

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

REVISION APPLICATION NO. 486 OF 2020

BETWEEN

PETER MNYANYI.....APPLICANT

VERSUS

PATRICK MISSION HIGH SCHOOL.....1ST RESPONDENT

BOARD OF DIRECTORS OF MWAKITAPONDA

INVESTMENT COMPANY LTD.....2ND RESPONDENT

(From the decision of the Commission for Mediation & Arbitration of DSM at
KIN) Dated 22nd September 2020 in Labour Dispute No.

CMA/DSM/KIN/176/265/2018

RULING

28th March 2022 & 29th March, 2022

K. T. R. MTEULE, J.

This ruling concerns a Preliminary objection raised in this Revision Application No. 486 of 2020 which was filed by **Mr. Peter Mnyanyi** (the applicant) challenging the CMA award in a Labour Dispute No. CMA/DSM/KIN/176/265/2018. This application is opposed by the respondents who raised a point of preliminary objection asserting incompetence of the application for being time barred.

Along with the point of preliminary objection raised by the Respondent, on 29 September 2021, the court, acting *suo moto*, raised another point of law which centered on the issue as to whether



it was properly moved under the provisions cited by the applicant in bringing the application. Parties were directed to address the court on the point of citation of the law.

The preliminary objection and the point of law raised by the court were argued by a way of written submissions. During hearing the applicant appeared in person whereas the respondents had a representation of Mr. Alphonse Peter Kubaja, Advocate.

The **Mr. Alphonse Peter Kubaja**, the Respondent's Counsel submitted first on the point of law raised by the court suo moto as to whether the applicant properly moved this Court to grant the prayers sought in this application.

Mr. Kubaja submitted that the provisions of the law cited in this application are not moving provisions that can enable this Court to revise the CMA decisions as the application was made under Rule 24 (1), (2) (a) (b) (c) (d) (e) (f), (3) (a) (b) (c) (d), Rule 28 (1) (c) (d) (e) and Rule 55 (1) and (2) of the Labour Court Rules, GN. No. 106 of 2007 which allow this Court to adopt Civil Procedure Code in case of lacuna in labour laws.



Mr. Kubaja argued that as applicant failed to move the Court by not citing other relevant provisions, he is of the view that, this Court was not properly moved. Supporting his arguments, he cited the case of **Muongwaana Thabit v. The Registered Chama Cha Mapinduzi**, Civil Application No. 11 of 2015, Court of Appeal of Tanzania, (unreported).

Regarding the issue as to whether the matter was filed out of time, **Mr. Kubaja** submitted that, at paragraph 3.27 of the applicant's affidavit, it is stated that the order of the Commission intended to be challenged before this Court was served to the applicant on **5th October 2020** and the present application was filed on **27th November 2020**, thus means there was a delay of 10 days in filing applicant's application contrary to Section 91 (1) (a) and (b) of the Employment and Labour Relation Act, Cap 366 R.E 2019 which directs the same to be filed within 42 days. Thus, they prayed for the application to be dismissed.

Opposing the preliminary objections, the applicant started to respond on the point of law raised by the court suo moto. The applicant submitted that the Court was moved properly by not citing Section 91 (1) and 94 (1) (b) (i) of the Employment and Labour Relation Act,



Cap 366 R.E 2019 as the present matter is not an application for revision which fall under Section 88 (1), 91 (1) (a) and (b) of the Act. The applicant referred this Court to the case of **Chama Cha Walimu Tanzania v. The Attorney General**, Civil Application No. 151 of 2008 (unreported). He insisted that all cited Rules in his notice are relevant to support his application. He further cited the case of **Coca Cola Kwanza Ltd. v. Emmanuel Mollel**, Revision Application No. 22 of 2008, High Court of Tanzania, Labour Division, at Dar es Salaam, (unreported).

Regarding the issue of time the applicant submitted that the applicant's application does not fall under Section 91 (1) and 94 (1) (b) (i) of the Employment and Labour Relation Act, Cap 366 R.E 2019 on such basis he is of the view that the same was not supposed to be filed within 42 days. He stated that his application fall under the Law of Limitation Act, Cap 89 R.E 2002 as per Part III item 21 which directs the filing to be within sixty days.

The applicant further submitted that since the applicant become aware of the CMA decision on **5th October 2020** after being served with the impugned award, 60 days provided by the law needed to count from that date. Therefore, the time limit was supposed to end



on **4th December 2020**. He thus prayed for the Preliminary objection to be dismissed.

Having carefully considered parties submissions, Court records, as well as relevant labour laws and practice, I proceed to determine the points of law.

It is the established principle that failure to cite proper provision or incomplete citation of enabling provision of the law makes an application incompetent and the only remedy is to strike it out. This was the position in the case of **Edward Bachwa & Another v. The Attorney General & Another, Civ. Appl. No. 128 of 2006 (CA) DSM (unreported)**, where the Court held that, wrong citation of the law, section, subsection or non citation of the law will not move the court to do what is asked and renders the application incompetent. The same position was held in the case of **Gauntam Jayram Chavda v. Covell Mathews Partnership**, Taxation Reference No. 20 of 2004, Court of Appeal of Tanzania, at Dar es Salaam, (unreported), whereby the application for reference was struck out for being incompetent for failure to cite the proper provision of law.



In the present application, the applicant's notice of application, chamber summons and his affidavit with the reliefs sought as stated at paragraph 5.2 of the said affidavit, indicates that this application is seeking for the revision of the award of the CMA. This remedy is available under Section 91 and Section 94 of the Employment and Labour Relation Act, Cap 366 R.E 2019 which are the enabling provisions. Section 91 provides:-

"91.-(1) Any party to an arbitration award made under section 88 (10) who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for a decision to set aside the arbitration award - (a) within six weeks of the date that the award was served on the applicant unless the alleged defect involves improper procurement; (b) if the alleged defect involves improper procurement, within six weeks of the date that the applicant discovers that fact."

It is apparent that Section 91 (1) and (2) is an enabling provision and it directs time limit of six week to file an application against the impugned award. By citing only Rule 24 and 28 of GN. No. 106 of 2007, I am of the view that the application is not properly supported by the law and hence it is incompetent.



With regards to the preliminary objection raised by the respondents regarding the time of filing this application this court find worth to direct itself to the record of this application. Apart from several applications which were filed by the applicant in this Court without bearing any fruits for being dismissed and struck out, the record available including applicant's affidavit at paragraph 3.27 and 3.28 show that the impugned award was issued on 22nd September 2020. I have already indicated above that this revision application falls under Section 91 of the Act which demand the same to be filed within 42 days. The applicant admits having been served with the awards on 05th October 2020 and the present revision application to challenge the impugned award was filed on 27th November 2020 thus means there was a delay of 10 days as rightly stated by the Respondent. It is not disputed that the applicant has not obtained extension of time to file the application. (see **Juma Nassoro Humbwaga Vs. Jesse Lucas John**, Misc. Land Application No. 70/2013 and **Usangu General Traders Vs. Kagera Tea Company**, Commercial Case No. 55/2005.

In such circumstance^S I am certain that the application was filed out of time. Further the provisions of law cited to bring it are not

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sufficient to move the court. In that respect, the court lacks jurisdiction to entertain it. I therefore strike out the applicant's application for being time barred and improperly before the court.

It is so ordered.

Dated at Dar es Salaam this 29th Day of March, 2022.



KATARINA T. REVOCATI MTEULE

JUDGE

29/03/2022