

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT ARUSHA

APPLICATION FOR REVISION NO. 77 OF 2022

(C/F Labour Dispute No. CMA/ARS/NGR/386/2018 at the Commission for Mediation and Arbitration at Arusha)

NGORONGORO CONSERVATION AREA AUTHORITY.....1ST APPLICANT

THE ATTORNEY GENERAL.....2ND APPLICANT

VERSUS

KUYA LENARIA SAYAEL.....RESPONDENT

RULING

27/11/2023 & 18/12/2023

GWAE, J

This ruling arises from the preliminary objection canvassed by the respondent on the following points of law;

1. That, the application for revision is hopelessly time barred
2. That, the second applicant is wrongly joined in the application for revision.

Following the preliminary objection raised by the respondent, the main application for revision had to stop and hearing of the preliminary objection proceeded where by the respondent was represented by the learned counsel, Mr. Daudi Haraka and the applicants enjoyed legal

services from Miss Grace Lupondo, Senior State Attorney. With leave of the court, the preliminary objection was disposed by way of written submission.

Submitting on the first point of the preliminary objection, the respondent submitted that, the award, which is sought for revision was delivered on 24th August 2022 and that on the very same date the award was ready for collection as the respondent was able to collect the same on the said date. Therefore, it was the respondent's argument that, the applicants ought to have made a follow ups of the award in order to comply with the required statutory time limit for lodging a revision (i.e not later than six weeks from the date when award was issued).

Supporting his submission, the respondent cited the following provisions of the law; Rule 27 (1) & (2) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules 2007 GN No. 67 of 2007 and section 89 (1) of the Employment and Labour Relations Act [CAP 366 R.E 2019]. According to him the time from when the award was delivered to the time of filing this revision, the applicants 'delay is of 81 unaccounted days.

The respondent went on to state that, the court should provide guidance on the meaning of the word "service" under section 91 (1) (a)

of the ELRA or else if the impression is left it will defeat the intention of the Legislature on setting the time limit for filing the application. He supported his argument with the case of **Barclays Bank Ltd vs Phylisiah Hussein Mcheni**, Civil Appeal No. 19 of 2016 CAT Dar es Salaam.

Submitting on the second point of the preliminary objection, the respondent submitted that, the second applicant is wrongly joined as he was not a party to the dispute before the CMA and joining the Attorney General without following the proper procedures of the law is a misjoinder, which renders the current application to be liable for being struck out.

Cementing on the above, the respondent cited section 22 of the Written Law (Miscellaneous Amendment, No. 4) 2019 which provides for the power of the Attorney General to intervene suits. The respondent went on stating that, for the Attorney General to intervene in a suit, certain procedures must be followed as provided under section 17 (3) of the Office of the Attorney General (Discharge of Duties) Act, Cap 268 Revised Edition, 2019.

Responding to the respondent's submission, Mr. Mkama Musalama submitted as follows; On the first point of the preliminary objection he

was of the view that, the cited section 91 (a) of the ELRA requires the application to be filed before this court within six weeks from the date of service of the award to the applicant. Thus, according to him the six weeks period starts to run from the date when the applicant was duly served with the award.

Mr. Musalama further argued that, the applicants were served with the copy of the award on 14th November 2022 as evidenced at page 12 of the award on the reason that, the award was to be delivered on notice and the applicants were never notified of the date of delivering of the award until on 14th November 2022. According to him, since the application before this court was filed on 15th December 2022 (32) days from the date of receipt of the copy of the award. Therefore, it was his stand that, the applicants' application was filed within the prescribed time by the law and therefore the 1st point of the preliminary objection is devoid of merit.

Submitting on the second point of the preliminary objection, the learned State Attorney stated that, the respondent's counsel ill-conceived section 17 (3) of the Attorney General (Discharge of Duties) Act (supra). According to him, the said section is applied where the matter is filed to the court which the Solicitor General does not have the right of audience

(subordinate courts) while in the matter at hand the Solicitor General have the right of audience on the reason that, the application was filed before the High Court.

Moreover, Mr. Musalama submitted that, the joining of the 2nd applicant in this revision is pursuant to section 6A (a) of the Government Proceedings Act, which gives power to the Attorney General through the Solicitor General to intervene and appear at any stage of the proceedings, appeal, execution or any incidental proceeding instituted against the Government before any court in which is not a party. Therefore, it was his view that, the matter at hand cannot be defeated by misjoinder of the 2nd applicant.

Having outlined the rival submissions of the parties' counsel, it is now time for the determination of the preliminary objections as raised by the respondent.

