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30/4/2010

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM
LABOUR REVISION NO 23 OF 2009

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DIRECTOR GENERAL - PCCB APPLICANT

VERSUS

FRANK IPYANA RESPONDENTS

(Original CMA/MTW/F1/65/08)

RULING

25/11/2009 & 30/04/2010

Rweyemamu, R.M.J:

The respondent in this matter filed a suit of unfair termination in the *Commission for Mediation and Arbitration* (CMA). In a reasoned award, the arbitrator decided that the respondent's termination was procedurally unfair and ordered the employer/applicant to reinstate the respondent and pay his salary from the date he was terminated. That decision, handled down on 16/4/2009 dissatisfied the applicant and in terms of section 91 (2) of the *Employment and Labour Relations Act*, 6/2004, they ought to have applied for its revision within a period of six weeks. They did not hence this application for extension of time to do that.

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On 21/7/2009 the present application was filed supported by affidavit sworn by one of its officers Carson Tumsifu Nkya. The relevant grounds in support of the application were articulated in the affidavit as follows:-

- " 4. That on 20th April, 2009 the said award reached the Director General of PCCB who directed the Legal Department to prepare for the revision of the arbitration award before the High Court Labour Division.
5. That the copy of the said award with instructions for filing for revision was misallocated by office clerk."
6. That the copy of the arbitration award and instruction for application for revision came into my knowledge on 10th July, 2009."

In reply to the respondent stated in the counter affidavit:-

" 7. That the contents of paragraph 5 of the affidavit are denied the applicant is put to strict proof thereof, the Respondent states further that the deponer of the affidavit was fully aware of the date of award, and knew or was legally supposed to know what was contained in the award. The Respondent states further that the applicant has filed this application after being served with the copy of summons for in execution No. 238 of 2009. Copy of the said summons is annexed here to and marked "CAI" leave of the court is prayed for the same to form part of this counter affidavit."

On 5/10/2009, the day scheduled for hearing, the applicant sought and was granted leave to amend the application. In the affidavit sworn by

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the same officer and subsequently filed on 15/10/2009 in support of the amended application, the same grounds were repeated only that it was filed together with an affidavit of another officer one Cosmas James Bwana who deponed; that he was the officer who handled the award document; that the said document got lost/misplaced in the process of office shift for purpose of construction.

To that amended affidavit, the respondent replied among others:-

- "3. That paragraph 3 of the affidavit is noted and I add that the said date for delivery of the subject CMA arbitral award was set and scheduled in the very and presence of the parties herein, the applicant inclusive. The applicant's deponent admits being aware of the award's delivery date, to wit 16/04/09;*
- 4. That paragraph 4 of the affidavit is noted for the subject arbitral award reaching the applicant within four days of the date of its delivery. It is added that the applicant's key competency function is proper receipt, control custody and action of sensitive public and investigation records, the subject award inclusive;*
- 5. That further to paragraph 4 above, the same is hearsay and without deposing the actual award having been received on such 20/04/09 with dated endorsements of any action thereon;*
- 6. That paragraph 5 of the affidavit is untrue, contradictory and not consistent with the deponent's own other statement on oath dated 21/07/09 therein deposing the award as having been merely misallocated and not got lost and or misplaced as is now being*

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deposed this time around in the affidavit;

7. That paragraphs 6 of the affidavit is noted for lacking merits. It is added that the applicant is a going corporate/statutory body capable, if willing and ready, able to timely prefer judicial remedies like the intended revision in the absence of the deponent. It is added that the applicant unjustifiably took other FURTHER 11 days to come to this court upon and after getting the purported lost/misplaced arbitral award;

8. That further to paragraph 6 herein above in the purported event of lost/misplaced arbitral award the same is always accessible and available in public record, the trial CMA Mtwara registry for any party wishing to timely prefer any further judicial remedies like revision (Emphasis mine)

The gist of the respondent's statement under oath is that the grounds adduced by the applicant did not amount to good cause and therefore the applicant had failed to show good cause for delay in filing the intended application for revision.

At the time of hearing of this application, the applicant was represented by MR. Makondoo state attorney who adopted and repeated the grounds contained in the affidavit and added that the intended application has merit because the Attorney General (AG) should have been but was not made a party in the case. In reply, the respondent who appeared in person stated that it was up to the applicant to make the AG a party.

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The issue before me for decision is whether the applicants have adduced sufficient grounds for delay and not whether the intended application for revision has merit.

I have considered arguments by both sides and agree with the respondent that the applicant has failed to show good cause for delay. The grounds adduced by the applicant amount to an admission that the delay was caused by negligence on their part. It has long been an observed principle of law that negligence on a party's side is not a sufficient cause for failure to comply with the law.

And as rightly pointed out by the respondent, the applicant's office is among those expected to show a higher degree of care in keeping records entrusted to it and laxity has no place in its operations. In view of that, I find that the applicant has failed to show sufficient good cause for delay and accordingly dismiss this application.

R. M. Rweyemamu
JUDGE
30/04/2010