

TANZANIA / JUDGMENT

g4s secure solutions t ltd vs enos frank kitomari 2021 tzhc 6519 10 september 2021

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TZHCDECIDED
10 September 2021

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE DISTRICT REGISTRY OF SHINYANGA LABOUR DIVISION MISC. LABOUR APPLICATION NO. 14 OF 2020 (Originating from Labour Dispute No. CMAj SHYj239j2020) G4S SECURE SOLUTIONS (T) LTD APPLICANT VERSUS ENOS FRANK KITOMARI RESPONDENT

RULING

J!Jh August, & 1(fh September. 2021 MKWIZU, J On 25th may, 2021, applicant filed an application for revision against the Commission for Mediation and Arbitration (CMA) award in Labour Dispute No. CMA/SHY/239/2020. The application was preferred under section 91 (1) (a), 91 (2) (a) (b) and 94 (1) (b) (i) of the Employment and Labour Relations Act (No.6 of 2004), read together with Rule 24 (1), (2) (a) (b) (c) (d) (e)

(f) & (3) (a) (b) (c) (d) and Rule 28 (1) (a), (b) (c) (d) (e) and Rule 28 (2) of the Labour Court Rules, 2007 GN No. 106 of 2007. The application was confronted with a notice preliminary objection filed by the respondent's counsel on 15/6/2021. The notice reads; 1 "The application for revision filed on 25/05/202 against the CMA Award in CMA/SHY/239/2020 dated 03/03/2021 is hopelessly time barred" Since it is a rule of practice that preliminary objections on point of law must be determined first, parties were allowed to submit on the raised preliminary objections before going into the merit of the matter. During hearing of preliminary objection, Mr. Mathew Kija, Advocate represented the respondent and Mr. Moses Kyondo also learned Advocate appeared for the applicant. Submitting in support of the preliminary objection, Mr. Mathew Kija informed the court that according to section 91 (1) (a) of the Employment and Labour Relations Act, CMA award can be challenged by the aggrieved party filling a revision within six weeks from the date of service on him the copy of the award. The award issued by Magreth Kiwara was served on the applicant on 8/4/2021 and the application before this court was filed on 25th May, 2021 six days after the expiry of the 42 days period provided for by the law. He contended that, the application is time barred liable to be dismissed. In response to the preliminary objection, Mr. Kiondo submitted that according to paragraph 18 of the affidavit in support of the application, the application is rooted on the issue of improper procurement of the award falling under section 91 (1) (b) of the Employment and Labour Relations Act which allows filing of the revision by an

aggrieved party within six weeks after the discovery of the improper procurement of the award. He said, the award was issued on 3/3/2021, it was served upon the applicant on 8/4/2021² and that the improper procurement was discovered on 8/5/2021 necessitating the filing of the revision thereafter. Explaining on the details of improper procurement, applicant's counsel argued that the complaint at the CMA was determined outside the time required under Rule 10 (1) of GN No. 64 of 2007. On this stated, Mr. Kiondo, the letter of retrenchment was issued to the respondent on 31/8/2020 while the dispute at the CMA was referred on 4/11/2020 beyond 30 days period. He prayed for the dismissal of the Preliminary point raised. In rejoinder Mr. Kija proposed that, the issue raised by the applicant's counsel entailing improper procurement do not fall on the definition of the improper procurement as explained in the case of Mahawi Enterprises Limited V. Serengeti Breweries Ltd, Mise. Commercial Cause No.9 of 2018. I have given the preliminary objection, the application as well as the parties counsel's submissions a thorough scrutiny. The point as raised in the preliminary objection is whether the revision is time barred or not. Counsels are in agreement that revision of the CMA award is preferable either under Section 91 (1) (a) or 91(1) (b) of the Employment and Labour Relations Act. The battle is on which subsection of section 91 of the ELRA, the application was preferred. While respondents counsel contends that the application ought to have been brought within 42 days from the date of service on the applicant the CMA's award under Section 91 (1) (a) of the ELRA, Applicant's counsel says, the revision was filed under section 91 (1) (b) of the ELRA.³ The two section gives two unrelated situations under which revision of the CMA award may be filed. The section provides: "91.-(1) Any party to an arbitration award made under section 8 8(8) 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. // (Emphasis added) I have visited the application for revision under scrutiny. The Notice of Application and the chamber summons by the applicant filed on 25/5/2021 partly read: "Made under section 91 (1)(a) and (2)(a)(b) and 94(1)(b)(i) of the Employment and Labour Relations Act (No. 6 of 2004/ read together with Rule 24(1)/ (2) (a)(b) (c)(d)(e)(f) & (3)(a)(b)(c)(d) and Rule 28 (1) (a/ (b) (c)
- (d) (e) and Rule 28 (2) of the Labour Court Rules, 2007 GN No. 106 of 2007. // (Emphasis supplied) Citation of the above provisions of the law was not for decorative purposes. They are enabling provisions on which this court is moved to decide the requested prayers. As the application stands, the application is made under section 91 (1) (a) which obliges the applicant to file the revision within 42 days (six weeks) from the date of service on him of the CMA award.⁴ Applicant's counsel's submissions that the revision was made under 91 (1)

- (b) is an afterthought. That being the situation, then applicant ought to have filed his application within six weeks after service on the applicant the copy of the Award. Apparently, copy of the award was served to the applicant on 8/4/2021. By simple arithmetic, 42 days came to an end on 19/5/2021. Present revision was filed on 25/5/2021, six days after the lapse of the six weeks period prescribed by the law, hence, time bared liable to be dismissed as prayed for by the respondent's counsel. That said, the preliminary objection is sustained. The time barred application is dismissed. Being a labour matter, I make no order as to costs. It is so ordered. DATED at SHINYANGA this 10th of September, 2021 5
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