

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM  
CIVIL APPLICATION NO. 311/18 OF 2022**

**TANZANIA LOCAL GOVERNMENT WORKERS**

**UNION (TALGWU)..... APPLICANT**

**VERSUS**

**SOSPETER GALLUS OMOLLO..... RESPONDENT**

**(Application for Extension of Time to apply for Stay of Execution of judgment  
and decree of the High Court of Tanzania, Labour Division, at Dar es Salaam)**

**(Rwizile, J.)**

**dated the 26<sup>th</sup> November, 2021**

**in**

**Labour Revision No. 265 of 2020**

\*\*\*\*\*

**RULING**

*30<sup>th</sup> May & 9<sup>th</sup> August, 2023*

**FIKIRINI, J.A.:**

By way of notice of motion made under rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules), the applicant moved the Court praying to be granted extension of time within which the applicant may apply for stay of execution. An affidavit of Burton Mayage, learned advocate duly authorized to swear, and written submissions filed on 6<sup>th</sup> July, 2022 support the notice of

motion. Contesting the application, the respondent Sospeter Gaius Omollo filed an affidavit in reply.

At the hearing, which took place on 30<sup>th</sup> May, 2023, Mr. Mashaka Mfala and Mr. Magusu Mugoka both learned advocates appeared for their respective parties. Mr. Mfala had a few remarks to make to bolster the affidavit and written submission filed in support of the application, which he adopted to make part of his oral submission. On the reasons why the application should be granted, Mr. Mfala had three grounds: **one**, on why the applicant was late to file the intended application, he contended that the applicant had all along been within the courts' corridors pursuing justice. Initially, the application for stay was filed but was later withdrawn. Since time had elapsed, the present application was inevitable.

**Two**, he contended that there were serious irregularities in the CMA proceedings and judgment. The alleged irregularities are that: (i) the witnesses testified without taking oath, which was contrary to regulation 25 (1) of the Labour (Mediation & Arbitration Guidelines), Rules, GN. No. 64 of 2007, and (ii) the Arbitrator did not append his signature after the testimony of every witness. It was his concern that if those proceedings were left

unattended and execution proceeded, besides his client being jeopardized but the court would be put in disgrace.

**Three,** that this Court had, in most cases, allowed application upon showing good cause. In the present situation, since there are irregularities and illegalities which need to be rectified and this Court is well placed to do so, the application should be granted.

After adopting the affidavit in reply, Mr. Mugoka, earnestly opposed the grant of the application. His premises were that, right after the judgment on 21<sup>st</sup> November, 2021 the applicant did not take any steps. Pointing out instances from the affidavit deponed in support of the application, he referred to paragraph 8 of the affidavit in which it was admitted that the applicant became aware of the execution lodged on 9<sup>th</sup> March, 2022 and fixed for mention on 17<sup>th</sup> May, 2022 and that the applicant's advocate entered appearance. Computing from March to May was almost two (2) months without the applicant taking any steps to apply for stay of execution of the decree. According to Mr. Mugoka, the applicant has failed to account for each day of the delay by stating the reasons, which are concrete and acceptable by the Court.

On the point that the proceedings, judgment and award by the CMA were marred with irregularities and illegalities, he contended that the allegations that the witnesses testified without taking oath and that the Arbitrator did not append his signature were not averred in the affidavit by specifically indicating the anomalies. Citing the case of **Zito Zuberi Kabwe & 2 Others v. The Honourable Attorney General**, Civil Application No. 365/01 of 2010 (unreported) in which the Court held that the irregularity claimed should be apparent on the face of the record.

Mr. Mugoka implored the Court to decline and dismiss the application with costs since the applicant had failed to state clearly the claimed irregularities and illegalities. According to the learned counsel, the application, if anything, was intended to delay the intended execution.

In response, Mr. Mfala admitted that the applicant was aware of the lodgment of the application for execution and thus the reason why the application for stay of execution was filed, though withdrawn later. Besides, the applicant has all along been in the court corridors, searching for its right and not sleeping on it as the respondent's counsel suggested, Mr. Mfala maintained.

