

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

**REVISION NO. 473 OF 2020**

**LITTLEMORE COMPANY LTD.....APPLICANT**

**AND**

**GRACE GASPER KESSY..... RESPONDENT**

**RULING**

01<sup>th</sup> November, 2021

**Rwizile, J.**

According to the application, the CMA decision made on 12<sup>th</sup> October, 2020 be set aside. The same is coached and based on the fact that, the application to set aside the exparte award was not time barred. In the affidavit supporting the application, Yassir Murad Said stated reasons for which this application should be granted.

*The issue I was asked to determine is whether the CMA erred in law to hold that the application to set aside an exparte award was filed out of time.*

The respondent who appeared two times before this court through Mr. Muhindi personal representative, has never filed any notice of

representation and or counter-affidavit. He appeared today, when the matter is fixed for hearing to pray for time to do so. His prayer was rejected, the application was therefore heard exparte.

Mr Kisyungu, Learned Counsel who appeared for the applicant submitted one point raised for determination. He argued that the exparte award was delivered by the commission on 24<sup>th</sup> April, 2020. The same according to the learned counsel was communicated on 2<sup>nd</sup> July, 2020. The application impugned, according to him was filed on 15<sup>th</sup> July, 2020.

He submitted that under Rule 30(1) of GN 64 of 2007, the application ought to be filed before expiration of 14 days, which he did but the commission held otherwise it was filed out of time. The same, in his view was communicated to the applicant through the Deputy Registrar of this court when an application for execution was pending. He asked this court to follow the decision in the case of **Mukisa Biscuits Co. Ltd Vs. West End Distributor** [ 1969] EA 696. The learned counsel therefore, asked this court to allow this application by quashing the award

From the applicant's submission, I have to say that time limit is the question of law. As submitted, the application to set aside an award is to be filed within 14 days from the day, an award was made aware to the party. Indeed it is not attributed with time the same was delivered unless, if the party was present on the day it was delivered.

In this case, it is true that the award was delivered exparte. That means, the applicant was not informed of the award, since there is no evidence on party of the respondent, on the day it was delivered.

The only point to be determined is when was the applicant made aware of the same. Of course, the applicant has alleged that same was done on 2<sup>nd</sup> July, 2020, when she appeared for execution before the Deputy Registrar of this court.

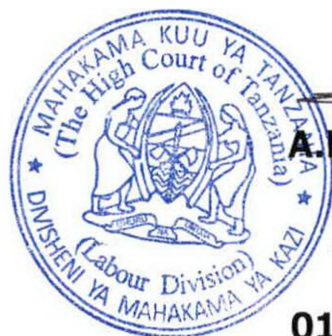
In as much as what the counsel submitted may be true, it was his duty to plead in the affidavit and annex any document to prove so. In his affidavit, the applicant under para 1(b), does not show or plead if the same was made known to him through the execution proceedings before this court, as he has submitted. All what is stated under para 1(b) (1)-(v) does not show so. It is reproduced as here under for easy reference;

*(b) Statement of the Material Facts*

- i. That, I am the principal officer of the applicant henceforth conversant with the facts am about to depone hereunder.*
- ii. That, on 15<sup>th</sup> July, 2020 the applicant filed a application to set aside the ex-parte award in respect of employment dispute number CMA/DSM/ILA/14/20 delivered on 24<sup>th</sup> April, 2020 delivered by honourable Mahiza, R.B. Mediator.*
- iii. That, on 7<sup>th</sup> August, 2020, the respondent filed a preliminary point of objection against the applicant's application to set aside exparte award to wit that the application is time barred.*
- iv. That, the abovenamed matter was scheduled for hearing of preliminary point of objection on the 11<sup>th</sup> September, 2020.*

It is a cardinal principle of law and practice in our jurisdiction that parties are bound by their pleadings. The applicant in this matter did not plead important facts which he has argued today. There is no proof whatsoever showing the day the application was called to his attention for the first time. All what he has submitted, is not backed by proof. None of the records stated were attached to the affidavit supporting the application.

Therefore, I am of the opinion that the applicant has failed to discharge her duty. I have also gone through the reasoning of the arbitrator. It is apparent that the same well elaborated and perhaps the allegation that the same was served on the applicant but she did not accept the service was not successfully before the commission and before me on affidavit evidence. The submission by the advocate for the applicant has not added anything of substance. From the foregoing, this application has no merit. It is dismissed. No order as to costs.



**A.K.Rwizile**

**JUDGE**

**01.11.2021**