

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

LABOUR REVISION N NO. 404 OF 2021

BETWEEN

PROGUARDS SECURITY SERVICES LIMITED.....APPLICANT

VERSUS

ALLY BELEKO.....RESPONDENT

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

Dated 18th August 2021

in

Labour Dispute No. CMA/DSM/TEM/602/2020/121/2021)

RULING

K. T. R. MTEULE, J.

2nd August 2022 12th August 2022

This ruling emanates from Revision Application No. 404 of 2021 which was filed by the applicant against the CMA award in Labour Dispute No. CMA/DSM/TEM/602/2020/121/2021. This application is vehemently opposed by respondents who raised a preliminary objection challenging the application for being time barred.

The preliminary objection was argued by a way of written submissions where the respondent's submission was done by Ms. Janeth Kazimoto, Advocate from Legal and Human Right Centre whereas the applicant was represented by Mr. William Makala applicant's Principal Officer.

Arguing in support of the preliminary objection Ms. Janeth Kazimoto submitted that it is a legal requirement under **Section 91 (1) (a) of the Employment and Labour Relations Act, Cap 366 of 2010 R.E** that any party who wants to challenge a decision of CMA to apply for revision in the Labour Court within forty-two (42). She stated that applicant's application for revision was filed out of time because the CMA award was delivered on 18th August 2021 but the application for revision was made on 15th October 2021 making a delay of 16 days. According to Ms. Janeth, such delay is contrary to the spirit of law which needs litigation to come to an end. Supporting her argument, she cited two cases including the case of **Tanzania Fish Processors Ltd. v. Christopher Luhanga**, Civil Appeal No.11 of 1994, Court of Appeal of Tanzania, (unreported). They thus prayed for the Court to sustain the preliminary objection and dismiss the application.

Disputing the preliminary objection Mr. Makala submitted that the applicant filed her application for revision within the time required by the law basing on facts that applicant was made aware of the ruling on 23rd September 2021. He stated on the same date when the secretary of the applicant was sent to the Commission to collect the said ruling and on 15th October 2021 the application for revision was

filed that's means application for revision was filed within 23 days as per Section 91(1) (a) of the ELRA, Cap 366 RE 200 which directs revision application to be filed within 42 days. The Respondent's counsel filed a rejoinder submission which will be taken into account in determining this application.

Having considered the submissions made by both parties, Court records, labour laws applicable and practice, on the raised preliminary objection, two issues needs to be addressed. One is whether the application is time barred. Secondly, what reliefs should the parties be entitled to. I find it appropriate for ease of reference to reproduce hereunder the provision of **Section 91 of Cap 366 R.E 2019** which state as follows:-

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.

Basing on the above cited provision it is legally known that anyone who intends to file revision application against a CMA award, must comply with the time limit which is 42 days from when the award was served to the Applicant or when the applicant became aware of the award.

In addressing this preliminary objection, I have noted that a point of departure amongst the parties' centres on when the computation of time starts. Is it from the date the award was delivered or from the date the award was collected or when it was served to the applicant? These questions are clearly answered by the law. It is unambiguously provided by **Section 91 (1) (a) of Cap 366** that the counting begins on the date when the award was served to the Applicant.

As to when the awards was received, the Applicant claims to have received it on 23 September 2021. This is disputed by the Respondent in his rejoinder who submitted that the award was served to the Applicant on 23 August 2021. It is apparent on the CMA award that it was issued on 18th August 2021. From its copy which is annexed to the affidavit deponed by the applicant's Principal Officer

at paragraph 3.6, it is indicated that the applicant was served with the impugned award on 23rd August 2021. I cannot agree with the Applicant that there is another date of service of award apart from the one endorsed on the award. The award is endorsed to have been received by Msengi William Makala, Principal Officer on 23rd August 2021. This 23rd August 2021 should be taken as a benchmark to start counting the days and not 18th August 2021 as claimed by the respondent and as well not 23rd September 2021 as claimed by the Applicant.

Counting from 23rd August 2021 when the award was served to the Applicant to 15th October 2021 when the Application was filed gives a total of 53 days. The Application was supposed to be filed on or before 04th October 2021 but it was filed on 15th October 2021. This means there was a delay of 11 days. This is contrary to **Section 91 of Cap 366** which requires an application for revision to be filed within 42 days from the date of the service of the award. From the foregoing, the issue as to whether the application is time barred is answered affirmatively.

The next issue is about parties' remedies. What should be consequences of finding a matter to be bared by time has been a subject of discussion in various case laws and a guidance is given.

I stand to be guided by the case cited by the Respondent which is **Tanzania Fish Processors Ltd. v. Christopher Luhanga (supra)** on the importance of the question of time in court proceedings. According to this case, time limitation goes to the jurisdiction of the matter. The only remedy for an application filed out of time a dismissal since it is a matter of jurisdiction.

From the above legal reasoning the preliminary objection is sustained as the matter was filed out of time without leave of the court. For that reason, I hereby dismiss this application for being time barred. It is so ordered.

Dated at Dar es Salaam this 12th day of August, 2022.



KATARINA REVOCATI MTEULE

JUDGE

12/08/2022