

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA DISTRICT REGISTRY
AT ARUSHA

REVISION APPLICATION NO 29 OF 2022

(A rising from Labour Dispute No. CMA/ARS/ARB/501/18/214/2018)

EMMANUEL MUNGAAPPLICANT

VERSUS

MONABAN TRADING AND FARMING LTD.....RESPONDENT

RULING

Date of last Order: 24-8-2022

Date of Judgement: 11-11-2022

B.K.PHILLIP,J

This application is made under section 91(1) (a) (b) , (2) (a)(b) (c) and 94(1) (b) (i) of the Employment and Labour Relations Act, (Henceforth " ELRA"), Rule 24(1), (2), (a),(b), (c), (d), (e), (f), (3) (a), (b), (c), (d), and Rule 28 (1) (a)(b)(c), (d), (e), of the Labour Court Rules , G.N. No.106 of 2007 (Henceforth " GN. No. 106/2007") .The applicant prays for the following orders; -

a) That, this Honourable Court be pleased to call for and examine the records and proceedings of the Commission for Mediation and Arbitration at Arusha and revise the proceedings and set aside the Arbitration Award issued in Labour Dispute No. CMA/ARS/ARB/501/18/214/2018 on 26th January 2022.

b) Any other relief (s) this Honourable Court may deem fit and just to grant.

The application is supported by an affidavit sworn by the applicant. The applicant is represented by Peter V. Njau , learned Advocate whereas Mr. Kapimpiti Mgalula, a learned Advocate appears for the respondent. Mr. kapimpiti swore a counter affidavit in opposition to the application and filed point of preliminary objection the subject of this Ruling . The same is couched as follows;

" That the application for revision is misconceived and bad in law for being time barred"

A brief background to this application is that the applicant was employed by respondents as human resources manager from 01/01/2018 to 31/7/2018 when his employment was terminated. Aggrieved by the termination of his employment the applicant lodged his complaint for unfair termination at the Commission for Mediation and Arbitration (Henceforth "CMA").

In his judgment dated 26th January 2022, the Arbitrator dismissed the applicant's complaint. Undaunted, the applicant lodged the instant application on the 15th March 2022 to challenge the dismissal of his complaint. I ordered the point of preliminary objection to be disposed of by way of written submissions. Both parties filed their written submissions as ordered.

Submitting for the preliminary objection, Mr. kapimpiti argued that this application was lodged on 15th March 2022 , that is, forty-nine (49) days from the date of delivery of the award contrary to the

law. He contended that an application for revision has to be filed within forty-two (42) days from the date of the award. He cited the section 91 (1) (a) of the ELRA, to bolster his argument. Furthermore, he submitted that the applicant obtained the copy of the award on the 26th January 2022 since there is no paragraph in his affidavit in support of this application stating that he did not obtain the copy of the Award on 26th January 2022. To cement his argument, he cited the case of **Off-Grid Electric Tanzania vs Kristian Johansen, Revision Application No.24 of 2019**, (unreported).

In rebuttal Mr. Njau submitted that the point of preliminary objection is devoid of merit since the award indicates that it was signed on 26th January 2022 but it was not delivered before the parties on that date. He contended that the applicant was supplied with the copy of award on 1st February 2022. To fortify his argument, he annexed to his submission a copy of CMA dispatch book .Furthermore, he argued that upon obtaining the copy of the award the applicant prepared his application for revision and attempted to file it on online unsuccessfully several times due to network problems until 10th March 2022 when he managed to file it . To support his argument, he annexed to his submission copy of print out from e-filing system .He went on submitting that now days it is a well known procedure that documents are filed online and a Court clerk can receive the hardcopies after the same being admitted online by the Deputy Registrar. He insisted that this application was filed online on 10th March 2022 and hardcopies were submitted in Court on 15th March 2022.

Furthermore, he alleged that Mr. Kapimpiti's arguments are illogical and unfounded since the application in hand is not an application for extension of time there was no need to indicate in the applicant's affidavit the date of receipt of the Award. He maintained that it is a well known principle of the law that the time spent by applicant in obtaining the copy of award/ judgment , proceedings or order has to be excluded while computing the time for filing an appeal/ application for revision. To cement his argument he cited section 19 (2) and (3) of the Law of Limitation Act and the case of **Alex Senkoro and 3 others vs Eliambuya Lyimo, Civil Appeal No. 16 of 2016**, (unreported). In conclusion of his submission Mr. Njau insisted that the time for filing the application for revision started to run against the applicant on 1st February 2022 when applicant received the copy of the CMA Award and this application was filed on line on 10/3/2022, within thirty eight days (38) days from the date of receipt of the copy of the award. Thus, it is not time barred.

In rejoinder, Mr. kapimpiti reiterated his submission in chief. He went on arguing that the award was delivered on 26th January 2022 in the presence of parties and the applicant obtained the copy of award on the same day. To cement his argument he referred this Court to paragraphs 7 and 8 of affidavit in support of this application. He insisted that the applicant never pleaded that he was served with copy of the Award on 1st February 2022. Thus, his assertion is an afterthought.

