

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

REVISION APPLICATION NO.393 OF 2020

BETWEEN

RICHARD ALLY BENDERA..... APPLICANT

AND

MOTA ENGIL ENGENHARIA E CONSTRUCAO AFRICA S.A..... RESPONDENT

JUDGMENT

Last order 13/9/2021
Judgment on 18/10/2021

B.E.K. Mganga, J

On 6th July 2020 applicants filed CMA F1 for unfair Labour practice alleging that the respondent refused to pay terminal benefits and repatriation costs for the applicant and 58 others. In the said CMA F.1, applicant indicated that the dispute arose on 30th May 2020. On 12th August 2020, respondent filed a notice of preliminary objection that the complaint was time barred. On 21st August 2020, Fungo. E.J, mediator, issued a ruling that the dispute was time barred. Applicants being aggrieved by the said ruling, has filed this revision application. The notice of Application is supported by a joint affidavit of Richard Ally Bendera and Hilda Steven Mapunda. In the joint affidavit, applicants deponed that they

were terminated on 30th April 2020 and that the respondent agreed to pay their terminal benefits but later on, he paid only one ex-employees. In the same affidavit, applicants have raised three grounds namely:-

“(a) That, the mediator erred in law and fact by determining the respondent objection of time barred without considering date of payment delayed in good faith.

(b) That, the mediator erred in law and fact by deciding that the dispute arose on the date of notice of termination ignoring the evidence tendered to prove that the respondent uphold the payment of terminal benefit to 28th May 2020 to one employee and refuting to the other employee right on 30th May 2020.

(c) That, the dismissal ruling is evidently erroneous for irrationally considering and weight to exhibits been admitted and tendered before the commission for Mediation and arbitration to justify the payment date.”

The application has been resisted by the respondent who filed the counter affidavit of Ibrahim Ishumi, the administrative manager of the respondent.

The application was disposed by way of written submissions. The applicants enjoyed the service of Simboz consultant while the respondent enjoyed the service of Daniel Kalasha, her legal manager.

It was submitted on behalf of the applicant that arbitrator erred for miscomputing the time at which the cause of action started to run against the applicants. To them, time started to run from 28th May 2020 when one of them was paid and not from the date of termination as there was mutual oral agreement that they will be paid.

It was submitted on behalf of the respondent that applicants were terminated on 30th April 2020 and that in terms of Rule 10(2) of the Labour Institutions (Mediation and arbitration) Rules, GN. No.64 of 2007 time started to run against them from that date and that the mediator did not err.

I have been called to determine the issue whether Mediator erred in computing time started to run against applicants. This issue cannot detain me since parties are in agreement that applicants were terminated on 30th April 2020 and that they filed a dispute at CMA on 12th August 2020 claiming to be paid terminal benefits including repatriation costs that arose due to the said termination. In no doubt, the cause of action arose on the date of termination and time started to run against applicants from 30th April 2020 that is to say the date of termination. It was submitted on behalf of the applicant that the cause of action arose on 28th May 2020

when one of their fellow ex-employees was paid terminal benefits. Even if for the sake of argument, I take it that time started to run against applicants from 28th May 2020, which as I have held above is not the position, cannot help them. In terms of Rule 10(1) and (2) of Labour Institutions (Mediation and arbitration) Rules, GN. No. 64 of 2007, time available for applicants challenging termination or for any other complaint is 30 and 60 days respectively. Counting from 30th April 2020 or, 28th May 2020 to 12th August 2020, is more than 60 days. Be as it may, applicants filed the dispute at CMA well out of time hence Mediator cannot be faulted. I therefore dismiss this application for being devoid of merit.

It is so ordered.




B.E.K. Mganga
JUDGE
18/10/2021