

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM**

REVISION NO. 14 OF 2017

KURASINI CONTAINER TERMINAL LTD.....APPLICANT

VERSUS

MOSHI MOHAMED CHINGWI.....RESPONDENT

RULING

Date of Last Order: 26/02/2018

Date of Ruling: 18/05/2018

L.L.Mashaka, J.

This is ruling in respect of the preliminary objection raised by the respondent that the application before the Court was out of time and that the application suffers from wrong/inapplicable citation of enabling provision of the law.

During hearing of the preliminary objection which proceeded orally, the applicant was represented by Mr Mashaka Ngole, Advocate and the respondent by represented Mr. Peter Mnyanyi, Personal Representative of her own choice .

Mr Mnyanyi submitted on the 1st point of preliminary objection that, the application was filed in Court on the 18th January 2017 and the CMA award was delivered on the 30/09/2016, which is more than 3 months when the application for revision was filed. That this application for revision on a dispute CMA/DSM/TEM/ 322/2014, where both parties to the dispute were heard at the CMA and the award was delivered on the 30/09/2016.

That under Section 91(1)(a) of the Employment and Labour Relations Act 2004, provides the time when an application for revision may be referred against the CMA award on any defects within 6 weeks from the date the award was delivered. That the award attached to the application shows the date when the award was delivered but the date when the CMA award was delivered to the applicant is not shown.

He insisted that, even if it is taken that the applicant received the award on a date known to himself, they were supposed to have filed an application for extension of time. That Section 19(4) of the Law of Limitation Act, Cap 89 RE 2002, in computing the period of limitation prescribed for an application to set aside an award the time prerequisite for obtaining a copy of the award shall be excluded. There is nowhere the applicant had applied to be supplied with the award so the requirements of Section 19(4) of the Cap 89 can be invoked.

That under Section 3(1) of Cap 89 RE 2002 the remedy for an application filed out of time is dismissal. Based on this ground he prayed the application be dismissed.

On the 2nd point of preliminary objection, Mr. Mnyanyi argued that the applicant has filed a notice of application and chamber summons under Section 94(1)(b)(i) of the Employment and Labour Relations Act No. 6 of 2004 as an enabling provision of law.

That Section 94(1)(b)(i) of Employment and Labour Relations Act No. 6 of 2004 is not an enabling provision of the law which will move the Court to grant the prayers sought by the applicant. That this line of reasoning was adopted by the Court of Appeal of Tanzania at page 21 in

the case of **CWT Vs. The AG**, Civil Appl. No. 151 of 2008, Court of Appeal of Tanzania at Dar es Salaam (unreported) at page 21. Hence a party who wishes the Labour Court to revise an arbitrator's award cannot do so under the said provision. That the same view was shared by Hon. Aboud, J in the case of **Barclays Bank (T) Ltd Vs. Phylisiah Hussein Mchemi**, Rev. No. 239 of 2013, High Court Labour Division at Dar es Salaam (unreported) at page 7, paragraph 3. That the said provision does not move the Court to determine the revision.

That the proper enabling provision to move the Court are Section 91(1), 91(2)(a) or (b) or (c) of the Employment and Labour Relations Act, No. 6 of 2004 read together with Rule 28(1) and Rule 24(1)(2)(a)–(f)(3)(a)–(d) of the Labour Court Rules, GN No. 106 of 2007.

In response Learned Counsel Ngole at the outset insisted that the preliminary objection was devoid of merit.

That on the 1st point of objection, the submission by Representative for the respondent that the application is filed out of time, that he has not submitted when the applicant was served the CMA award contrary to the position of the law that who alleges must prove. That in the applicant's chamber summons, notice of application and affidavit, the applicant stated that he was served the CMA award on the 07th December 2016 as per the top page and paragraph 12 of the affidavit. That these facts were made known to the respondent and has not countered the same by bringing any evidence to the contrary. Learned Counsel submitted that it had been stated in the case of **Serengeti Breweries Ltd Vs. Joseph Boniface**, Civil Appeal No. 150 of 2015, Court of Appeal of Tanzania at Mbeya

(unreported) that the time for filing revision to the High Court Labour Division against the CMA award begins to run when the person aggrieved by the said award has been served by the same. That the applicant's time began to run from the 07th December 2016 when he was served the CMA award. That the time for filing the revision under Section 91(1)(a) of the Employment and Labour Relations Act No. 6 of 2004 to the applicant's application ends on the 18th January 2017.

That according to the Court records, this application was filed on the 18th January 2017 which is within the 42 days period provided by the law. That the objection for the respondent to have merit, he could have provided them the date the applicant was served with the CMA award to wit the respondent has failed to do so.

