IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

(MOROGORO DISTRICT REGISTRY)

AT MOROGORO

LABOUR REVISION NO. 15/2021

(Originating from the decision of the CMA in Labour Dispute No. CMA/MOR/05/2020)

DIDACE MAGESA TANGATYA ..... APPLICANT

VERSUS.

YAPI MERKEZI INSTAATVE SANAY ANONIM SIRKET ..... RESPONDENT

RULING

15th & 29th March, 2022

CHABA, J.

The applicant, Didace Tangatya was employed in the capacity of a Senior Human Resource Officer by the respondent, Yapi Merkezi Instaatve Sanay Anonim Sirket, an International privately-owned contracting company, specialized in rail engineering, design, manufacturing and construction. The applicant was employed for a fixed term of contract from 1/09/2018 whereas his main duty station was between Morogoro and Dodoma (Makutupora area). About two months and two weeks later, the employment relationship between the applicant and the respondent went sour as a result, the applicant, was taken before the respondent's disciplinary committee, charged with an offence pertaining to misconduct where the disciplinary committee was satisfied and suggested to the top management that the applicant had to be terminated from his employment.

Dissatisfied with the decision of the disciplinary committee, the applicant preferred an appeal before the highest level of the respective committee within the organization. Accordingly, he was notified to attend his appeal, but went missing. He was therefore, terminated from his employment on 17/11/2018 on the ground of misconduct.

Following his termination, he instituted legal proceedings before the Commission for Mediation and Arbitration at Morogoro (the CMA) seeking for declaratory orders that the respondent breached an employment contract (unfair termination) and consequential orders for damages in lieu of notice; repatriation costs to the place of recruitment; subsistence allowance from the date of termination; reinstatement; 60 months' salary and certificate of service. At the end of trial, the CMA ruled that the termination of contract of service was fair and thus in the circumstance, he deserved nothing in as much as his claims were concerned. The reasons for such decision were assigned in the award. Discontented with the CMA Award, he fronted his application for revision before this Court praying for the following orders: -

1. That, this Honourable Court be pleased to call for records and examine the proceedings of the CMA at Morogoro in Labour Dispute Number CMA/MORO/05/2020 dated 26/07/2021 between the applicant and the respondent with the view to satisfy itself as to the legality, propriety, rationality and correctness thereof due to the reasons that:

    (a) That, under the labour laws the Mediator and Arbitrator shall not delegate their functions in any matter to any person without prior notice to and the consent of the commission (sic).

(b) That, the Arbitrator erred in law for delivering an award after 30 days of which is contrary to the labour laws.

(c) That, the CMA award which was made on 26/07/2021 contravened the requirement of the labour law since as it was signed by another person who did not deliver it.

2. That, this Honourable Court be pleased to determine the dispute for the interest of justice in a manner it considers appropriate.
3. That, this Honourable Court be pleased to award any other relief as it shall deem fit to grant.

On her part, the respondent through the service of Ms. Seikunda Lyimo and Mr. Humphrey Alloyce, learned advocates filed a counter affidavit, notice of opposition and preliminary objections on a point of law to the effect that; *the instant application is bad in law for being out of time, hence contravened section 91 (1) (a) of the Employment and Labour Relations Act [Cap. 366 R.E. 2019] (the ELRA).*

As a matter of procedure, once a party to the case raise preliminary objection on a point of law, the same must be determined first. During hearing, the applicant appeared in person and unrepresented, whereas Mr. Humphrey Alloyce entered appearance for the respondent.

Arguing in support of preliminary objection, Mr. Humphrey submitted that a party who has been aggrieved by the decision of the CMA may file revision proceedings before the High Court of Tanzania, Labour Division within six weeks, which is equivalent to forty-two (42) days. The impugned Award was delivered on 26th July, 2021 and the applicant was served with a copy of the Award on 27/07/2021, but he filed his application on 21/09/2021. Thus, from 27th July, 2021 to 21st September,

2021; 56 days had elapsed. According to section 91 (1) (a) of the Employment and Labour Relation Act [Cap. 366 R.E. 2019], the applicant has found himself out of time for about 14 days.

