

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA**

**AT SHINYANGA**

**MISC.LABOUR APPLICATION NO 9 OF 2019**

*(Arising from the decision/ruling by Nnembuka K. Mediator given at the  
Commission for Mediation & Arbitration of Shinyanga on 8<sup>th</sup> February, 2017 in  
Reference No.CMA/SHY/321/2016.)*

**MASE SIMON RHOBIN .....APPLICANT**

**VERSUS**

**GREEN STAR ENGLISH MEDIUM SCHOOL.....RESPONDENT**

**RULING**

*Date of the last Order: 14<sup>th</sup> January, 2020*

*Date of the Ruling: 20<sup>th</sup> January, 2020*

**E.Y. MKWIZU, J.**

Before me is an application for extension of time for lodging revision arising from the decision/ruling of Nnembuka K. (Mediator) given by the Commissioner for Mediation & Arbitration of Shinyanga on 8<sup>th</sup> February, 2017 in Reference No. CMA/SHY/321/2016.

The application is supported by an affidavit deposed by the applicant. The facts leading to this application can briefly be stated as follows: -

On 17<sup>th</sup> November, 2016 applicant herein filed an application before the Commission for Mediation and Arbitration at Shinyanga **under Rule 29**

**(1) (a) and 29 (2)** of the Labour Institution( Mediation and Arbitration) Rules,G.N No. 64 of 2007 praying for the enlargement of time to file a labour dispute resisting what he called unfair termination by the respondent.

Respondent, resisted the application by filing along with her notice of opposition accompanied with a counter affidavit, a notice of objection to the effect that the complainant's application contravenes the mandatory provisions of rule 29 (3 (e), (f) and (g) of the Labour institution ( Mediation and Arbitration) Rules,2007,unknown in law and that it is supported by a defective affidavit.

On 8.2.2017 Nnembuka K. (Mediator), dismissed the application on the ground of being levered on the wrong provision of the law and that applicant had filed two similar application which she withdrew after being served with the notice of preliminary objection from her opponent.The applicant was aggrieved. He filed revision No 5 of 2017 before the HighCourt which was struck out on12/2/2019 for being accompanied by a defective affidavit.

When the matter came for hearing on 14<sup>th</sup> January, 2020, Mr. Charles Kiteja learned advocate represented the applicant while Mr. Bakari Chubwa Muheza also learned advocate represented the respondent. Submitting for the application, Mr. Kiteja was very brief but focused, he said, the delay to file application for revision was beyond the applicant's control. After the issuance of the CMA award, applicant timely filed revision No 5 of 2017 before this Court which was struck out for being incompetent on 12<sup>th</sup> February 2019. Immediately thereafter, on 20<sup>th</sup> day of February, 2019, applicant filed this application for extension of time to file revision.

Authenticating on the time elapsed between the time when revision No 5 of 2017 was struck out and the time when he filed the present application, Mr. Kiteja submitted that, applicant being a lay person was on the process of engaging an expert to draft legal document regarding this application and that this process took him eight days from 12<sup>th</sup> February, 2019 when the order striking out the application was given by the High Court to 20<sup>th</sup> February 2019 when he managed to file the present application.

On the issue of illegality of the award by the CMA, Mr. Kiteja argued that the CMA after having found that the application was incompetent, it proceeded to dismiss it instead of striking it out. This, he said, is an irregularity that calls for determination by this court in the intended revision. He finally, urged this court to find the application substantiated and grant the prayers.

On the other part, Mr. Bakari Chubwa Muheza, counsel for the respondent opposed the application. He was of the view that applicant has failed to show good cause to enable this court grant the application. He contended that, the reason led to the dismissal of the application that was before the Mediator was due to intolerance habit of the applicant of filing several application of the same nature and withdrawing them on being made aware of their incompetence. He said, Mediator's dismissal order explained the reason why he had to resort into dismissal and not striking out the application. Mr. Bakari referred me to the order by the Mediator.

On whether the applicant has furnished good cause for the delay, it was Mr. Bakari's submission that, revision No 5 of 2017 was struck out due to the applicant's negligence. He filed an incompetent application resulted

into it being struck out. The application should be dismissed maintained Mr. Bakari, counsel for the respondent.

In his rejoinder Mr. Kiteja, reiterated his submission in chief and prayed to have the application granted as prayed.

As observed earlier, this application is for extension of time within which to apply for revision against the CMA's decision. The application has been controverted by the respondent. My duties so to speak are limited to considering whether the applicant has shown sufficient reasons for his delay, and whether the intended revision has arguable points.

I have carefully considered the applicant's affidavit, counter affidavit and the oral submission by the rival parties. The CMA's decision that dismissed the applicant's application was delivered on 17/2/2017. The applicant challenged that decision via revision No 5 of 2017 which was on 12/2/2019, struck out for being accompanied by a defective affidavit. Tirelessly, on 20<sup>th</sup> February, 2019 eight days after the order striking out the application for revision, applicant filed this application.

It was the applicant's counsel argument that, eight days delay was due to the fact that applicant being a lay person was unable to do the drafting's and therefore went on looking for an advocate so as to have the

documents drafted and legally filed. On this process, eight days were spent. Under the circumstances, I am satisfied that the applicant was diligent and he did all that was within his powers, and that the delay was beyond his control. The delay was with sufficient reasons.

Another issue raised by the applicant in this application, one that is intended to be raised in the application for revision is the question of illegality or irregularity of the attacked CMA award.

In **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** (1992) TLR, 185 at page 188, this Court held that:

*"... where, as here, the point of law at issue is the illegality or otherwise of the decision being challenged, that is of sufficient importance to constitute 'sufficient reason' within the meaning of rule 8 of the Rules [now rule 10 of the 2009 Rules for extending time. To hold otherwise would amount to permitting a decision, which in law might not exist to stand. In the context of the present case this would amount to allowing the garnishee order to remain on record and to be enforced even though it might very well turn*

*out that that order is, in fact a nullity and does not exist in law.*

*That would not be in keeping with the role of this Court whose primary duty is to uphold the rule of law."*

See also: **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 and **VIP Engineering and Marketing Limited, Tanzania Revenue Authority and Liquidator of TRI-Telecommunications (T) Ltd v. Citibank (T) Ltd**, Consolidated Civil References No. 6, 7 and 8 of 2006 (all unreported).

Guided by the above authorities, I am persuaded that the alleged illegality of the challenged award is a further ground for granting the relief sought in this matter. In my considered view, the complaint that the court below dismissed the application instead of striking it out, is an issue of sufficient importance as it affects the rights of the parties directly. It is a question that is apparent on the face of the record. The respondent counsel was of the view that the CMA award was correct as the Mediator gave reason as to why he arrived into that decision. In its decision CMA while acknowledging consequences of an incompetent application, it went on to dismiss the application on the allegation that striking out the application

would be to allow applicant to file many other applications. I think, there is justification for extension of time to afford this Court an opportunity to investigate and determine the alleged illegality in the matter.

It is upon the above reasons that I allow the application. Time is extended for the applicant to lodge its intended application for revision thirty days from the date of the delivery of this ruling.

It is accordingly so ordered.

**DATED at SHINYANGA this 20<sup>th</sup> day of JANUARY, 2020.**

