

**IN THE HIGH COURT OF TANZANIA**  
**LABOUR DIVISION**  
**AT MUSOMA**  
**MISCELLANEOUS LABOUR APPLICATION NO 25 OF 2020**

**KATIBU DAYOSISI YA MARA** \_\_\_\_\_ **APPLICANT**

**VERSUS**

**RAPHAEL JUMA KASERA** \_\_\_\_\_ **RESPONDENT**

*(Arising from the decision and orders of this court, Galeba J. in labour revision no 5 of 2019 dated 28.10.2019)*

**RULING**

*Dates; 27<sup>th</sup> August and 4<sup>th</sup> September 2020*

**GALEBA, J.**

This is an application for extension of time within which the applicant can file an application to set aside a dismissal order dated 28.10.2019. It all started with labor dispute no **CMA/MUS/248/2017** which, was filed at the Commission for Mediation and Arbitration (the CMA) in Musoma. In that labour matter, which had been instituted by **RAPHAEL JUMA KASERA (MR. KASERA)**, the CMA ordered **KATIBU DAYOSISI YA MARA (KATIBU)** to pay **MR. KASERA** Tshs. 3,823,385/= in 30 days from 26.11.2018 when the award of the CMA was passed. **KATIBU** was aggrieved by that decision and he filed labor revision no. 5 of 2019. When that labor revision came before me for hearing on 28.10.2019 I dismissed it for want of prosecution, because **KATIBU** with information of the hearing date was not



represented although **MR. KASERA** was present. From that day nothing was done until 14.05.2020 when he filed the present application.

This application is supported by the affidavit of **MAXIMILLIAN LYAMSEMA**, whose contents are crucial at paragraphs 2, 5 and 6. According to paragraph 2, the decision of the CMA has serious illegalities which need attention of this court and according to paragraphs 5 and 6, **KATIBU** knew of the dismissal order on the same day of the dismissal and was informed that the case had been dismissed. I will quote those paragraphs *in extenso*;

*"2. That the CMA award contains serious illegalities and irregularity to be determined by this honorable court.*

*5. That, on 15<sup>th</sup> day of January 2019 I filed Labour Revision No. 5 of 2019 at the High Court of Tanzania, Labour Division at Musoma which was struck out on 28.10.2019 by Z. N. Galeba, Judge for want of prosecution. A copy of the Order is herein attached and marked as Annexure W-2 to for part of this affidavit.*

*6. That, on the said date my representative was on travel from Dar es Salaam and he failed to arrive on time and my phone was not accessible, he phoned my co-worker who informed at 11:40 am that I was supposed to attend to court, when I went there the case was already heard and order delivered."*


When this application came up for hearing on 27.08.2020 **KATIBU** was appearing by **MR. WAMBURA KISIKA**, learned advocate and **MR. KASERA** appeared in person. The latter abandoned his objections, so we proceeded to deal with the substantive application.

In supporting the application Mr. Kisika submitted that although he has no valid reasons to explain the delay from 10.12.2019, the latest

day when he was supposed to file the application to set aside the dismissal of 28.10.2019, but there were serious illegalities in the decision of the CMA. He added that legally, once an illegality is established in a matter to be challenged, then an extension of time must be granted even if there was to be no explanation as to the delay. He cited **CIVIL APPLICATION NO 225 OF 2014; VICTORIA REAL ESTATE DEVELOPMENT LIMITED VERSUS TANZANIA INVESTMENT BANK AND THREE OTHERS CA DSM** and **CIVIL APPLICATION NO 539 OF 2019; SAID MUNSIRO VERSUS CHACHA MWIKWABE CA MWZ**, both unreported.

As for the illegalities, Mr. Kisika submitted that the decision of the CMA had two errors of law. Amplifying on that point he submitted that the errors were; **one, KATIBU DAYOSISI YA MARA** is not a legal entity hence it would not have been sued, adding that the legal entity was the **KANISA ANGLIKANA DAYOSISI YA MARA**. **Two**, he submitted that the other illegality was that as **MR. KASERA** had a fixed term contract, then unfair termination was not a remedy available to him in the **CMA**.

I asked Mr. Kisikia whether the illegalities he was referring to were in the decision that he wanted to challenge in case he obtained the extension sought. In response he submitted that what had illegalities is the **CMA** and it is not the dismissal order that he wanted this court to lift.



With his points Mr. Kisika moved this court to grant the orders sought. On his part **MR. KASERA**, being a layman, he had no much to say. He submitted that KATIBU had enough time and if he had wanted to apply to set aside a dismissal order he would have done that in good time. He finally left the matter in the hands of the court.

First, I must agree with Mr. Kisika that where existence of illegality can be demonstrated, the applicant does not necessarily need to advance any reasons for explaining the delay. See the decision in case of **VIP ENGINEERING AND MARKETING LIMITED AND TWO OTHERS VS CITIBANK TANZANIA LIMITED CONSOLIDATED CIVIL REFERENCE NO 6, 7 AND 8 OF 2006**, where it was held that;

*"It is settled law now that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under rule 8 (now rule 10) of the Court of Appeal Rules regardless of whether or not a reasonable explanation has been given by the applicant under the Rules to account for the delay."*

In other words, the principle cited by Mr. Kisika is actually the existing law on enlargement of time so far in Tanzania. But that is not the real issue, the critical question to move us from here is; is there an illegality in the decision that **KATIBU** wants to challenge, should he obtain extension of time sought? That is what I asked Mr. Kisika, and his reply was in the negative, because the decision they wanted to set aside was the order of this court dated 28.10.2019, which order Mr. Kisika submitted that it does not have any illegalities. He



submitted that the illegalities he was referring to were in the decision of the CMA.

It is the holding of this court that the points of illegality submitted upon by Mr. Kisika can only be valid in seeking extension of time within which to challenge the CMA decision but not the decision of the high court. That is so because, there is no illegality in the decision of this court which order is being sought to be challenged, should extension be granted.

It follows therefore, as the night the day, that because there were no reasons advanced by **KATIBU** or his advocate explaining the delay for failure to apply to set aside the dismissal order dated 28.10.2019, and because there have been no illegalities demonstrated on the order of the high court sought to be challenged, there is no legal basis that this court can extend time within which to file an application to set aside this court's order dated 28.10.2019.

This application is accordingly dismissed for want of merit.

DATED at MUSOMA this 4<sup>th</sup> September 2020



Z. N. Galeba  
**JUDGE**  
**04.09.2020**