He went on submitting that, not only the applicant was duty bound to seek for an extension of time to file the instant revision, but also had a duty to account for each day of delay. To buttress his argument, Mr. Humphrey referred this Court to the case of **Jordan John Sanga v. Governing Board of College of Business Education,** Revision No. 568 of 2019 (High Court, Labour Division – DSM). Basing on the decision of this case, he prayed that the applicant's application be dismissed and struck out.

He stressed that, since the applicant's application has been filed out of time, it means that this Court has been outed with the jurisdiction to try the matter. To reinforce his position, the learned advocate cited the cases of **Dingxing International Real Estate Ltd v. Erasto Victor And 2 Others,** Revision No. 319 of 2020 and **Barclays Bank (T) Ltd v. Phylisian Hussein Mcheni,** Civil Appeal No. 19 of 2016 CAT – DSM; which he stressed that, dismissing this application is the proper remedy under the circumstance.

As regards to the CMA form No. 10 which is a creation of Rule No. 34 (1) of the Employment and Labour Relation (General Regulation) GN No. 47 of 2017, Mr. Humphrey accentuated that the same has been introduced in law to inform the Arbitrator when the applicant has an intention to appeal against the impugned decision of the CMA. Upon receipt of this form, the Arbitrators' main duty is to prepare the respective proceedings and the Arbitration Award so that the same may be remitted to the High Court (T), Labour Division. He submitted further that all

applications for revision are governed by Rules 24 and 28 of the Labour Court Rules GN. No. 106 of 2017.

In reply, the applicant contested the preliminary objection and faulted Arbitration Award stating that the same encompasses defects which involved improper procurement of the Award. He submitted that on 16/08/2021 he discovered that the Award had defect and thereafter he filed notice of application on 21/09/2021 under section 91 (1) (b) of ELRA. According to him, from 16/08/2021 to 21/09/2021 in as much as section 19 (1) of the Law of Limitation Act [Cap 89 R.E 2019] (the Law of Limitation Act) is concerned, read together with section 60 (2) of the Interpretation of the Laws Act [Cap. 1 R.E. 2019], computation of limitation time, began from the date he discovered the defect which is three weeks and six days only, i.e, 27 days. He cited the case of **Capital Development Authority v. Amina Abdallah Kamata,** Revision No. 17 of 2019 where the Court held among other things that for the purposes of section 19 (1) of the Law of Limitation Act (supra) and section 60 (2) of the Law of Interpretation of the Laws Act (supra) public holidays are to be excluded in computing the period throughout. Basing on the above provisions of the law, the applicant did not see the need to apply for extension of time as submitted by the counsel for the respondent. He prayed that the raised preliminary objection be overruled, and the main case be heard on merits.

In his brief rejoinder, Mr. Humphrey countered that the case of **Capital Development Authority** (supra) is distinguishable in this case. He stated that, even the question of extension of time it was held to be un-automatic. In that view, the applicant was duty bound to apply for an extension of time before filing the present revision.

Having heard the parties to this case and upon considered rival oral submissions and upon paid a careful attention to the court record, the burning issue is whether the raised preliminary objection on a point of law meritorious.

