

**IN THE HIGH COURT OF TANZANIA**  
**LABOUR DIVISION**  
**AT MUSOMA**  
**APPLICATION FOR REVISION NO 18 OF 2020**  
**BETWEEN**

**WILLIAM RYOBA WAMBURA** \_\_\_\_\_ **APPLICANT**

**VERSUS**

**GRUMETI RESERVES LIMITED** \_\_\_\_\_ **RESPONDENT**

*(Arising from the decision and orders from the Commission for Mediation and Arbitration for Musoma at Musoma, Hon. Kadeha, Mediator, in labour dispute no. CMA/MUS/43/2020 dated 16.06.2020)*

**JUDGMENT**

*21<sup>st</sup> November & 11<sup>th</sup> December 2020*

**GALEBA, J.**

This is an application for revision of an award of the Commission for Mediation and Arbitration (the CMA) that was delivered on 16.06.2020 in labour dispute no CMA/MUS/43/2020 dismissing the applicant's application for enlargement of time because the applicant did not advance sufficient or good cause to warrant grant of the extension of time sought. Consequent to the dismissal of his application the applicant, with representation of Mr. Emmanuel Gervas, learned advocate filed the present revision proceedings to challenge the dismissal. This application is resisted by Mr. Godfrey Tesha, also learned advocate for the respondent.

According to law, an application to the CMA to challenge the termination should be made in 30 days as required by **rule 10 (1) of the Labour Institutions (Mediation and Arbitration) Rules 2007 (the Rules)**.

Because the applicant was out of time he filed an application for extension of time to the CMA. That application was filed on 17.02.2020, which was 5 months from 24.12.2019 when the termination to be challenged was imposed.

According to the affidavit attached with **CMA F2** commencing the application before the CMA, the reasons cited were that the applicant had a matrimonial cause, he had limited financial resources and also he was late as he had to look for a lawyer and when he got him he was told that his application to the CMA had been barred by limitation of time.

The application before the CMA was heard and finally it decided that lacking financial resources or ignorance of law or even having a matrimonial dispute none was a valid ground for purposes of extension of time. So the application for condonation was dismissed. That decision aggrieved the applicant who filed this application for revision.

The grounds cited for this court to set aside the ruling of the CMA are **first**, that the CMA delivered a ruling in which it considered both a decision on the preliminary objection and also extension of time, hence an illegality. **Secondly**, that there were illegalities in the decision of the respondent to terminate the applicant as it did not give him a right to be heard and **thirdly** that the applicant had no money to travel to Musoma where the CMA offices are located.

In arguing the application Mr. Gervas submitted that because of the termination the applicant had nothing to feed his family and had to struggle to get basic needs for his family to survive including failure to timely obtain fare for travelling to Musoma where the CMA is located. He complained that the CMA refused to take into account the illegalities committed by the respondent when it mishandled the termination procedures. Mr. Gervas complained that although the applicant managed to get **Mr. Phillip Samson Chigulu** to assist him in challenging the termination but the said **Mr. Chigulu** dealt with his personal matters which led to the CMA to dismiss the applicant's application.

Relying on the case of **Zuena Nassor v Phoenix Tanzania Assurance Co Ltd**, Labor Revision No 419 of 2018, Mr. Gervas submitted that the fact

that there was an illegality in the termination process amounted to a good ground for according the applicant extension of time by the CMA. With those reasons, Mr. Gervas moved this court to set aside the decision of the CMA.

The submissions were resisted by Mr. Godfrey Tesha. He submitted that hiring a layman to assist the applicant, struggling to obtain basic family needs, failing to raise fare for transport to Musoma are all not reasons to explain the delay. Mr. Tesha submitted that the fact that the decision of the respondent was illegal was not raised before the CMA. Citing the case of **Raphael Enea Mngazija v Abdallah Kalonjo Juma**, Civil Appeal no 240 of 2018, Mr. Tesha submitted that a matter that was not raised or argued at the trial cannot be considered on appeal. In short Mr. Tesha was of the view that this application has no merit.

In this application therefore the issue that, this court is called upon to resolve is whether the CMA was right to dismiss the application for extension of time.

First let this court be clear once and for all that not having money, having matrimonial difficulties, difficulties with feeding the family, having

the CMA in a distant town and not being conversant with relevant laws are not grounds for extension of time. If courts were to hold that those facts or any of them was a good point to extend time, then courts would have opened doors that it would not have capacity to shut again. It would have opened doors for guests it has no ability to entertain. Briefly, the CMA was right to dismiss the application based on the above reasons.

Mr. Gervas had argued that there was an illegality on the decision of the respondent and cited the decision of this court in **Zuena Nassor v Phoenix Tanzania (supra)**. If that decision says what Mr. Gervas submitted, it could be right in its circumstances. The point in this case is that what the applicant wanted to complain in the main application to be filed once he got the extension is to address the illegalities on the decision of the employer; how then is it possible that the same illegalities can be used to obtain extension of time. If the CMA can rule that the employer's acts were illegal at the time of seeking extension of time what would be the issues in the main application to challenge the termination after the extension has been obtained? In other words, if the CMA can decide at the stage of an application for condonation that the employer's decision had

illegalities, it would be denying itself an opportunity to hear the main application without bias.

Although Mr. Tesha's argument was that the issue of illegality on the employer's decision was not raised before the CMA, but the holding of this court is that even if the same would have been raised, granting extension of time based on such issue would be another illegality, because that would be to decide the case on merits without hearing parties or receiving their evidence.


To put it in simpler terms, an illegality in the context of an application for enlargement of time does not touch on any illegalities alleged to have been committed by one of the parties against the other. It does not include any illegality that is likely to be part of the main application should the applicant obtain the extension sought. The illegality in the context of extension of time is an illegality committed by a court, the CMA, a tribunal or any other judicial making body, but never one of the parties act or omission.

For the above reasons, this application is misconceived and the same is dismissed for want of merit. The applicant has a right of appealing to the

Court of Appeal of Tanzania in case he is dissatisfied with any aspect of this judgment.

DATED at MUSOMA Tanzania this 11<sup>th</sup> December 2020



  
Z. N. Galeba  
**JUDGE**  
**11.12.2020**