

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 147 OF 2020

BETWEEN

FELIX EZEKIA MAKETA.....1ST APPLICANT

DOTTO WILBARD MAZIGO.....2ND APPLICANT

AND

TANZANIA INTERNATIONAL CONTAINER

TERMINAL SERVICES (TICTS)..... RESPONDENT

RULING

Date of Last Order: 03/08/2020

Date of Ruling: 09/10/2020

A. E. MWIPOPO J

The respondent namely Tanzania International Container Terminal Services (TICTS) filed Notice of the Preliminary Objection (P.O) on 21st May, 2020 containing two point of laws. Basing on the P.O. the respondent is praying for the Court to dismiss the application filed by the Applicants namely Felix Ezekia Maketa and Dotto Wilbard Mazigo. The points of law raised are as follows;

1. The Revision Application is hopelessly time barred.
2. The Revision Application contains defective notice of representation.

On 22nd June, 2020 Respondent abandoned the second point of the P.O. and remained with just one point of P.O. that the Application is hopelessly time barred. The court ordered the hearing of the Preliminary Objection to proceed by way of written submissions.

Both parties to the Application are represented, whereby the applicant is represented by Mr. Frank Killian, Advocate, and the respondent is represented by Mr. Ernest Sekuboyi, Advocate.

The respondent submitted in support of the P.O. that the Applicants asserted in his Affidavit that he was served with the copy of the Award on 9th March, 2020 but when the Respondent make a follow up to the Commission for Mediation and Arbitration (CMA) he was informed that the same was served to the Applicant on 3rd March, 2020. The Respondent is doubting the truthfulness of the Applicant assertion who shows in notice of Application and Chamber Summons that he was served with CMA Award on 09th March, 2020 and is praying for the Court to look at the Record. The Respondent prays for the Court to hold that the Applicant was served with the Award on 3rd March, 2020 and as result this Application which was filed on 20th April, 2020 was filed out of time.

In reply to the Preliminary Objections, the applicant was of the opinion that the P.O. in respective of the filing date was misconceived and ought to be disregarded by the Court. The Applicant submitted that the

application was filed through Court online system on 15th April, 2020 which is within the time even if the Award was served to the Applicants on 3rd March, 2020. The Applicants attached the copy of printout of the online filling system which shows that the application was filed on 15th April, 2020 at 20:50:45 hrs. The Applicant submitted that the CMA Award was served to the Applicant on 9th March, 2020 but the Respondent came with his own record alleging that the Applicant was served with an award on 3rd March, 2020. The CMA award presented by the Applicant shows it was served to the Applicant on the 9th March, 2020. Counting from 9th March, 2020, this application was well filed within time. The applicant prayed for the P.O. to be dismissed.

In rejoinder, the Respondent retaliated his submission in chief.

After reading the submissions from both parties, it is clear that what has been submitted by the Respondent is allegation which has no proof. The Respondent have submitted that he did write a letter to the Commission asking as to when the CMA award was served to the Applicant. The answer from the Commission was that it was served to the Applicant on 3rd March, 2020. However, the Respondent decided not to attach the alleged letter from the Commission as evidence to prove the allegation. The respondent is praying for the Court to peruse the CMA record to verify the date of service. Unfortunately, the Commission record

as we are talking was yet to be brought to this Court. Therefore, there is no CMA Record for this Court to verify as prayed by the respondent.

The respondent being the person who alleges that the Commission award was served to the Applicants on 3rd March, 2020 has duty to prove the same. In this P.O., there is no evidence whatsoever tendered by the Respondent to prove the allegation. In such situation, the Court have to scrutinize available evidence to see whether the Application was filed within the time provided by the law.

Section 91 (1) (a) of the Employment and Labour Relations Act, 2004, provides for the party who was aggrieved by the Commission decision to file application for Revision before Labour Court within 6 weeks from the date of receiving the impugned award. The evidence available in record shows that the Applicants were served with the Commission award on 9th March, 2020. This can be found in the attached copy of the Commission Award and in the content of Notice of Application and Chamber Summons. The present Application was filed through online system on 15th April, 2020 as it was shown in the attached copy of online filing system. I decided to check in the online filing system if the application was filed on 15th April, 2020 as it was alleged by the Applicant and I did find that the system shows that the Application was filed on 15th April, 2020. The electronic filing system is recognized by our laws and is

governed by the Judicature and Application of Laws (Electronic Filing) Rules, 2018, G.N. No. 148 of 2018. Rule 21(1) of G.N. No. 148 of 2018, provides that:

“A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, east African time, on the date it is submitted, unless specific time is set by the Court or it is rejected”.

From above provision, the document which has been filed through electronic filing system is considered to be filed in Court on the date it was submitted unless it is rejected. It is a practice that after the document is lodged online the party have to file hard copy too. And the applicant submitted the hard copy on 20th April, 2020. Counting from 9th March, 2020 when the Applicants were served with Commission Award to 15th April, 2020 when this Application was filed it is clear that the Application was filed within 42 days provided by the law. Thus, it is my finding that the application was filed within time.

Therefore, I find the P.O. have no merits and I hereby over rule it. The Revision Application to proceed with determination on merits.



A. E. MWIPOPO
JUDGE
09/10/2020