

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION. NO. 453 OF 2019

BETWEEN

DARLSON NOEL MIDEKE 1ST APPLICANT

AUGUSTINE GODFREY KIMBASHA 2ND APPLICANT

VERSUS

TANZANIA BREWERIES LIMITED RESPONDENT

RULING

Date of Last Order: 21/10/2020

Date of Ruling: 24/12/2020

About, J.

This ruling is in respect of the preliminary objection raised by the respondent, **TANZANIA BREWERIES LIMITED** against an application for revision at hand. The said preliminary objection is to the effect that:-

- i. This application is time barred.

The preliminary objection was argued by way of written submissions. The applicants and the respondent were represented by Learned Counsels, Mr. Tibiita L. D. Muganga and Mr. Nuhu Mkumbukwa respectively.

Arguing in support of the preliminary objection Mr. Nuhu Mkumbukwa submitted that, the impugned award was delivered on 13/08/2018 and the present application was filed on 14/05/2019. He stated that, in his affidavit the applicants did not state any reason for their delay to file the present application. It was submitted that even if they were granted leave to file the present application, such fact should have been stated in their affidavit and attaches the order thereto. In support of his argument the Learned Counsel cited the case of **World Vision vs. Felician Rutwaza**, Lab. Rev. No. 08 of 2017 HC, Bukoba (unreported). He therefore prayed for the present application to be struck out with costs.

In response to the preliminary objection Mr. Tibiita L. D. Muganga strongly submitted that, the present application was timely filed in this Court. He argued that, as an officer of the Court the respondent's Counsel is obliged to assist the Court in reaching to a fair and just decision. He added that, the respondent's Counsel was present throughout the proceedings of this case, thus, he is fully aware that the applicant was granted leave to refile this application. He therefore prayed for the objection to be dismissed.

In rejoinder Mr. Nuhu Mkumbukwa submitted that, it is not the duty of the court to enter inquiry into the facts of the case before it, other than to adjudicate upon specific matters in dispute which the parties themselves have raised by their pleadings. He reiterated that, the applicant should have stated in his affidavit that was granted leave to refile his application. He urged the court to dismiss the application for being filed out of time.

I have dully considered the submission of the 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 application against arbitration award is governed by section 91 (1) (a) of the Employment and Labour Relations Act [CAP 366 RE 2019] (herein the Act). The relevant provision is to the effect that:-

'Any party to an arbitration award made under section 88 (8) who alleges a defect in any arbitration proceedings under the auspice 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 the
award was served on the applicant
unless the alleged defect involves
improper procurement'.*

As clearly expressed in the provision above, any party aggrieved to an arbitration award alleging defects on the same he/she is required to file application for revision before this Court within six weeks from the date of the award. It is on record that the impugned award was delivered on 13/08/2018 and the first application was filed timely in this court. The record reveals further that, the first application was struck out on 25/04/2019 for being incompetent and the applicant was granted 21 days leave to file proper application. Following that Court's order the applicant filed the present application on 14/05/2019. I have carefully calculated the days from the date of the order of 25/04/2019 to the date the applicant filed the present application on 14/05/2019 and it is clear that the applicant took 21 days to file the present application. On the basis of

that analysis it is clear that, the applicant complied with the Court's order and filed the matter timely.

I have also considered the respondent's argument that, the applicant did not state the fact that he was granted leave to refile the present application in his affidavit. I fully agree with the respondent Counsel submission that the applicant should have stated such fact in his affidavit but he did not do so. However, in my view the fact that the applicants have attached such an order it is suffice to prove that they were granted leave to refile this application within 21 days and they duly complied with the Court's order as scheduled.

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.



I.D. Aboud

JUDGE

24/12/2020