

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 572/17 of 2021**

**KENYA KAZI SECURITY (T) LTD ..... APPLICANT**

**VERSUS**

**SOPHIA KALISTI GUAREHHI ..... RESPONDENT**

**(Arising from the decision of the High Court of Tanzania, (Labour Division)  
at Dar es Salaam)**

**(Aboud, J.)**

**dated the 11<sup>th</sup> day of September, 2020**

**in**

**REVISION No.196 of 2019**

-----

**RULING**

15<sup>th</sup> & 23<sup>rd</sup> November, 2023

**MLACHA, J.A.:**

This is an application for extension of time to file stay of execution of the award of the Commission for Mediation and Arbitration (the CMA) made in CMA/DSM/KIN/R.159/18. The application is brought by notice of motion under rules 10 and 48 (1) of the Tanzania Court of Appeal Rules, 2009, (the Rules). It is supported by affidavit of Daviel Mwakanjila, an administrative officer of the applicant company.

The grounds upon which this application is brought reads thus:

- 1. That, the applicant filed application for stay of Execution which was received timely at the Court Registry however*

*the delay occurred on admission process at the Registrar office.*

*2. That the award sought to be challenged is tainted with many illegalities and irregularities which if left to stand will set a bad precedent, more specifically the failure to grant an opportunity to the applicant to be heard as the CMA award was procured ex-parte.*

*3. That the delay to file stay of execution was not inordinate.*

The background of the matter as can be gathered from the notice of motion and affidavit in support of the application is as follows: The respondent, Sophia Kalisti Guarehhi was employed by the applicant on a date which could not be specified in 2012 and worked up to 18/1/2018 when her services were terminated. Aggrieved by the termination, she approached the CMA and filed a labour dispute, CMA/DSM/KIN/R.159/18 which was heard *ex parte* upon the applicant failing to enter an appearance. The CMA delivered its award on 26/6/2018, giving victory to the respondent, who was awarded TZS 6,846,153/= being payments for notice, leave, severance allowance and 24 month's salary. The applicant appeared at the CMA and attempted to set the award aside without success. She filed a revision at the High Court of Tanzania, Labour Division to challenge the decision but it was dismissed. She then filed an application for execution which is now pending at the High Court.

The respondent lodged an affidavit in reply and contradicted the above facts. She denied service of the notice of appeal and the letter requesting for copies of proceedings. She also denied knowledge of the appeal. She accused the applicant for being negligent in handling the matter.

The applicant was represented by Mrs. Neema Ndosu while the respondent had the services of Mr. Alphonse Katemi.

Submitting before me, counsel for the applicant said that the application for execution was filed at the High Court of Tanzania on 1<sup>st</sup> October 2021. Service of the summons to appear before the High Court for execution was served to the applicant on 16<sup>th</sup> October 2021. She filed an application for stay of execution before the Court on 20<sup>th</sup> October 2021. It was not admitted on the same day. It came from the office of the registrar on the following day; 21<sup>st</sup> day of October 2021 and passed for payment of fees. She paid the fees and it was received but when it came for hearing before a single judge on 3<sup>rd</sup> November, 2021, she noted the delay and decided to abandon the *ex parte* application. She prayed to refer the application to the full Court. It moved to the full Court where it was withdrawn.

Counsel went on to submit that the applicant did not get a copy of the order on the same date. And since 13<sup>th</sup> and 14<sup>th</sup> November were

weekends, she could not file this application in these days. She filed on 16<sup>th</sup> November 2021. She submitted that, the delay on the first period was for one day and in the second period was just 6 days both of which had justification on reasons given. She has the view that the account was enough to justify the delay. She referred the Court to **Philemon Mang'ete t/a Bukine Traders v. Gesbo Hebron Bajuta**, Civil Application No. 8 of 2016 (unreported) page 5, a copy of which, is attached in the list of authorities.

In ground two, counsel submitted that, the award of CMA was procured illegally because the mediator acted without jurisdiction contrary to section 88(2) of The Employment and Labour Relations Act, Cap 366. Giving details, counsel submitted that the case was placed before him as a mediator but he converted himself to an arbitrator without an assignment and heard it. Counsel had the opinion that this was contrary to the law and constitutes an illegality which is a ground for extension of time. He relied on the case of **The Principal Secretary Ministry of Defence and Naional Service v. Devram Valambia** (1997) TLR 189 and **VIP Engineering and Marketing Ltd & 2 others v. Citibank Tanzania Ltd**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 as his authority on this point. He added that they have filed Civil Appeal No. 157/2021 before the Court and it has an overwhelming chances of success.

In response, Mr. Katemi strenuously opposed the application by arguing that the applicant has failed to adduce reasons to justify the delay other than giving the history of the matter. He said that apart from some relevance which is in para 15 and 16 of the affidavit in support of the application, there is nothing more. He said that there is no account of delay of the period between 4/11/2021 and 15/11/2021 in the affidavits and submissions of the applicant. He said that the case of **Henry Mayunga v. Tanzania Telecommunication Company Ltd**, Civil Application No. 8 of 2011 (unreported) which is in the applicant's list of authorities cannot assist the applicant because she has failed to account for the delay.

