

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 512 OF 2020

ABSA BANK TANZANIA LIMITED..... APPLICANT

VERSUS

AVIT KWAREH..... RESPONDENT

(From the decision of the Commission for Mediation & Arbitration of DSM at Kinondoni)

(Kiwelu : Arbitrator)

dated 30th October 2020

in

LABOUR DISPUTE: CMA/DSM/KIN/535/2020

JUDGEMENT

21st September & 8th November 2021

Rwizile J.

This application emanates from the decision of the Commission for Mediation and Arbitration. The applicant is asking this court to call for records and proceedings of the Commission and examine the same to satisfy itself as to its legality, propriate, rationality and make corrections therefrom.

Being supported by an affidavit of one Florian Pesha, Principal officer of the applicant, which has raised two issues for determination coached as follows; **one**, whether it was proper for the arbitrator to strike out the matter which was out of time and **second** whether the arbitrator exercised jurisdiction vested in the Commission by failure to hold that the matter was time barred.

In brief, it was factually stated that, parties to this application had employment relationship. Sometimes in June 2020, their relationship turned vinegary. As it turned out, the respondent filed a dispute with the Commission, in CMA. F1. According to the impugned ruling, the commission before plunging into the merits of the dispute raised two points as to *whether the dispute was properly placed before it and if it had jurisdiction to hear the same.*

Upon being addressed by the parties' counsel one Sabasi Shayo for (respondent) and Mr. Richard Clement (for the applicant), the commission found out that CMA F1, which commenced the dispute was not specific as to when and where the dispute arose. The dispute was therefore struck

out. This order did not amuse Mr. Shayo. He has filed this application challenging the same.

Mr. Shayo argued this application before me as well that the commission had the duty to rule out if the dispute was time barred or not. He said, it was shown before the commission that the same was filed out of time. Referring to the CMA.F1, the counsel said, the date of termination was on 26th March 2020, and the application was filed on 29th June 2020, nearly three months thereafter. This, in his view defeats rule 10(1) of GN No. 64 of 2007, which requires such disputes to be filed in 30 days. In his view, it was filed out of time. Mr. Shayo insisted, the same ought to have been dismissed. To the contrary, he went on, the same was struck out for the reason that the commission had no territorial jurisdiction to hear the dispute. He argued further that the arbitrator had two points to determine. On time limitation, he said, the commission said, time was not stated in F1. The learned counsel held the view that the application was to be dismissed for being out of time as held in the case of **Barclays Bank (T) Ltd vs Hussein Mcheni**, Civil Appeal No. 19 of 2016. CA at page 13 and 15.

Mr. Heri Zuku, learned counsel who appeared for the respondent, argued that the commission held, it had no jurisdiction to entertain the dispute. Having so held, he argued further, the commission had no duty to venture into anything else. In his view, the case of **Barclays Bank (T) Ltd vs Hussein Mcheni** (supra) is, but a distinguishable one. This court, was therefore asked to hold that this application is vexatious and dismiss it.

By way of rejoining, Mr. Shayo pointed out that since the commission raised two points but determined one, it is agreed that the application filed out of time should be dismissed. He therefore asked this court to grant the application.

On my party, I have to say, the decision of the commission was clear in material substance. At page five of the award, a conclusion is made and I quote

"... Kutokana na maelezo niliyotoa tume kanda ya Dar-es salaam inakosa mamlaka ya kusikiliza mgogoro huu kwani katika CMA F1 haijaonyeshwa ni lini na wapi mgogoro ulitokea..."

It was the finding of the commission therefore that it was not sure if, the dispute was within its territorial jurisdiction or was in time. The remedy in its wisdom was to strike it out. Doing so, I think, was purposely designed to allow the respondent a chance to properly deal with CMA F1. It is not stated anywhere in the award, that the commission lacked territorial jurisdiction to hear the application as submitted by Mr. Shayo. In my perusal, it is found that the commission held, it had not been supplied with two important facts. **First**, where did the dispute arise, whether it was Ilala or Kinondoni Districts and that this information must be explicitly stated in the form. **Second**, that there was no information showing when did the dispute arise. From the extra above, I think, the submission by Mr. Shayo is unfounded.

If, the commission found that the dispute was out of its jurisdiction it could have clearly stated so.

I do not think the reasoning of the commission and its finding has anywhere to fault. Rule 10 of the Labour Institutions (Mediation and Arbitration) rules 2007, GN No. 64.

Provides three scenarios of when disputes on fairness of termination should be filed with the Commission, that is, in 30 days from termination date as the first scenario, but in the second scenario when the final decision to terminate was made and the third one, in case of appeal for decision to terminate, when the same was upheld. Even though F1 had the date of termination as 26th March 2020, still this cannot be taken as the last date of the action against his termination. He had, as it was held by the Commission to also indicate when did the dispute arise. This party was left unattended to. Worse still, there is no indication as to where the dispute arose. Having so discovered, the Commission was right to hold as it did. It was clear that the pleadings instituted through F1 was not fully completed to justify when and where did the dispute arise. It was therefore not properly placed by the Commission. It deserved a fate it faced. The application, as submitted by the respondent is misplaced and just a mere sham. I dismiss the same in its entirety with no order as to costs.




A.K.Rwizile

JUDGE

08.11.2021