

IN THE HIGH COURT OF THE UNITED REPUBLIC TANZANIA

[LABOUR DIVISION]

AT ARUSHA

**CONSOLIDATED MISC. LABOUR APPLICATIONS NOs. 64 OF 2019
AND 25 OF 2020**

(C/F Labour Dispute No. CMA/ARS/ARB/38/2019/34/2019)

PATRIOTIC SECURITY COMPANY LTD APPLICANT

Versus

STEVEN MOLLEL 1ST RESPONDENT

HOZA ABDI 2ND RESPONDENT

OBOYE JAMES 3RD RESPONDENT

RULING

~~*8th December, 2020 & 9th February, 2021*~~

Masara, J.

The Applicant herein applied for extension of time to enable them to file an application for revision out of time against the decision of the Commission for Mediation and Arbitration for Arusha (the CMA) made on 29th May, 2019 in Labour Dispute No. CMA/ARS/ARB/38/2019/34/2019. The Application for extension of time was filed in this Court on 23rd October, 2019. Thereafter, the Applicant also lodged an application for stay of execution of the CMA award above stated on 11th May, 2020. The later application was filed after the Respondents had filed an application for execution of the CMA award. Parties appeared before me represented by Mr. Alex Michael, counsel for the Applicant and Margreth Erasto, an Assistant Secretary from TUPSE. I directed that the two applications be consolidated and parties file written submissions on both applications. That was done.

In the written submissions, both parties adopted their affidavits for and against the applications. Mr. Alex Michael implored the Court to grant the Applicant the extension sought submitting that the decision of the CMA contains an illegality that ought to be relooked by this Court. The alleged illegality, in his view, relate to the fact that the evidence by the Respondents was adduced by one of them; to wit, Steven Mollel who is the first Respondent herein. To him, that amounted to a representative suit which was done without notice. He made reference to Rule 5(2) and (3) of the Labour Institutions (Mediation and Arbitration) Rules, GN 64/2007 which states:

"(2) Where proceedings are jointly instituted or opposed by more than one employee, documents may be signed by an employee who is mandated by the other employees to do so.

(3) subject to sub rule (2) a list in writing, of the employees who have mandated a particular employee to sign on their behalf, must be attached to the document. The list must be signed by the employees whose names appear on it."

Mr. Alex therefore contended that the existence of an illegality in the decision amounts to sufficient reason for extension of time as the Respondents did not adduce notice of authorisation of Steve Mollel in order for him to represent them in the dispute. He made reference to Court of Appeal decisions in ***Lyamuya Construction Company Ltd Vs. Board of registered Trustees of Young Women's Christian Association of Tanzania***, Civil Application No. 2 of 2010, ***Principal Secretary Ministry of Defence and National Service Vs. Devram Valambia*** [1992] TLR 182 and ***Kashinde Machibya Vs. Hafidhi Said***, Civil Application No. 48 of

2009. He then delved into other matters that should not be discussed at this stage.

In reply, Ms Erasto argued that the Applicants have not stated why they delayed to file the application for extension of time. In her view, the Applicant did not provide good cause for the delay for this Court to allow the extension sought. She relied on Rule 56(1) of the Labour Court Rules, GN 106 of 2007. Ms Erasto elaborated that as the contested decision was read out in the presence of both parties, the Applicant was duty bound to explain why it took them that long to apply.

Having properly scrutinised the submissions by the parties herein alongside their respective affidavits the issues for determination is whether sufficient grounds have been made to warrant the extension of time and stay of execution sought.

At the outset, I agree with the submissions made by Ms. Erasto that the Applicant has not expounded on why execution of the CMA decision should be stayed. Furthermore, the Applicant has not stated why it took them about five months to file their application for extension of time. Knowing that they have failed to account for such delay, the Applicant seems to rely solely on illegality of decision as a basis for the extension of time. As already stated, the illegality sought to be relied upon is "failure of the Respondents to give notice of representation". The crux of the matter lies on whether there was a representative suit at the CMA.

The Court of Appeal in ***Tumsifu Kimaro (The Administrator of the Estate of the Late Eliamini Kimaro) Vs. Mohamed Mshindo***, Civil Application No. 28/17 of 2017 (unreported) held inter alia:

*"Before dealing with the substance of this application in light of the rival submissions, I find it apposite to restate that although the Court's power for extending time under rule 10 of the Rules is both broad and discretionary, it can only be exercised **if good cause is shown**. Whereas it may not be possible to lay down an invariable definition of good cause so as to guide the exercise of the Court's discretion under rule 10, the Court must consider factors such as the **length of the delay, the reasons for the delay, the degree of prejudice the respondent stands to suffer if time is extended, whether the applicant was diligent, whether there is point of law of sufficient importance such as the illegality of the decision sought to be challenged.**"*(emphasis supplied)

The same position can be gathered from the Court of Appeal decisions in ***Lyamuya Construction Company Limited Vs. Board of Trustees of Young Women's Christian Association of Tanzania*** (supra) Civil Application No. 2 of 2010 and ***Bharya Engineering & Contracting Co. Ltd Vs. Hamoud Ahmed Nassor***, Civil Application No. 342/01 of 2017 (unreported) among many others.

From the said decision, there is no doubt that illegality, if proved, amounts to good cause which may be grounded to grant an extension of time. Nevertheless, such illegality must be real and be apparent on the face of the record. In the case of ***Omary Ally Nyamalege (as the Administrator of the Estate of the late Seleman Ally Naymalege) and Others Vs.***

Mwanza Engineering Works, Civil Application No. 98/08 of 2017, the Court of Appeal observed:

*"Applying the above settled position to the instant application, I have no difficulty in holding that the applicant's contention that the decision sought to be challenged is fraught with illegalities is nothing but an unsubstantiated general complaint. Without the details of the alleged illegalities, it is impossible to determine **whether the said illegalities are apparent on the face of the record and that they are of sufficient importance to merit the attention of this court.**"* (Emphasis added)

I have noted from the records attached by the Applicant that the Respondents were represented at the trial by Aisha Masoud from TUPSE and that all of them filed CMA F1 at the CMA. The mere fact that one of them testified on their behalf does not make it a representative suit. Rule 5(2) and (3) of the Labour Institutions (Mediation and Arbitration) Rules, GN 64/2007 gives circumstances where a matter will be regarded as a representative application. That is where one makes an application on behalf of others through signing a single CMA F1. It is on those circumstances that conditions laid down by Rule 5(3) apply. In cases where there are multiple parties, it is not unusual for one or more of them to testify and prove a case on behalf of the rest. That cannot be said to be representation of the others and in any case, it cannot be regarded as an illegality apparent on the face of the record to sanction extension of time.

That said, it is the finding of this Court that the Applicant has failed to meet the threshold of proving sufficient cause for the extension of time sought. Furthermore, as the extension of time has not been granted, the application

for stay of execution also fails. Consequently, the applications lack merits and are dismissed forthwith. This being a labour matter, I make no orders as to costs.

Order accordingly.




Yohane B. Masara
JUDGE

March 2, 2021.

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