

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

REVISION NO. 218 OF 2021

EXIM BANK (T) LIMITED APPLICANT

VERSUS

DAVID MUMBII RESPONDENT

(From the decision of the Commission for Mediation and Arbitration at Ilala)

(Kazimoto, Mediator)

Dated 29th June, 2020

in

REF: CMA/DSM/ILA/727/18

RULING

16th June & 01st July 2022

Rwizile, J

The applicant asked this Court to call for, examine, revise and set aside the entire proceedings, decision and orders by the Commission for Mediation and Arbitration (CMA) in respect of Labour Dispute No. CMA/DSM/ILA/727/18.

It can be factually stated that the respondent was an employee of the applicant in the position of bank teller and was later promoted to a chief cashier from 26th January, 2009 until when he was terminated on 09th

January 2013 for gross misconduct. The respondent instituted a complaint at the CMA whereby the award was in favour of the respondent.

The applicant was ordered to compensate the respondent for unfair termination and be reinstated. The applicant was dissatisfied with the award and filed Revision No. of 445 of 2016. This court quashed the award of labour dispute No.CMA/DSM/ILA/R.63/13/139.

On 02nd July, 2018, the respondent refiled a labour dispute No. CMA/DSM/ILA/R.727/18. The matter at CMA was heard ex parte and an ex parte award pronounced in favour of the respondent on 29th January, 2019. The application for execution No. 376 of 2019 was filed but was struck out for having arithmetical errors on the amount of 75 million awarded instead of the amount, it recorded 75 billion. The award was corrected on 29th April, 2021 based on the Deputy Registrar's directive at the execution stage. The applicant, then filed this application to challenge the entire award in labour dispute No. CMA/DSM/ILA/R.727/18.

Both parties were represented. The applicant was represented by Makarios Tairo, learned Advocate whereas the respondent was represented by Michael J. Nyambo, learned Advocate. But before the hearing on merits of this application commenced, the respondent raised two Preliminary Objections that: -

- 1. This application for Revision is hopelessly time barred.*
- 2. This application for revision is incompetent before this honourable Court for lack of proper citation of the title of this honourable Court.*

Mr. Nyambo submitted that the decision of the CMA was made in 2019. He stated further that the notice of application and chamber summons are pegged to revise the CMA award No. CMA/DSM/ILA/R.727/18 which made on 29th January 2019. He continued to state that there is a total lapse of 2.3 years, which is contrary to section 91(1)(a)(b) of Employment and Labour Relations Act. The application ought to be filed in 42 days. He stated that the applicant did not specify the date of the order to be revised and so prayed for the application to be dismissed for being time barred.

On the other point he submitted that the name of the Court does not exist. It was the learned counsel's prayer that this application should be held incompetent because the name of the court is the "High Court of the United Republic Tanzania" and not the "High Court of Tanzania "

In rebuttal Mr. Makarios submitted that the decision of the CMA is clear as notified in the notice of application and the chamber summons that the decision made on 29th January 2019 was corrected on 29th April 2021. The learned counsel was vehement that the corrected award was received on

the same day and filed the application on 9th June 2021. More so, he argued only 41 days lapsed from the date the corrected award was served on the applicant. Mr. Makarios held the view that the application was filed in time and so the preliminary objection has no merit.

On the second point, he submitted that the preliminary objection is irrelevant and the law has not been cited and if it has been, it cannot be used to defeat the suit. He stated further that the Constitution named the High Court of Tanzania and so the overriding objective principle has to be applied. He finalized by stating that the preliminary objection be dismissed and the case be heard on merit.

In a rejoinder, Mr. Nyambo submitted that time began to run from 29th January 2019. He stated there was an error and the matter was taken to CMA to be rectified. He continued to state that the applicant did not apply for revision in time but came to deal with the correction of the award dated on 29th April 2021. He stated this application is based on the award dated 29th January 2019, which is time barred.

On the second point he submitted that the articles of the United Republic of Tanzania Constitution state the name of the court, and so prayed for the Court to hold that the name of this Court is not properly cited.

It is to be note that, the notice of application and the chamber summons are praying for this Court to revise and set aside the proceedings and decision and orders of the labour dispute No. CMA/DSM/ILA/R.727/18.

Upon going through the CMA proceedings there are numerous decisions which contain the same labour dispute number litigated by the same parties. They are decisions dated 29th January 2019, ruling dated 03rd May 2019, ruling dated 08th November 2019, ruling dated 29th June 2020 and the correction of the award dated 29th April 2021.

In the affidavit supporting this application, a prayer is to revise the entire proceeding, decision and orders of the CMA. This is the same as in the Notice of Application and the chamber summons. The same are matters arising from the award in labour dispute No. CMA/DSM/ILA/R.727/18.

The point here is based on the narrative of facts in the affidavit. The decision to be impugned was made on 29th January 2019 by the CMA. It contained errors that rendered it inexecutable by this court. The Deputy Registrar of this Court, on 21st October 2020, in the execution of the award directed the CMA to correct the errors in the award. The same was done on 29th April 2021.

It is alleged by Mr. Makarious that the same was served on the applicant on same day it was issued. In his view, time begun to run on the same

day it was served on the applicant. The learned counsel definitely meant, it is on that day when the applicant was made aware of the decision as it is in terms of section 91(1) (a) of the Employment and labour Relations Act.

In my considered view, the applicant had tried to set aside the exparte award dated 29th January in vain. This is vivid as well in the ruling dated 18th November 2019. It is therefore to my understanding that the applicant ought to have challenged the decision when it was made in 2019. Events of rectifying the award were made after the execution proceedings of 2020. I do not think time begun to run in 2021 when an award was rectified. Above all, the applicant does not indicate clearly which decision this court has to deal with in revision. In all fours, I entirely agree with Mr, Nyambo that this application is filed out of time. It should be dismissed as I hereby do. Having so dismissed the application based on the first preliminary objection. I see no reason to determine the second one. I make no order as to costs.




A.K. Rwizile

JUDGE

01.07.2022