Distinguishing the decision in **Zito Zuberi Kabwe** (supra), he submitted that, whereas in the cited case, the claimed irregularities and illegalities were not clear, in the present application, the irregularities and illegalities had been shown in annexure TALGWU-4 the CMA proceedings. Supporting his submission, Mr. Mfala referred to the case of **Exim Bank (Tanzania) Limited v. Jacqueline A. Kweka**, Civil Application No. 348/18 of 2020, annexed to the written submissions.

Concluding his response, he prayed for the application to be allowed for the interest of justice so as to enable rectification of the illegalities, failure of which the same might be used in the future as the correct way of conducting proceedings. He argued that as the highest Court of the land, it should not allow the illegalities to remain on record as that would be catastrophic.

After considering the notice of motion, affidavits and submissions from counsel for the parties, I am now required to determine two things: **one**, whether the applicant has shown good cause warranting the grant of the application and **two**, whether the alleged irregularities and illegalities are apparent on the face of the record.

The Court has obtained its powers to grant or not to grant the application of this nature from rule 10 of the Rules, which requires the applicant to show good cause. The provision provides that:-

*"10-The Court may, upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or tribunal, for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these rules to any such time shall be construed as a reference to that time as so extended."*

Construing from the provision, the powers vested upon the Court are discretionary and can be exercised once a good cause has been shown. More so, even though discretionary, those powers have to be exercised judiciously regarding each case's particular circumstances. Although there is no exact or specific definition of what amounts to a good cause that can determine whether to grant the application or not, guidelines have been enumerated through case laws. The guidelines though not exhaustive, are as propounded in the cases of **Mbogo v. Shah** [1968] E.A. the defunct Court of Appeal for Eastern Africa, **Fortunatus Masha v. William Shija & Another** [1997],

**Insignia Limited v. Commissioner General (TRA)**, Civil Application No. 2 of 2007, **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christina Association of Tanzania**, Civil Application No. 2 of 2010 and **Amani Centre for Street Children v. Viso Construction Company Ltd**, Civil Application No. 105 of 2013 (all unreported) to mention a few. In **Mbogo** (supra), the Court had this to say:-

*"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. **These factors include the length of the delay, the reason for the delay, and the degree of prejudice to the respondent or defendant if time is extended.**"*

[Emphasis added]

After setting the stage, the crucial question to be answered is whether the present application deserves granting. On the first limb, the argument is that applicant had been in court corridors pursuing their rights. The assertion sounds plausible. However, the law requires the account of each of the delayed days, which the applicant has not been able to make. After the impugned decision on 26<sup>th</sup> November, 2021, the applicant filed a notice of appeal and a letter requesting to be furnished with the necessary documents to challenge the decision on 8<sup>th</sup> December, 2021.

Despite not indicating when were the requested documents furnished, the applicant seemed to have not taken any measure until 30<sup>th</sup> March, 2022 when the application for stay of execution registered as Civil Application No. 134/18 of 2022 was filed before this Court. The application was later withdrawn for being filed out of time.

Pursuant to rule 11 (4) and (4A) of the Rules, after a notice of appeal has been lodged as it is in the present application, and the application for execution has been filed. After the applicant has been notified, the application for stay of execution should have been lodged within fourteen (14) days. In the instant application, the notice of appeal was lodged on 8<sup>th</sup> December, 2021 and the Application for Execution No. 57 of 2022 was lodged on 17<sup>th</sup> February, 2022. The applicant was aware as of 9<sup>th</sup> March, 2022, as indicated in paragraph 8 of the affidavit supporting the application for stay of execution. Fourteen (14) days from 9<sup>th</sup> March, 2022 would have ended on 23<sup>rd</sup> March or thereabout. The application for stay of execution, which was withdrawn later, was filed on 30<sup>th</sup> March, 2022.

Accounting for each day of the delay is the backbone of the application for extension of time. As well illustrated in the **Lyamuya Construction Company Ltd** (supra). The delay even of one day must be explained as



underscored in the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported). The Court stated as follows:

*“Delay, of even a single day, has to be accounted for otherwise, there would be no point of having rules prescribing periods within which certain steps have to be taken.”*

In the present application, as indeed submitted by Mr. Mugoka, the submission to which I relate myself, there were no concrete and significant reasons advanced by the applicant accounting for each day of the delay as required in law. The first limb of his argument that the applicant has all along been in the court corridors pursuing its rights is unsubstantiated, particularly from 9<sup>th</sup> March 2022 up to when the present application was filed. The applicant’s submission on this point is without merit.

