

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

REVISION NO. 420 OF 2021

BETWEEN

MUSTAFA MOLEDINA.....APPLICANT

AND

MWAJUMA RAMADHANI.....RESPONDENT

JUDGMENT

Date of Last Order: 10/03/2022
Date of Judgment: 22/03/2022

B. E. K. Mganga, J.

In 2006, Mwakuma Ramadhani entered into unspecified oral contract of employed with the respondent. On 7th January 2021, applicant orally terminated employment of the respondent. Respondent was unhappy as a result she knocked the doors of the Commission for Mediation and Arbitration (CMA) complaining that she was unfairly terminated as no reason for termination was given and that procedures were not followed. It happened that applicant and his advocated defaulted to appear at CMA as a result, respondent prayed and was granted an order to proceed exparte. On 28th May 2021, Arbitrator, after hearing the evidence of the respondent, awarded the respondent

to be paid TZS 1,836,154 being twelve (12) months' salary compensation, one-month salary in lieu of notice, one month leave pay and severance pay. On 16th June 2021, applicant filed an application before CMA seeking to set aside the said *ex parte* award. On 31st August 2021, Hon. Chengula, arbitrator, delivered a ruling dismissing the applicant's application to set aside the *ex parte* award. On 28th October 2021, applicant filed this application seeking the court to revise the said ruling.

In support of the application, applicant filed the affidavit sworn by Assela Kokushubira Arcard, her counsel. In the said affidavit, Assela Kokushubira Arcard, deponed that she was representing the applicant at CMA. Counsel deponed further that, on 31st March 2021, she failed to appear at CMA as she was sick. As a proof that she was sick, she attached a copy of exemption from duty issued by a doctor from Samasi Health Limited based in Dar es Salaam. She deponed further that the matter was adjourned to 14th April 2021 of which appeared one Joachim Joliga, the personal representative of the respondent, because she failed to appear as she was attending TLS annual general meeting at Arusha and that, she was informed that the matter was adjourned to 29th April 2021. In paragraph 8 of the affidavit in support of the application,

Assela Kokushubira Arcard counsel for applicant, deponed that on 29 April when she appeared at CMA, she was informed by Hon. Chengula that the matter proceeded ex parte and further that an award was issued on **28th May 2021**. Assela Kokushubira Arcard, deponed further that the said ex parte award was served to the applicant on 4th June 2021. In paragraph 10 of the affidavit deponed that the order to prove the dispute ex parte was given on 29th March 2021 which was never set for mediation. In the affidavit in support of the application, the deponent raised five grounds namely: -

- 1. That the arbitrator erred in law and fact by disregarding the entire evidence of the applicant as reasons for non- appearance.*
- 2. That the arbitrator erred in law and fact by entertaining the respondent's case and allowing the case to continue ex parte on dates that were not set by the commission.*
- 3. That arbitrator erred in law and fact by entertaining the case ex-parte without notice of that intention to the applicant.*
- 4. That the arbitrator erred in law and fact by rendering the judgment (sic) on the date which was not set for judgment(sic).*
- 5. That the arbitrator erred in law and fact by holding that the respondent was unfairly terminated.*

Respondent did not file a counter affidavit because applicant did not bother to serve her until on the date of hearing. Respondent was served by the application while in court on the date of hearing. Respondent submitted that any prayer to file a counter affidavit will

delay execution application she filed before the court because the said execution application cannot proceed due to this application. She therefore prayed that the application should proceed for hearing.

Arguing the 1st ground of application, Ms. Arcard, counsel for the applicant submitted that, evidence for non-appearance was not considered by the arbitrator. Counsel submitted that, on 31st March 2021 and 29th May 2021, she was sick and that, she was exempted from duty (ED) for 7 days for each occasion and further that, on 14th April 2021 she was attending TLS annual general meeting in Arusha. When asked by the court, as to whether, there is a paragraph in her affidavit showing that after expiry of the ED issued on 31st March 2021, she made follow up at CMA, she readily conceded that there is none. The same applies to the ED issued on 29th May 2021. Counsel for the applicant conceded that, at CMA, Faith Kiwanga, advocate, also was appearing on behalf of the applicant and that there is no paragraph in her affidavit explaining what prevented the said Faith Kiwanga advocate from appearing on behalf of the applicant.