At the outset, I wish to state that it is not in dispute that the impugned award was delivered on 26th July, 2021 and served to the applicant on 27th July, 2021. Afterward, the applicant filed this Labour Revision on 21/09/2021 which is 56 days from the date of pronouncement of the award. It is trite law that a party to this proceeding is required to file his revision within six weeks or 42 days. **Section 91 of the ELR CAP 366** provide inter alia that:

> *"Section 91 (1) - Any party to an arbitration award made under section 88 (1) 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".*

The CMA record however indicates that the application was filed after 42 days have lapsed hence contravened section 91 (1) (a) and (b) of the ELRA. I say so because the impugned award was delivered on 26th July, 2021 and copy of the award was served to the applicant on 27th July,

2021, but the applicant filed this case on 21st September, 2021. From 27th July, 2021 to 21st September, 2021 is about 56 days. On his side, the applicant stated at paragraph 3 (k) of his affidavit that the award delivered on 26 July, 2021 which (sic) was improperly procured and he discovered the defects on 16/08/2021. Hence, in view of section 91 (1) (b) of ELRA, he was within time as computation of limitation of time is required to start from the date, he discovers such fact. He further submitted that section 19 (1) of the Law of Limitation Act (supra) is relevant and must be read together with section 60 (2) of the Interpretation of the Laws Act [Cap. 1 R.E. 2019].

During his submission, the applicant however did not explain and or even mention the defect of fact that he discovered on 16 August, 2021 apart from giving general explanations that the award was improperly procured. At this juncture, I find it appropriate to highlight what improper procurement entails, and whether on the balance of probability the applicant surely discovered the alleged defect of fact.

As far as the law of ELRA is concerned, the term *improper procurement* has not been defined. However, in the case of **Mahawi Enterprises Limited v. Serengeti Breweries Limited,** Misc. Comm. Cause No. 09 OF 2018, HCT (Commercial Division), DSM, this Court (Hon. Madam Justice Fikirini, as she then was) endeavoured to interpret the term *improper procurement* in the auspice of arbitration in the following words, I quote:

> "In the case of Kong Kee Brothers Construction Co. Limited v. Attorney General [1986] LRC (Comm) 345, the definition on the term misconduct was extended to include technical misconduct such as mishandling or procedural irregularity,

ambiguity, excess of jurisdiction, incompleteness and breach of rules of natural justice. **As for improper procurement of the award, it is now settled position that this will include elements such as bribe, treating bias, misleading or deceiving arbitrator, employing arbitrator for reward, failure to be impartial. This by any standard does not include erroneous decision, mistake of the law, misunderstanding of submissions or the like and so forth."** (Emphasis added).

As gleaned from the above quoted interpretation of the decision of this Court in line with the chamber summons and the supporting affidavit deposed by the applicant, nothing has been featured as elements pertaining to bribe, treating bias, misleading or deceiving arbitrator, employing arbitrator for reward, failure to be impartial, to constitute improper procurement of the award. Instead, the so called TUZO or Arbitral Award bears out that the applicant was terminated from his employment after he had been found guilty of soliciting and receiving corruption from job seekers by the company's disciplinary committee. Since the applicant's allegation is an empty shell, it follows therefore that he did not discover any defect on the award. In the circumstance, it is hard to rely on section 91 (1) (b) of the ELRA because in my opinion, the applicant's contention is purely an afterthought. Even Sections 19 (1) and (2) of the Law of Limitation Act (supra) and 60 (2) of the Interpretation of Laws Act (supra) cannot save the applicant because it is inapplicable in this case.

As rightly submitted by the respondent's counsel, since the applicant is time barred, the only remedy available to him is to lodge an

application seeking for an extension of time to file revision and give an account for each day of delay.

In final event, I dismiss the application for being time barred. As this matter stemmed from a labour dispute, I make no order as to costs. **It is so ordered.**

DATED at **MOROGORO** this 31st day of March, 2022.

M. J. Chaba

Judge

31/03/2022

Court:

Ruling delivered at my Hand and Seal of this Court in Chambers this 31st day of March, 2022 in the presence of Ms. Seikunda Lyimo, learned counsel for the respondent, and the applicant who appeared in person, unrepresented.

M. J. Chaba

Judge

31/03/2022

Rights of the parties fully explained.

THE HIGH COURT OF TANZANIA

M. J. Chaba

Judge

31/03/2022