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THE UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION OF THE HIGH COURT
AT DAR ES SALAAM

LABOUR REVISION NO.62 OF 2009

BETWEEN

M/S. METRO PLASTIC INDUSTRIES LIMITED ----- APPLICANT

AND

1. ABU MKUBWA
2. RICHARD MWAIFUNGA T/A YONO AUCTION MART ---- RESPONDENT
(Original CMA/DSM/KIN-ILA/453)

16/04/2010 & 28/04/2010

S.C. MOSHI, J.:

RULING

The issue before us is whether the application for Revision is within the prescribed time? A notice of Preliminary Objection was lodged by the respondent to the effect that the application is time barred as it has been filed out of time contrary to Section 91(1) (a) of the Employment and Labour Relations Act, No.6/2004.

It was agreed by the parties, and granted by the Court that the Preliminary Objection on point of Law (PO) should be urged by way of Written Submissions. The applicant filed his Submission as ordered however the respondent didn't comply with Court's order. Hence the Court proceeded to prepare the present Ruling.

The applicant submitted at lengthy on the merits of the application; however, with due respect; it's my view that it was a misdirection as the parties were required to argue on the PO only so that the Court could satisfy itself if the matter is properly before it.

The record shows that the C.M.A award was procured Ex-parte on 11/10/2007; it was in favour of the employee (respondent). Thereafter, the applicant (employer) lodged an application to set aside an ex-parte award on 3/12/2008. The application was dismissed for lack of merits. Then the present application; was filed on 26/03/2009. It's very unfortunate that the said ruling, which is the subject of the application, was NOT DATED. It is my view that time limit for lodging an application for Revision would start to run on the date when the parties were served with the decision or the date on which the ruling was delivered.

Although the matter had come for PO determination, I will, under Rule 28 of the Labour Court Rules revise the C.M.A award on the following grounds:-

- i) The C.M.A Ruling which is the subject of the present application is not dated.
- ii) Section 86(3) and 88(2) of the Employment and Labour Relations Act, No.6/2004 were contravened; as the Mediator converted himself to an arbitrator; the arbitrator ought to be appointed by the Commission; see the case of PROJECT MANAGER BARRICK GOLD MINE (BULYANHULU) VS. ADRIANO O. OTHIAMBO REV.NO. 290/2008, HIGH COURT DIVISION AT MWANZA, RWEYEMAMU, J.
- iii) There was no proof of service to justify the C.M.A to proceed Ex-parte. I therefore, under Rule 28 of the Labour Court Rules quash the proceedings

and set aside all orders made thereunder. The matter should start afresh in accordance with the law.


S.C. Moshi
JUDGE
27/04/2010

Date: 28/04/2010
Coram: Hon. S.C. Moshi, J.
Applicant: ABS
For " Mr. Mbuga for
Respondent: ABS
For " ABS
CC: Happy

Order: Delivered on this 28th day of April, 2010.


S.C. Moshi
JUDGE
28/04/2010

Copies:

1. M/s Metro Plastic Industries Ltd.,
Panayotou Building,
Adjacent BMTL,
DAR ES SALAAM.
2. Abuu Mkubwa & Richar Mwaifunga T/A,
Yono Auction Mart,
DAR ES SALAAM.