On the 2nd and 3rd grounds of revision, counsel for the applicant submitted that, an order to hear the dispute ex parte was issued on the

date the matter was not scheduled. Counsel went on that; applicant was not served with notice showing that the dispute will be heard exparte.

On the 4th ground, counsel for the applicant submitted that the said exparte award was issued on the date different to the one scheduled. Counsel for the applicant concluded by praying the application be allowed.

On her party, respondent, just informed the court that she is leaving everything to the court to decide.

I have carefully examined the CMA record and find that, at CMA, respondent was being represented by Joachim Joliga, the personal representative while the applicant was being represented by two advocates namely Assela Arcard and Faith Kiwanga, and Ngune Abdul, the personal representative. CMA record shows that when the matter was called on 11th February 2021, respondent and her personal representative appeared, but neither the applicant, his advocates nor his personal representative appeared. When it was called on 24th February 2021, both Joriga, Personal representative of the applicant and Ngune Abdul personal representative of the applicant appeared, as a result, the matter was adjourned to 3rd March 2021. On 3rd March 2021, both Joriga and Ngune Abdul appeared, but the matter was adjourned to 18th March

2021 at 7:00hrs. The record is silent as to why the matter was adjourned. On 18th March 2021, Joriga, the personal representative of the respondent on one hand, and Assela Arcard and Faith Kiwanga, advocates on the other hand appeared for the applicant. On this day, the matter was not heard, but it was adjourned to 31st March 2021 at 09:00hrs. The record is also silent as to the reasons for adjournment. On 31st March 2021, Mr. Joriga, personal representative for the respondent appeared, but neither the applicant himself, his advocates nor personal representative showed up. The matter was adjourned to 14th April 2021 at 10:00hrs. On 14th April 2021, neither applicant's advocate nor personal representative appeared, as a result, Joriga, the personal representative of the respondent, prayed to proceed ex parte. The arbitrator ordered that ex parte hearing will be on 29th April 2021. On 29th April 2021, the dispute was heard ex parte and an ex parte award was issued on 28th May 2021.

After the said ex parte award was issued, applicant filed an application to set aside the said ex parte award. The notice of application was supported by an affidavit of Assela K. Arcard, advocate. I should point that the said affidavit is similar to the one the said the Assela K. Arcard, counsel for the applicant has filed in support of this application.

At CMA, respondent filed a notice of opposition and a counter affidavit. When the matter was called on 14th July 2021, Assela Arcard, advocate and Godfrey Tossi, a legal officer, appeared for the applicant while the respondent was represented by Joriga, her personal representative. The matter was adjourned for hearing on 30th July 2021 at 10:00hrs. On 29th July 2021, Assela Arcard, advocate for the applicant wrote and sent a notice of absence to CMA that she will be unable to attend hearing because she lost her close relative. The record is not clear as to what transpired on 30th July 2021 as it is silent. Thereafter the record shows that, the application to set aside *ex parte* award was heard on 9th August 2021 in presence of Assela Arcard, counsel for the applicant and Joachim Joriga, the personal representative for the respondent and a ruling thereof was set to be delivered on 27th August 2021. The record is silent as to what happened on 27th August 2021. The record shows further that, the ruling, the subject of this application, was delivered on 31st August 2021 and that, it was collected by Mr. Joachim Joriga, the personal representative of the respondent on the same date, while Godfrey Tossi for the applicant collected it on 6th September 2021. As pointed hereinabove, this application was filed on 28th October 2021.

