

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 663 OF 2019

BETWEEN

CONQUER INVESTMENT CO. LTD..... APPLICANT

VERSUS

TATU RAJABU..... 1ST RESPONDENT

UPENDO MUNA 2ND RESPONDENT

MWANAHAMISI HUEIN OMARY 3RD RESPONDENT

RULING

Date of Last Order: 03/06/2020

Date of Ruling: 07/08/2020

About, J.

This ruling is in respect of a preliminary objection raised by the respondent against an application for revision at hand. The preliminary objection is to the effect that:-

“The revision application of the applicant is
hopelessly time barred.”

At the hearing of the preliminary objection both parties were represented by Learned Counsels. Mr. Adnan Abdalah Chitale appeared for the applicant while Mr. Elibahati Akyoo was for the respondents.

Arguing in support of the preliminary objection Mr. Elibahati Akyoo relied on section 91 (1) (a) of the Employment and Labour Relations Act, [CAP 366 RE 2002] (herein the Act). He submitted that, the present revision application is hopelessly time bared because the award to be revised was delivered on 28/06/2019 and the present application was filed on 07/08/2019. He said, the applicant delayed for almost a month of which cannot be justified. Mr. Elibahati Akyoo stated that, it was when the respondent served the applicant with application for execution application on 07/08/2019 then he suddenly rushed to the Court to file the present application. Mr. Elibahati Akyoo therefore urged the Court to dismiss the application.

In reply Mr. Adnan Abdalah Chitale submitted that, the proposition put forward by the respondent's Counsel that the application is time barred is misleading and does not hold water. He argued that, the present application was filed on the 41 day within the time limit prescribed by the

law. He added that the respondent's Counsel did not make proper computation of time. He therefore urged the Court to dismiss the preliminary objection.

I have dully considered the submission of both parties, Court's records, relevant labour laws and practice with eyes of caution. In this matter I find the issue for determination is whether the application for revision was timely filed.

The time limit for filing revision against arbitration award is governed by section 91 (1) (a) of the Act. The relevant provision is to the effect that:-

"91 (1) - Any party to an arbitration award made under section 88(8) 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 supplied]

On the basis of the above provision, any party aggrieved to an arbitral award alleging defects he/she is required to file his/her application to this Court within 6 weeks or 42 days from the date of the award. It is on record that the impugned award was delivered on 28/06/2019 and the present application was filed on 07/08/2019. I have critically examined the period from the date of the award to the date of filing this application and it makes a total number of 41 days as rightly submitted by the applicant's Counsel. From such finding it is crystal clear that the dispute was timely filed before this Court. Therefore, the respondent Counsel's submission that the applicant delayed for almost a month is misconceived.

I have also considered the respondent Counsel's submission that, the applicant filed this application when he was served with application for execution and find such submission to have no legal basis. The fact that the respondent filed an application for execution did not automatically bar the applicant to file an application for revision, so long as his dispute was

filed on time. In my view each party was at liberty to initiate his/her application as they did respectively.

In the result I find the preliminary objection raised by the respondent that the application is time barred has no merit. Consequently I overrule the same and order the application to proceed on merit.

It is so ordered.

A handwritten signature in black ink, appearing to be 'I.D. Aboud.', written over a horizontal line.

I.D. Aboud.

JUDGE

07/08/2020