Coming to the second limb on illegalities, the law is settled that where an issue of illegality or illegalities has been raised as a ground, it constitutes sufficient ground. In several of its decisions, this Court has discernably pronounced that illegality constitutes sufficient ground. In its recent decision in the case of **Vodacom Tanzania Limited v. Innocent Daniel Njau**, Civil Appeal No. 60 of 2019 (unreported), echoing its position in the **Principal**

**Secretary, Ministry of Defence and National Services** (supra), the Court underlined this:-

*"We are of the considered opinion that the learned Judge ought to have exercised his discretion judiciously to **consider even the ground of illegality which was also pleaded by the appellant because "sufficient reason" does not only entail reasons of delay, but also sound reasons for extending time.** In particular, whether the ground of illegality raised by the appellant was worth consideration in determining whether or not to grant the application...."*[Emphasis added]

See also: **The Attorney General v. Tanzania Ports Authority & Another**, Civil Application No. 87 of 2016, **VIP Engineering and Marketing Limited & 2 Others v. Citibank (T) Ltd**, Consolidated Civil References Nos. 6, 7 and 8 of 2006

Even though the applicant has pleaded illegalities as reflected in paragraph (e) immediately after paragraph 4 and paragraph 7 of the affidavit in support of the application, that: (i) witnesses testified without taking oath as required in law and (ii) the Arbitrator did not append his signature at the end of each witness's testimony as required in law; unfortunately, the

application before me is for extension of time to apply for a stay of execution. Since the grant of stay of execution would not resolve the illegalities and irregularities complained about, I find the application misconceived. Luckily this is not the first time such an issue has arisen. In the case of **Ibrahim Twahil Kusundwa & Another v. Epimaki S. Makoi & Another**, Civil Application No. 437/17 of 2022, in which the case of **Iron and Steel Limited v. Martin Kumaliya and 117 Others**, Civil Application No. 292/18 of 2020 (both unreported) was referred. In **Martin Kumaliya's** case (supra), the Court pondering on the relief sought had this to say:-

*"...an illegality of impugned decision will not be used to extend time in the circumstances of this case, for no room will be available to rectify it in the application for stay of execution intended to be filed. **Illegality of the impugned decision is not a panacea for all applications for extension of time. It is only one in situations where, if the extension sought is granted, that illegality will be addressed.**"*[Emphasis added]

See also: **Sabena Technics Dar Limited v. Michael J. Luwunzu**, Civil Application No. 451 of 2020 (unreported).

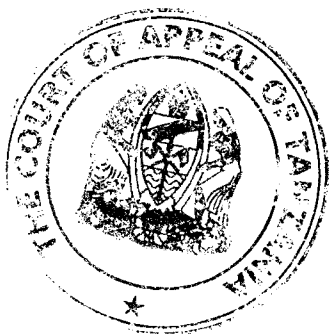
Without much ado, in this application, similarly, the extension of time sought, if granted, will still not resolve the illegalities pleaded in the affidavit supporting the application. The illegalities pointed out are from the proceedings and the decision before the Commission for Mediation and Arbitration (CMA), which in no way would be dealt with in the intended application for stay of execution. Indeed, the ground of illegality is misconceived. Consequently, this application is dismissed for lacking in merit with costs.

It is so ordered.

**DATED at DAR ES SALAAM** this 7<sup>th</sup> day of August, 2023.

P. S. FIKIRINI  
**JUSTICE OF APPEAL**

The Ruling delivered this 9<sup>th</sup> day of August, 2023 in the presence of Ms. Farida Ibrahim Kerenge holding brief for Mr. Mashaka Mfala, learned counsel for the applicant and also for Mr. David Ndossy, learned counsel for the respondent, is hereby certified as a true copy of the original.



  
J. E. FOVO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**