant preferred the matter to Commission for Mediation and Arbitration for Mbeya (CMA) which delivered its award on 24/4/2018 in which he awarded some of the reliefs and dismissed others as claimed in CMA F1.

Aggrieved the applicant filed Labour Revision No. 15 of 2018 which was struck out by Hon. Ngwembe Judge for the proceedings had deferent names with that contained in the award. Then the applicant applied to the CMA for correction of names in the proceedings which was delivered on 12/4/2022. Based on the ruling correcting names in the proceedings the applicant lodged the present application for revision.

When the respondent was filing her documents as per the law it was accompanied by notice of preliminary objection to the effect that the application is time barred. As the practice of this Court when preliminary objection is raised, I ordered the same to be disposed first before going into merits of the application.

When the matter was called on for hearing, parties had no legal representation. By consensus they agreed to dispose the preliminary objection through written submission, dutifully complied with the scheduling order of the Court.

The respondent submitted that the application is time barred because the award of the CMA was delivered on 24/4/2018 but this application was filed on 7/5/2022 contrary to section 91(1)(a) of the Employment and Labour Relation Act which requires the revision to be made within six

weeks from the date of delivery or when parties are served with the award.

In reply, the applicant submitted that the application for revision is not time barred because the corrected award of the CMA was delivered on 12/4/2022, computing from that date to 7/5/2022 when the applicant filed the revision was well within time. He contended that section 19(2) of the Law of Limitation Act excludes time used for obtaining copies of necessary documents.

In rejoinder the respondent submitted that the ruling of this court in Labour Revision No 15 of 2018 was not between the parties herein and it had nothing to do with the present application. He added that in the struck-out Labour Revision No. 15 of 2018 the court did not direct names of the parties to be rectified rather it struck out for names in the proceedings deferring with the award. He continued to submit that correction of proceedings had nothing to do with the award as the date of it delivered went unchanged.

I have considered the arguments of parties for and against the preliminary objection. From parties' submission the only issue for determination is whether preliminary objection raised is meritorious.

What is discerned from the application documents and argument in the preliminary objection, matter not in dispute are that the applicant and the respondent had a dispute at CMA which handed the award on 24/4/2018, aggrieved the applicant filed Labour Revision No. 15 of 2018 in this court which was struck out by Ngwembe, J for the reasons stated in the ruling thereof. The applicant applied for correction of names in the proceedings the CMA delivered its ruling on 12/4/2022 correcting names of the complainant in the proceedings from Athumani Rashidi Shabani to Shabani Rashidi Athuman.

The respondent's preliminary objection is to the effect that since the award of CMA was delivered on 24/4/2018 and this revision filed on 7/5/2022 then it is time barred while the applicant contention is that the ruling which inserted the correct name of the applicant was delivered on 12/4/2022 and this revision was lodged on 7/5/2022 hence within the six weeks prescribed by the law.

Starting with the law section 91(1)(a)&(b) of the Employment and Labour Relation Act [Cap 366 R: E 2019] provides that

91.-(1) Any party to an arbitration award made under section 88(10) 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.

There is no dispute on period of limitation for applying to set aside the arbitration award of the CMA. The applicant sought refuge from section 19(2) of the law of Limitation Act [Cap 89 R: E 2019] (LLA) to exclude period spent in obtaining the corrected proceedings and no award as he submitted. The said provision provides;

19(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded.

Reading the application documents particularly the award and averments in the affidavit it is not supported by the applicant's line of argument. In the applicant's affidavit the award of the CMA attached is dated 24/4/2018 which is taken as the date of reckoning period of limitation. The fact, that proceedings was corrected by the CMA on 12/4/2022 did not stop running of period against the applicant. In fact, the corrected proceedings are not part of the applicant's application because it was not attached to the application to support what he is trying to submit here. The award which is subject of this application bears that it was delivered on 24/4/2018 this

clearly proves that the date of computing time is 24/4/2018 and not 12/4/2022 when proceedings was corrected by the CMA. Akin situation was discussed in the case of **Mohamed Salimini v Jumanne Omary Mapesa**, Civil Appeal No. 345 of 2019, Court of Appeal at Dodoma (Unreported). In this case the appellant's appeal was struck out for defects in the decree, the appellant applied and obtained a corrected decree. Then he filed the appeal directly and the court had the following;

'...In the present case, after the trial court decree was struck out by the Court, the duty to procure a corrected and proper decree was upon the appellant, and this duty was expected to be exercised within reasonable time while mindful-of the time prescribed for lodging and appeal before the High Court is ninety (90) days. Indeed, when applying for the corrected decree of the trial court it was incumbent for the appellant to be mindful of whether or not the prescribed 90 days for such an appeal was still running.'

The records are clear that the award of CMA was delivered on 24/4/2018, this makes incumbent that the running of time against the applicant did not stop. For sake of argument, there is proceedings in the CMA record which shows that it was certified on 14/3/2022 by Fungo E.J which bear the correct name of the applicant and it shows that it was signed on 24/4/2018 by the preceding arbitrator in presence of the parties. In fact, I have not seen any corrected proceedings even in the CMA records. Computation of period of limitation is reckoned form the judgment, ruling,

award or any other order of the court sought to be challenged and not proceedings.

The reason advanced by the applicant was more suitable in the application for extension of time and not in the main application for revision, the cause which was taken in the case of **Patrick Malogozi Mongella v The Board of Trustees of Public Service Pensions Funds**, Civil Application No. 199/18 of 2018, Court of Appeal at Dar es Salaam (Unreported).

From what I have endeavored to demonstrate above, I find the preliminary objection raised by the respondent meritorious. The application for revision is hereby struck out. This being the labour matter I make no order as to costs.

DATED at MBEYA this 30th day of May, 2022


D. P. Ngunyale

Judge

30/05/2022

Ruling delivered this 30th day of May, 2022 in presence of both parties in person.


D. P. Ngunyale

Judge

30/05/2022