Learned Counsel argued further that the submission on the Law of Limitation Cap 89, RE 2002 does not apply to labour cases, as per Section 46 of Law of Limitation Act, Cap 89 RE 2002. That the proceedings of the CMA are regulated by the Employment and Labour Relations Act No. 6 of 2004 made there under which provide for time limitation and computation for filing revision.

On the 2nd point, Learned Counsel contended that, the point was devoid of merit. That it was very clear from the notice of application and chamber summons filed by the applicant that all enabling provisions of the law were properly cited. That in the notice of application the applicant cited Section 91(1)(a)(2)(a) of the Employment and Labour Relations Act, No. 6 of 2004, also cited the provisions of Rule 28(1)(b)(c)(d)(e) and Rule 28(2) of the Labour Court Rules 2007 read together with Rule 24(1)(2)(a) –(f)

(3)(a)-(d) of the Labour Court Rules. These provisions including the decision of **Mulamuzi Byabusha Vs. TRA**, Revision No. 226 of 2014, High Court Labour Division at Dar es Salaam (unreported) are proper enabling provisions of the law for filing revision to the High Court Labour Division.

That in the application before the Court, there was no wrong or non-citation of the enabling provision of the law as submitted by Representative for the respondent. Citing inappropriate provision together with proper enabling provisions does not amount to wrong citation or non-citation of the law but rather superfluous citation of the law which cannot in any way effect the application before the Court. That the cited case of **Barclays Bank (T) Ltd (Supra)** is distinguishable to the application before the Court.

Learned Counsel argued that he agree with the submission by the respondent on the position of the Court of Appeal of Tanzania case of **CWT Vs. The AG (supra)**, that wrong citation renders an application incompetent. But this is not case before the Court. That in the **CWT Vs. The AG (supra)** case, the applicant only cited Section 94(1)(f)(ii) of the Employment and Labour Relations Act No. 6 of 2004 only and which is not the case in this application.



Learned Counsel prayed for the dismissal of the preliminary objection and the matter be set for hearing inter partes.

In rebuttal, Mr. Mnyanyi for the respondent prayed to reiterate his submission in chief on the 2 points of objection.

Having heard submissions by both parties the issue for determination is whether or not this Court has jurisdiction to entertain the matter at hand following the two points raised of preliminary objection. On the issue of citation as rightly submitted by Learned Counsel for the applicant, the application is made under Section 91(1)(a)(2)(a) of the Employment and Labour Relations Act No. 6 of 2004, also cited the provisions of Rule 28(1)(b)(c)(d)(e) and Rule 28(2) of the Labour Court Rules 2007 read together with Rule 24(1)(2)(a)(b)(c)(d)(e)(f) (3)(a)(b)(c)(d) of the Labour Court Rules, 2007 which are enabling provisions of the law. Part VII Sub-Part C as per Court of Appeal decision spells out powers of the Labour Court on adjudication and the applicant has properly cited the same contrary to what Representative for the respondent submitted to as Section 94(1)(b)(i) provides for revision powers of this Court on award issued by the CMA. There is no wrong or inapplicable citation of the enabling provisions of the law. The 2nd point of preliminary objection is dismissed for lack of merit.

On the 1st point of the preliminary objection, the respondent has not submitted to this Court when the applicant was served with the award to warrant the same to be out of time. The date when the award was issued and when the other party is served with the same are two different issues each to be dealt with as follows. The CMA award was delivered on the 30/09/2016, however it does not show when parties were served with the award. Since no CMA records yet forwarded before this Court which could assist this Court on proper records of arbitration proceedings, and since the respondent has not furnished this Court with full information on the same then this Court is guided by the applicant's submission as per the decision

of the Court of Appeal of Tanzania in the case of **Serengeti Breweries Ltd V Joseph Boniface**, Civil Appeal No 150/20015, at Mbeya, Mugasha, J.A on the time limit for filing revision application to the Labour Court and from the supporting affidavit at paragraph 12 on when the award was served to the applicant on the 7th December 2016 and since the respondent opted not to file Counter Affidavit, it is the finding of this Court that the application was filed within time. The 1st point of preliminary objection is accordingly dismissed too.

As I went through the supporting affidavit, the Court noted a defect on the same. The affidavit offends Order VI, Rule 15(2) of the Civil Procedure Code, Cap 33 RE 2002, for failure by the verifier at the verification clause to specify and verify the numbered sub-paragraph (a) to paragraph 18 of affidavit. This renders the affidavit defective for contravention of the mandatory requirement of the said provision of the law. The defective supporting affidavit is struck out of the Court register. Hence the application for revision remains with no legal legs to stand which contravenes Rule 24(3)(a)(b)(c)(d) of the Labour Court Rules GN No. 106 of 2007, hence incompetent to move the Court. The remedy is to struck out and I accordingly do so.

For the interest of justice, I grant the applicant leave to file a competent application for revision within 7 days from today.

It is so ordered.


L.L. Mashaka
JUDGE
18/05/2018