

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

REVISION NO 743 OF 2018

BETWEEN

MSHANA ALLY & 9 OTHERS APPLICANT

VERSUS

SKYRED HOTEL LIMITED.....RESPONDENT

JUDGMENT

Date of Last Order: 15/07/2020

Date of Judgment: 30/07/2020

Z. G. Muruke, J.

The applicants **MSHANA ALLY & 9 OTHERS** calls upon this Court to revise and set aside the ruling of the Commission for Mediation and Arbitration [herein after referred to as CMA] dated 27th June, 2017 in dispute no. CMA/PWN/BAG/R.54/016. The application is supported by joint affidavit of the applicants. Challenging the same the respondent filed the counter affidavit affirmed by Abdalah Gunda-the Principal Officer.

Hearing was by way of written submission, the applicant complied with the schedule whereas the respondent did not, hence this court proceed to deliver judgment in accordance with rule 37(1) of the Labour Court Rules, GN 106/2007. The applicants were represented by Edward Simkoko a representative from TAWISU- a trade union, while the respondent was represented by Advocate Herry Kauki.

It is from record that from January 2012 the applicants were employed by the respondent in different job positions. They worked with the respondent until 15th April, 2015 when the hotel was closed by Tanzania Revenue Authority (TRA) for failure to issue fiscal receipt/tax invoices on sales. The respondents were required to get back at work after reopening of the Hotel. However, on June, 2016 the respondent resumed hotel activities without calling back the respondents. On 20th June, 2016 the applicant through TAWISU(a trade union) wrote a letter to the respondent asking for negotiation in regard to the applicant's employment status, without response. They then decided to knock the CMA's door where the matter was dismissed for being time barred. Aggrieved with the ruling, the applicant's filed the preset application.

Submitting in support of the application the applicant's representative submitted that, the arbitrator misdirected herself by deciding that the application was time barred while the termination date was not stated by the respondent. The respondent terminated the applicants on 20th July, 2016 when the applicants inquired about their employment status. That the applicants became aware of the termination of their employment on 20th July, 2016 hence it was filed within thirty days as per Rule 10(1) of the Labour Institution (Mediation and Arbitration) GN 64 (GN.64). The arbitrator without justifiable reason decided that the dispute was brought out of time.

After consideration of the applicant's submission and records, the issue for to be determined is whether the dispute was timely referred before CMA?

The time limit for referring disputes before CMA is governed by Rule 10 (1) (2) of GN 64. The relevant provision that covers the applicant's claim is Rule 10 (2) of GN 64. It provides:-

"Disputes about the fairness of an employee's termination of employment must be referred to the commission within thirty days from the date of termination or the date that the employer made a final decision to terminate or uphold the decision to terminate"

From the cited provision, a party who claims to be unfairly terminated, shall refer the matter before CMA within thirty days date of termination. In the present matter it from records that on 15th March, 2015 Tanzania Revenue Authority (TRA) closed the applicant's hotel due to failure to comply with revenue laws. After the closure the applicants were told to wait for reopening so as to continue with their job.

Having found that the hotel is back to its operations without being informed, on 20th July, 2016 the applicants through TAWISU wrote a letter to the respondent requesting them to negotiate on the status of the applicant's employment before taking legal steps. The meeting was scheduled on 29th June, 2016 at 5:00 am. The applicants averred that from that notice there was no response from the respondent.


Parties argued as to when the cause of action arose. Applicants submitted that the cause of action arose on 20th June, 2016 when they asked the respondent for negotiation without response, while respondent in his counter affidavit relied on the affidavit in support of the application

that the cause of action arose on 15th March, 2015 when the Hotel was closed.

It is clearly shown from exhibit SH5 (the letter calling for negotiation) the date which was scheduled for the negotiation was 29th June, 2016. The records are silent as to the respondent's response to the same. It is my view that the cause of action arose in 29th June, 2016 when the respondent decided not to negotiate in regard to the status of the applicant's employment. From CMA F.1 the applicants referred their dispute before CMA on 15th August, 2016 being forty five (45) days from the date when the cause of action arose. Basing on the above finding, I find no need to fault the arbitrator's finding that the matter is time barred. The applicant ought to have asked for condonation prior referring their disputes. In view of the above, the application has no merit, I hereby dismiss it.


Z. G. Muruke
JUDGE
30/07/2020

Judgment delivered in the presence of Ezabela Alex, TASIWU holding brief of Edward Simkoko, Personal Representative for applicant and Herry Kauki, Advocate for the respondent.


Z.G. Muruke
JUDGE
30/07/2020