Furthermore, Mr. Kapimpiti argued that Mr.Njau admitted he submitted the application for filing on 15th March 2022, that is, 43

days after obtaining the copy of the Award contrary to section 91 (1) (a) of the ELRA which requires application for revision to be filled within six weeks from the date of service of the award into the applicant. Mr. Kapimpiti was emphatic that Law of Limitation does not apply in labour matters. The applicable law is section 91 (1) (a) of ELRA and the same does not provide for exclusion of the time spent for obtaining the copy of the Award.

Having gone through the Court's records, the submissions made by the learned advocates as well as perused the relevant provision of the law, let me proceed with the determination of the point of preliminary objection. The governing law in the determination of the time limit for filing an application for revision is section 91 (1) (a) of ELRA. The same provides as follows;

" Any party to an Arbitration award made under section 88(8) who alleges a defect in any Arbitration proceedings under the auspices of the Commission may apply to the Labour Court for decision to set aside the Arbitration award

*(a) Within six weeks of the date **that award was served on the applicant** unless the alleged defect involves improper procurement."*

(Emphasis is added)

From the above quoted provisions of the laws, the days for filing the application for revision starts to run from date of receipt of the copy of the Award by the applicant. [Also, see the case of **Serengeti Breweries Limited vs Joseph Boniface, Civil Appeal No. 150 of 2015** (unreported)]. It is noteworthy that there is a difference between pronouncement of the Award and serving a copy of the award to the parties. Mr. kapimpiti insisted that the award was delivered on

26th January 2022 in the presence of the parties. With due respect to him, he was required to prove that the copy of the award was served to the applicant on the very day it was delivered. The law is very clear that he who desires any Court to give judgment as to any legal right dependent on the existence of facts which he asserts must prove that those facts exist. (See section 110 of the Law of Evidence). Mr. Kapimpiti has failed to substantiate his assertion aforesaid since no proof has been presented to this Court that the copy of the Award was served to the applicant on 26th January 2022.

In addition to above, the copy of the Award shows that the Award was signed by the Arbitrator on 26th January 2022. However, upon perusing the CMA proceedings /records I noted that the same do not indicate that the judgment was delivered on 26th January 2022 in the presence of the parties as alleged by Mr. Kapimpiti. In fact, the date of delivery of the award is not indicated in the proceedings. Under the circumstances, I do not see any plausible reasons to doubt Mr. Njau's assertion that the applicant was not served with the award on 26th January instead the same was served to him on 1st February 2022.

Moreover, Mr. Kapimpiti's argument that since the applicant has not stated in his affidavit that he was supplied with award on 1st February 2022 then, he cannot be heard now to claim that he was not supplied with the copy of the Award on 26th January 2022 is misconceived on the reason that the proof to service of the Award to the applicant is of paramount importance. It is not a matter of making assumptions basing on the facts deponed by the applicant in his affidavit bearing in mind

that the provisions of section 91(1)(a) of ELRA provides category that the days for filing the application for revisions are reckoned from the date of service of the award unto the applicant .

On the other hand, I wish to point out that the copy of CMA dispatch book and print out from the e-filing system annexed to Mr. Njau's submission are of no use since the position of the law is clear that submissions are not evidence and cannot be used to introduce new evidence. In the case of **Tanzania Union of Industries and Commercial Workers (TUICO) at Mbeya Cement Company Ltd Vs Mbeya Cement Company Limited and National Insurance Corporation (T) Ltd , Civil Case No.315 of 2000,** (unreported), the Court said the following;

" It is a settled law that a submission is a summary of arguments. It is not evidence and cannot be used to introduce evidence . In principle all annexures , except extracts of judicial decisions or text extracts , have been regarded as evidence of facts and where there are such annexures to written submission , they should be expunged from the submission and totally disregarded"

In addition to the above, I am alive that parties to a case are required to file their documents on line and hard copies are submitted in Court after admission of the documents by the Deputy Registrar electronically.([The Judicature and Application of Laws (Electronic Filing) Rules GN. No.148 of 2018]. In this application the Court's e-filing system shows that this application was lodged in Court on-line on 10th March 2022 . At this juncture I wish to associate myself with the observations made by this Court in the case of the case of **Edissa d/o Melkion Mitti vs Plan International Tanzania, Labour Revision No. 4 of 2021 HC at Kigoma,** in which the Court said the following;

"The fact that the hard copies were presented for filing on 3/8/2021 does not mean that the case was received on that date for we are no longer living in the era of hard copy filing. We are living and guided by the Judicature and Application of Laws (Electronic Filing) Rules, GN.No. 148 OF 2018 which demand electronic filing".

Likewise, in the application in hand the fact that the documents for this application were submitted in Court on 15th of March 2022 does not mean that the application was lodged in Court on that date. It is also noteworthy pointing out that as it was in the conventional way of filing documents in Court, when there is a dispute on the filing date of a document the Court was able to establish the filing date by checking the payment receipt for the filing fees found in the case file. With the advent of electronic filing, this Court can establish the filing date by checking in its electronic filing system.

Counting from 1st February 2022 when applicant alleged that he was served with the Award to 10th March 2022 when application for revision was filed on line it is 38 days. Thus, it is the finding of this Court that this application was filed within the time prescribed by the law. Thus, the point of preliminary objection is hereby dismissed for lack of merit.

Dated this 11th day of November 2022



A handwritten signature in blue ink, appearing to read "B.K. Phillip".

B.K.PHILLIP

JUDGE