

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

REVISION NO. 600 OF 2019

BETWEEN

ELISHA MBOKA MWAMENGO APPLICANT

VERSUS

LETSHEGO TANZANIA T/A FAIDIKA LTD RESPONDENT

JUDGMENT

Date of Last Order: 14/05/2019

Date of Judgment: 10/07/2020

S.A.N. Wambura, J.

Aggrieved by the award of the Commission for Mediation and Arbitration [herein after to be referred to as CMA] delivered on 30/11/2018 the applicant **ELISHA MBOKA MWAMENGO** has filed this application under the provisions of Sections 91(1)(a), (2)(c) and 94(1)(b)(i) of the Employment and Labour Relations Act No. 6/2004, Rules 28(1)(c)(d)(e), 55(1) and 24(1), (2)(a)(b)(c)(d)(e)(f), (3)(a)(b)(c)(d) of the Labour Court Rules, GN No. 106 of 2007 praying for the following Orders:-

1. This Honourable Court be pleased to revise and set aside the whole decision of the Arbitrator of the Commission for Mediation and Arbitration at Dar es Salaam in the matter CMA/DSM/KIN/R.17/18/124 delivered by Hon. Mbeni, M.S - Arbitrator on 30th day of November, 2018 and served to applicant on 19th December, 2018.

2. Any other relief(s) the Honourable Court deems fit to grant.

The application was supported by his sworn affidavit.

Mr. Kennedy Lyimo Principal Officer of the respondent **LETSHEGO TANZANIA T/A FAIDIKA LTD** filed a counter affidavit challenging the application.

With leave of the Court the matter was disposed of by way of written submissions. I thank both parties for adhering to the schedule and for their submissions.

It was submitted by the applicant that the Arbitrator erred in entertaining the application for restoration of a dismissed complaint by invoking the provisions of the Law of Limitation Act Cap. 89 which is not applicable in labour matters which has its own rules of procedure. That

Rule 10(2) of the Labour Institutions (Mediation and Arbitration) Rules GN 64 of 2007 provides for time limit in respect of matters of condonation, setting aside awards, jurisdiction and the like as provided for under Rule 29(1) of GN 64/2007. They cited the case of **Tanzania Breweries Ltd Vs. Edson Muganyizi Barongo & 7 Others**, Misc. Labour Appl. No. 79/2014 to that effect.

It was further submitted that if the Court finds that the Law of Limitation Act is applicable then the provisions of Section 19 ought to be considered along with Item 21 of Part 3 of the Schedule in computing the same. That the period for obtaining a copy of the Decree, Judgment or Order ought to be excluded. That the applicant was supplied with the same on 09/08/2018 and the application was filed on 30/08/2018 within twenty one (21) days after being served with the same as witnessed in the dispatch book and not seventy one (71) from the date the Order was issued, citing the case of **Serengeti Breweries Ltd Vs. Joseph Boniface**, Civil Appeal No. 150/2015 (Mbeya) to that effect.

They thus prayed for the application to be allowed.

The respondent was of the view that Rule 10(2) of GN 64/2007 relied by the applicant is not as wide as believed by the applicant and is in

respect to disputes only. So time limit provided under Rule 10(2) does not apply to applications. Thus the Arbitrator was right to invoke the provisions of Item 21 of Part 3 of the Law of Limitation Act Cap. 89 and dismissed the same under Section 3 of the same Act citing the case of **Hashim Madongo & 2 Others Vs. Minister of Industries and Trade & 2 Others**, Civil Appeal No. 27 of 2003 to that effect.

That the plea of in the alternative was not stated in their affidavit so ought to be expunged as parties are bound by their pleadings citing the case of **Juma Jaffer Juma Vs. Manager PBZ Ltd & Others**, Civil Appeal No. 7 of 2002.

That there is no requirement to attach the said Order when filing an application for restoration under Rule 29 of GN 64. That the applicant never applied for copies of the 2nd Order as per Section 19(2) of the Law of Limitation Act and so the exclusion of time taken to be supplied with the same does not apply.

They prayed for the same to be dismissed as the applicant was supposed to make an application for extension of time as per Rule 31 of GN 64/2007 before filing the matter which was dismissed for being time barred.

In rejoinder the applicant retaliated his submissions in chief praying for the application to be granted.

Having gone through the parties submissions I am in one with the parties that the use of other laws literally comes into play in labour matters where there is a lacuna on the same as held in the case of **Tanzania Breweries Ltd** (supra). Now is there a lacuna in respect of filing restoration matters at CMA?

Whereas the respondent says there is the applicant has stated that there is not as the same is covered under the provisions of Rules 10(2) and 29(1) of GN 64/2007. They provide as herein quoted:-

*"Rule 10(2) **All other disputes must be referred to the Commission within sixty (60) days from the date the dispute arose.**"*

"Rule 29(1) Subject to Rule 10, this rule shall apply to any of the following:-

- (a) **Condonations, joinder, substitution, variation or setting aside an award.***
- (b) Jurisdictional disputes.*

(c) *Other applications in terms of these Rules.*"

[Emphasis is mine].

It is undisputed therefore that whereas Rule 10(2) is in respect of disputes only; Rule 29(1)(a) and (c) provide for filing of such applications and therefore it cannot be said that there is a lacuna in the Labour laws in filing of such applications.

Having found so then the next question would be on the time set in filing such applications. I believe these applications which derive their legacy from Rule 10(2) would be sixty (60) days which is the same as the days provided for under Item 21 of Part 3 of the Law of Limitation Act.

As to when the days are expected to run. It is after being in receipt of the said Orders. There has been an argument of serving parties with the same, though the law provides so under Rule 28(4) of GN 64/2007. The Rule provides thus:-

"Rule 28(4) *Where a matter is dismissed, the Commission shall send a copy of the ruling to the parties.*"

[Emphasis is mine].

CMA thus was duty bound to send a copy to the parties as the word used is "shall" which is a mandatory condition and not wait for them to collect the same as argued by the Arbitrator herein.

The law provides for six weeks from the date of receiving copies of the award or Order (Section 91 and Section 94 of ELRA) to file the same in Court. This can apply to applications as well. The applicant received the same on 09/08/2018 and filed the same on 30/08/2018 which was within the said six weeks.

In the circumstances, I herein quash the ruling of CMA and Order that the matter proceeds for hearing before another Arbitrator. It is so ruled.

S.A.N. Wambura

JUDGE

10/07/2020

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VERSUS

LETSHEGO TANZANIA T/A FAIDIKA LTD RESPONDENT

Date: 10/07/2020

Coram: Hon. W.S. Ng'humbu, Deputy Registrar

Applicant:

For Applicant: Mr. Leonard Masatu holding brief for Advocate Remmy
Ephraim William

Respondent:

For Respondent: Mr. Leonard Masatu Advocate

CC: Lwiza

COURT: The Judgment delivered this 10th July, 2020 in the presence of Mr. Leonard Masatu, Learned Counsel for the Respondent who is also holding brief for the Learned Counsel for the Applicant Mr. Remmy Ephraim William, is certified to be the true copy of the original.


W.S. Ng'humbu
DEPUTY REGISTRAR
10/07/2020