

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION
(AT DAR ES SALAAM)**

REVISION APPLICATION NO. 531 OF 2020

BETWEEN

ALEX MACHUMU**APPLICANT**

VERSUS

W.S. INSIGHT LTD. **RESPONDENT**

RULING

S.M. MAGHIMBI, J:

The current application was lodged under the provisions of Rules 24(1), 24(2)(a), (c), (d), (e), (f) and (3)(a), (b),(c) and (d), of the Labour Court Rules GN No. 106 of 2007), Section 91(1)(a), 91(2)(a)(b) and Section 94(1)(b)(i) of the Employment and Labour Relations Act. Cap. 366 R.E 2019 (ELRA). The applicant was aggrieved by the arbitrator award of the Commission for Mediation and Arbitration at Dar es Salaam before Arbitrator Massay, dated at 25th November, 2020 in Labour Dispute No. CMA/DSM/KIN/190/19/131. The Chamber Summons was supported by an affidavit of the applicant dated 15/12/2020.

While filing her counter affidavit to oppose the application, the respondent filed along with it a notice of preliminary objection on point of law that the application for revision had been filed outside the prescribed time as the award was received on 03rd November, 2020 and the Application for

Revision was filed on 16th December, 2020. Disposal of the application was by way of written submissions. The respondent's submissions were drawn and filed by Mr. Yiga Joseph Abel, while the applicant's submissions were drawn and filed by Mr. Joseph Basheka, Personal Representative.

I have considered the submissions by both parties, submissions which will be taken aboard in due course of determination of this objection. In his submissions to support the application, Mr. Yiga pointed out that the award was delivered on 25/09/2020 while the applicant collected the award on 03/11/2020. This is the same situation that is reflected in the records of this application. The application for revision was lodged in this court on 16th December, 2020 which is more than two months after the award was delivered.

The respondent was served on 09th March, 2021. The applicant's argument is that that he received the award on 03/11/2020. But he did not give any explanation whatsoever as to why he collected the award more than a month after it was delivered. Computation of time begins when the award was delivered and not at what pleasure time the applicant collected a copy thereto. That would have been applicable if the applicant showed evidence that he attempted to get a copy of the award in vain. He merely submitted that the award was collected on the 03rd November, 2020.

Section 91(1) requires a Revision to be lodged within six *weeks **of the date that the award was served on the applicant*** unless the alleged defect involves improper procurement;" Maybe it is important that that I expound the meaning of the words "**of the date that the award was**

served on the applicant". The literal meaning of the caption may be a comfort to many, that when you collect the award is when your time starts rolling. But the question is what was the intention of the legislature in enacting this provision. Did the legislature mean that even if the applicant had stayed for three years without collecting the award and one day he feels like it is time to go collect the award and challenge the decision then the computation should start there? By all means that cannot be said to be the intention of the legislature in enacting this provision. In the case of **Tanzania Fish Processors Ltd. Vs. Christopher Luhanga, Civil Appeal No. 11 of 1994**, (unreported) the Court of Appeal held:

"Limitation is material point in the speedy administration of justice. Limitation is therefore to ensure that a party does not come to court as and when he wishes"

What is gathered from the cited case is that it is the spirit of law that litigations must come to an end. That is why time limits are set to do certain acts. It is also the spirit of the law to set standards upon which computation of time may begin or end. Now the important question is what is the date when the award was served to the applicant? Because this definition is not clear in the ELRA, I will borrow the spirit from the Law of Limitation and other precedents set by this court and the court of appeal. It is trite law that the date of collection of the award should be the date upon which the award was delivered and made available to the parties. Therefore if the award was delivered on the 01st July, XXXX year and the same was ready for collection on that same day, which is the practice at the CMA, then it is on the next day following that date of delivery that the

computation of time would commence. If the award is made available on a later date, then the date upon which the award was ready for collection would be the start of computation of time, and in case the applicant didn't know of the availability at the earliest opportunity, then he should prove that he made efforts to follow up on the availability of the decision. Therefore that date cannot in any way be construed to have the literal meaning of the date that applicant "collected the award" without reasonable explanation as to why the award was collected so late.

Going back to the case at hand, the applicant has not made any submissions as to why he collected the award more than a month after the award was delivered. Under the circumstances, the court cannot afford him the comfort that computation should begin on the date that when he collected the award at his pleasure. The date shall therefore be computed from the 25th day of September when the award was delivered and counting to the 15th day of December when the application was lodged in court, the 42 days prescribed under the cited Section 91 of ELRA had long lapsed. The respondent's objection is therefore meritorious and it is hereby sustained. The application is time barred and it is hereby dismissed.

Dated at Dar es Salaam this 27th day of September, 2021.




S.M MAGHIMBI
JUDGE