Submitting on illegality, counsel for the respondent had the view that, the applicant has misconceived the principle by making reference to the decision of the CMA instead of the impugned decision of the High Court. Further, the illegality of the award of CMA is raised at a stage which is not proper. He had the view that it must have been tested in the High Court before coming to the Court. He said that this is wrong. He went on to submit that, the notice of appeal is incompetent because it was not served to the respondent. He argued the Court to dismiss the application.

In rejoinder, Mrs. Ndosu submitted that, they served the notice and the record of appeal to the respondent and she filed submissions in the

appeal. She went on to submit that an account for delay was done at para 14, 15 and 16 of the affidavit in support of the application. It is also in para 2 of the submissions. He added that, illegality can be raised at any time.

Having heard the counsel for the parties, the main issue for determination is whether the applicant has shown good cause for the delay to justify extension of time under rule 10 of the Rules. Rule 10 has two elements; the discretionary powers of court and good cause. The two must co-exist to warrant the grant of extension of time. What amounts to "good cause" is not defined in the Rules but case law has established some factors to be considered like, the length of delay involved, the reasons for the delay; the decree of prejudice, if any, that each party stands to suffer depending on how the Court exercises its discretion; the conduct of the parties, and the need to balance the interest of a party who has a decision in his or her favor a party who has a constitutionally under pinned right of appeal. This is reflected in numerous authorities which include those cited by counsel. Others are **Mark-Kim Chemicals Limited v. Gadgetronix Net Limited**, Civil Application No. 501/16 of 2019, **Dar es salaam City Council v. Jayantilal P. Pajan**, Civil Application No. 27 of 1987, **Elia Anderson v. Republic**, Criminal Application No. 2 of 2013 and **Attorney General v. Tanzania Ports**

**Authority & Another**, Civil Application No. 87 of 2016 (all unreported). They all call for the applicant to account for the delay and show that there was no negligence on her side. They also call the Court to check the balance of convenience between the parties.

Ground two is on illegality of the decision. Leading cases in this area include **The Principal Secretary Ministry of Defence and National Service** (supra), **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 and **Arunaben Chaggan Mistry v. Naushad Mohamed Hussein & 3 others**, Civil Application No. 6 of 2016 (all unreported). They all say that illegality of the decision where established is a ground for extending the time under Rule 10 of the Rules.

The record is loud that application for execution No. 408/2021 was served to the applicant on 6/10/2021. This is not disputed so I will take this as the date when the applicant became aware of the execution. The applicant lodged this application on 20/10/2021 but payment of fees was done on the next day, that is, on 21/10/2021. The applicant says that, she was delayed by internal processes of the registry which took the matter to 21/10/2021 when it was released for payment of fees. She filed it on 21/10/2021 making her late for a day. She also argued that she could

not get a copy of the order of this Court in time. It took her 6 days to get it. She says that the delay is justified. The respondent does not see any justification in the delays. She calls it negligence.

Having examined the matter closely, I have noted that, the applicant is trying to throw the blame to the office of the Registrar. That if it had processed her application on the day it was submitted, she could not have been late. She is also blaming the single judge for failing to release a copy of the order on the day it was pronounced. With respect, I don't agree with her. I think it was important to bring affidavits from the office of the Registrar to show that the delay was caused by his office. In the absence of evidence from that office, it has been difficult for me to believe her. Ground one is thus baseless and dismissed.

Ground two is also baseless. I am in agreement with counsel for the respondent that, much as illegality is a base for extending the time, as shown in the authorities cited by counsel, but that principle cannot be extended to include illegalities up to the sky. It is limited to illegalities on the face of the impugned decision. That was not the situation in this case which make reference to the decision of the CMA. Making reference to an illegality in the award of the CMA before the Court, was erroneous and cannot be used as a base for extending the time. Ground two is rejected and dismissed.



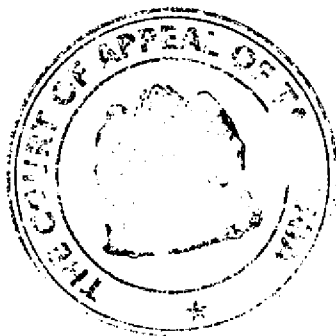
In view of what has been said above, I am satisfied that, the applicant has failed to show good cause to allow the Court to exercise its discretion under rule 10 of the Rules, to extend the time for lodging the application for stay of execution. The application is dismissed.

It is so ordered.

**DATED at DAR ES SALAAM** this 21<sup>st</sup> day of November, 2023.

L. M. MLACHA  
**JUSTICE OF APPEAL**

The Ruling delivered this 23<sup>st</sup> day of November, 2023 in the presence of Mr. Alphonse Katemi holding brief for Ms. Neema Ndos, learned Counsel for the Applicant, who is also, learned counsel for the Respondent is hereby certified as a true copy of the original.



  
D. R. LYIMO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**