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**THE UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION OF THE HIGH COURT**

AT DAR ES SALAAM

LABOUR REVISION NO. 276 OF 2009

BETWEEN

TANZANIA ONE MINING LTD. - APPLICANT

AND

ANDRE VENTER - RESPONDENT

(ORIGINAL CMA/AR/03/09)

30/3/2010 & 16/4/2010

S.C. MOSHI, J.

RULING

This ruling is pursuant to an application for revision brought under Rule 24(2) of the Labour Court Rules, G.N. No.106 of 2007. The applicant is seeking revision of Arbitrators award which was procured on 25/8/2009. The application is based on four grounds which were stated in the applicant's advocate affidavit as well as submitted orally during the hearing of the application. The advanced grounds were thus:-

- (1) That the Commission for Mediation and Arbitration (C.M.A.) at Arusha erred in entertaining the complaint that was time barred.
- (2) That the C.M.A erred in exercising jurisdiction not vested on it and presiding over a dispute that was not properly before it.
- (3) That the C.M.A. erred in awarding reliefs in excess of what was pleaded and in exercising its jurisdiction with material irregularity.

(4) That the C.M.A erred in adopting a lopsided evaluation and assessment of evidence, and in making finding that are incongruous to material facts.

I have heard both sides submissions and have taken into consideration both of them. Also I have taken into consideration the affidavit, counter affidavit and the record as a whole and I have the following considered observations and findings:-

(a) Whether the CMA entertained a dispute which was time barred hence exercised jurisdiction not vested in it by the law and failed to exercise the jurisdiction so vested. Rule 10 (1) of the Labour Institutions (Mediation and Arbitration) G.N. No.64/2007 disputes about the fairness of an employee's termination of employment must be referred to the Commission within 30 (thirty) days from the date of termination or the date that the employer made a final decision to terminate or uphold the decision to terminate.

In our case, the termination of service letter was written to the respondent on 15/9/2008. The 1st paragraph of the said letter states as here under quoted:-

"In terms of your employment contract with Tanzanite One Mining Limited, you are hereby notified that your employment is terminated with effect from two months as of from today see paragraph 14.2.2.2."

The respondent referred the dispute to C.M.A on 6/11/2008. The issue before the C.M.A. as well as before this Court is what is the

termination date i.e whether on 15/09/2008 when the letter was issued or on 15/11/2008 which is the two months from the date which the letter of notification of termination was issued. The arbitrator found that the date of termination was 15/11/2008. However the dispute was referred on 6/11/2008.

It is my view that, going by the provisions of Rule 10 (1) of the cited G.N. No. 64, the arbitrator had to consider, whether 6/11/2008 falls within thirty 30 days from the date of termination or the date that the employer made a final decision to terminate. By the contents of the termination letter, the final decision to terminate was made on 15/9/2008 when the letter was written and issued to the respondent. The effective date of termination was indicated to be 15/11/2008.

It's common ground that the applicant had not worked for the respondent since when the termination letter was issued. It is also in evidence that he was repatriated to South Africa immediately after. According to the respondent, he referred the matter to C.M.A. since he believes that the termination of his services was unfair. The matter was referred to C.M.A. on 6/11/2008. Now the issue which arises here is whether 6/11/2008 was within thirty days from the date of termination or the date that the employer made a final decision to terminate or uphold the decision of terminate.

The answer, it is my considered view that it is in the negative. The facts in evidence indicate that the employer (applicant) paid the respondent (employee) some of the terminal benefits such as repatriation costs, Severance allowance, etc. Hence, these facts supports the

thinking that the employer made a final decision to terminate on 15/09/2008. It is my view that, that is when; the date on which the dispute arose. As that is the date which the process of termination started and also the date which the final decision to terminate was communicated to the respondent, 6/11/2008, the date which the dispute was referred to C.M.A was more than 30 (thirty) days from 15/9/2010. Even if the respondent argument would be valid; that the termination date is 15/11/2008; then the matter would have been prematurely referred to CMA.

From what I have discussed above, it is apparent that the matter was referred to the C.M.A. out of time in contravention of Rule 10(1) of G.N. 64/2007. Furthermore no condonation was applied for as required by the law, see Rule 11 of G.N. 64/2007 Rule 11 applies to late referrals; where a party can seek condonation for application referred out of time; and it sets out how the same has to be processed.

Having discussed as I did, I find that the C.M.A. erred to entertain the dispute that was time barred; hence exercising jurisdiction not vested on it; and it failed to exercise the jurisdiction so vested by it failing to reject the matter brought out of time, thus it acted illegally.


Now what's the fate or result of working illegally or dealing with the matter without possessing jurisdiction to entertain it?

All what is based on illegalities is rendered illegal. Hence all the findings and orders made there from were illegal. I therefore will not discuss the remaining issues, as however good or valid the arguments may be, they cannot stand on a matter which was not properly before the C.M.A.

The only remedy, if the respondent is interested to pursue this matter, is to seek condonation to file the same out of time.


Basing on the aforesaid, I grant the application, quash the C.M.A proceedings and set aside the award.

R/A Explained.


S.C. Moshi
JUDGE
30/03/2010

Date: 16/4/2010
Coram: Hon. S.C. Moshi, J.
Applicant: Marry Kamungu – Personal Assistant Tanzanite One- Present.
For “ Absent
Respondent: Mr. Ande Venter – Present
For “ Absent
CC: J. Kalolo

Court: The Ruling is read on this 16th day of April, 2010 in presence of the parties.


S.C. Moshi
JUDGE
16/4/2010

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