From the foregoing facts, the court asked counsel for the applicant as to whether the application was filed within the prescribed time or not. Responding to that issue, Ms. Arcard, counsel for the applicant submitted that the application was filed within time. Counsel for the applicant submitted that the application was filed on 25th October 2021 as evidenced by the e-filing printout. Counsel for the applicant submitted further that, the award was served to the applicant on 17th September 2021 by Joachim Joriga, the personal representative of the respondent. Counsel for the applicant submitted also that, days started to run against the applicant from the date the award was served to him. She concluded that counting from the date of services of the award i.e., 17th September 2021, to the date of filing i.e., 25th October 2021, the application is within time. When she was asked by the court as whether; she knows Geoffrey Tossi; counsel for the applicant admitted that the said Geoffrey Tossi is a legal officer in her chambers. When she was shown a copy of the award that is in the CMA record, Ms. Arcard, conceded that the signature thereon belongs to the said Geoffrey Tossi, her legal officer. Ms. Faith Kiwanga also counsel for the applicant, joined hands of Ms. Arcard, advocate by submitting that the application was filed within time because applicant was served with the award on 17th September 2021 by Joachim Joriga.

The issue is whether the application was filed within the time prescribed under the law or not. As pointed out hereinabove, the record is clear that the ruling that is a subject of this application was ready for collection and was collected by the personal representative of the respondent on 31st August 2021, but the applicant collected it on 6th September 2021 and filed this application on 28th October 2021. The CMA record shows that the said **award was collected on 6th September 2021 by Geoffrey Tossi, the legal officer in the chambers of counsel for the applicant.** The argument that the said award was served to the applicant by Joliga, the personal representative of the respondent is not correct. It is evident that the award was collected by Godfrey Tossi, the legal officer in the chambers of counsel for the applicant. It was equally therefore, collected by counsels for the applicant because the said Godfrey Tossi was sent by counsels for the applicant. As it was collected by his counsels, applicant cannot say that the award was served to him on 17th September 2021

From the date the respondent collected the said ruling to the date the applicant filed this application, it is 58 days. From the date the said Geoffrey Tossi, the legal officer in the chambers of counsel for the applicant collected the said ruling i.e., 6th September 2021 to the date of

filing this application i.e., 25th October 2021 is 49 days. Section 91(1)(a) of the Employment and Labour Relations Act [Cap. 366 R. E. 2019] provides that an application for revision should be filed within six weeks i.e., 42 days from the date of the award. I am mindful that, days start to run from the date the award was served to the applicant as correctly submitted by counsel for the applicant. Since the CMA record shows that Geoffrey Tossi, the legal officer in the chambers of counsel for the applicant collected the award on 6th September 2021, days started to run against the applicant on this date. As pointed out hereinabove, the application was filed 49 days after the said Geoffrey Tossi has collected the award. It was therefore filed out of time.

Apart from that, at CMA, applicant was being represented by both Assela Arcard and Faith Kiwanga, learned advocates and one Ngune Abdul, the personal representative of the applicant. In the affidavit in support of this application and in support of the application filed at CMA seeking to set aside the exparte award, nothing was stated as to what prevented the said Faith Kiwanga, Advocate and Ngune Abdul, the personal representative from appearing at the time the said Assela Arcard, learned counsel was indisposed. More so, no information was sent to CMA by the said Assela Arcard to the effect that she was

indisposed prior to issuance of the order of hearing the dispute *exparte* and the award thereof. The only notice of absence that was sent to CMA by the said Assela Arcard, learned counsel, relates to the hearing of the application to set aside the *exparte* award on 30th July 2021 as she lost her close relative. In my view, there was no good cause for non-appearance of the applicant at CMA. I therefore hold that the arbitrator was justified to dismiss the application to set aside the *exparte* award that was filed by the applicant.

That said and done, this application stand to be dismissed for two reasons namely, (i) for being time barred and (ii) for lack of merit.

Dated at Dar es salaam, this 22nd March 2022.




B.E.K. Mganga
JUDGE