To begin with, **the first point of the preliminary objection**, the issue for my determination is whether the application before this court is time barred. To answer this issue, it is pertinent to have section 91 (1) (a) of the Employment and Labour Relations (supra) reproduced herein under;

"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” [Emphasis is mine]*

Reading from the above provision of the law it is imperative that the applicant's application to the Labour Court was to be filed within six weeks from the date when the award was served on the 1st applicant. In the matter at hand, the applicant submitted that the on the date when the matter was fixed for necessary orders (i.e 29th April 2022) parties were notified that, the award would be delivered on notice meaning that, the parties had to wait to be informed by the Commission on a date of delivering of the Award.

Reading from the award itself, this court has also observed that the same was delivered out of time. It follows therefore, since there was neither date fixed for procurement of the award nor the requisite notice on the date of delivering the award, it is not appropriate to hold that the application is time barred.

Equally, it is plainly reflected from the award itself on the last page that, the applicant received the copy of the award through her legal representative one Benedicto Kiiza on 14/11/ 2022 followed by a seal of the Commission and a signature of one Feliciano Swai.

Therefore, the court is of the firm view that, the time to file the applicant's application started reckoning from the date of receipt of the copy of the award. That is to say on 14th November 2022 and since the present application was filed on 15th December 2022 it is with no doubt that, the application at hand was filed within time. Hence, the 1st limb of objection is hereby overruled.

Coming to the ***second point of the preliminary objection***, this court is called upon to determine whether the second applicant was wrongly joined in the application. It is undisputed fact that, the 2nd applicant in the present application was not a party to the suit at the Commission as correctly raised by the respondent's advocate and conceded by the applicant's counsel. In justifying the joining of the 2nd applicant, the learned State Attorney cited the provision of section 6A of the Government Proceedings Act Cap 5 R.E 2019 which provides;

"6A.-(1) The Attorney General shall, through the Solicitor General, have the right to intervene in any suit or matter instituted by or against the ministries, local government

authorities, independent departments and other government institutions.”

I am mindful that, the 1st applicant is the Government Agency responsible for management of Ngorongoro Conservation Area and therefore, as alluded by the applicants’ counsel the Attorney General in this case has the right to intervene. The same position has also been reiterated in the decision of the Court of Appeal of (T) in of **Attorney General vs Tanzania Ports Authority & another**, Civil Application No. 467/17 of 2016 (Reported Tanzlii) where the Court of Appeal of Tanzania had the following to say;

“We must state that we have no problem with the above expounded position of the law on the status of the first respondent and the powers of the applicant to intervene and take over the proceedings instituted by the respective authority even where the applicant's right of audience is excluded.”

Therefore, since the 2nd applicant is the chief legal custodian of all public properties, it is my firm view that, he has the right to intervene to safe guard the interests of the 1st applicant and those of the Government. Nevertheless, the question that follows is whether the intervention of 2nd applicant in a suit is automatic. The Court of Appeal of Tanzania in the case of **CRDB Bank Plc vs Symbion Power (T) Limited**, Civil

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when faced with similar situation had the following to say in ex tenso;

*"It is thus important that before the Attorney General through the Solicitor-General intervenes in or takes over the conduct of the proceedings as counsel or intervener as contemplated under section 6A (1) of the GPA, he **should follow the procedure laid down by law**, including to demonstrate that, the respective Authority or institutions mentioned under section 6A (3) of the same Act and section 17 (1) (b) of Cap. 268 had exercised its duty stated in the former provisions to notify the Attorney General of any impending suit or intention to institute the suit or matter against the Authority or institution."*
(emphasis supplied)

The Court of Appeal went on to state that;

"Therefore, in the instant application, if the Attorney General had wished to have right of audience or to intervene as a party to defend the public interest in a matter which involves public property or represent the applicant, he would have done so earlier by complying with the requirement of the law, particularly sub sections (2) (a) (b) and (3) of section 17 Cap. 268, as the case may be. This is not the case in the present matter despite the fact that the application was lodged by the applicant's counsel on 25th August, 2022. Besides, as we have alluded to above, there is no sufficient materials before us as to when he became acquainted of or informed of the existence of the dispute

between the parties in this application..... We are thus of the considered view that the right of the Attorney General to have audience or to intervene in the proceedings is not automatic but subject to the compliance of the law as alluded to above."

With the above position of the law, I find that the Court of Appeal of Tanzania has said it all and since it being the Apex Court of this Country, this Court is bound by its decision and in that regard it is the firm view of this court that, the 2nd applicant was improperly joined in this application. Intervention by the Attorney General cannot therefore be casually done. Nevertheless, Order I Rule 9 of the Civil Procedure Code Cap 33 R.E 2019 has set out that a suit shall not be defeated by reason of misjoinder or non-joinder of parties. Therefore, in that regard I order the applicants to properly move the court in order to have the 2nd applicant joined be joined in this application.

In the event, and the in light of the foregoing reasons, the matter should proceed to be heard on merit after necessary steps taken by the 2nd applicant.

It is so ordered.

DATED at ARUSHA this 18th December 2023




MOHAMED R. GWAE
JUDGE