

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

MISC. LABOUR APPLICATION NO. 03 OF 2019

(Arising from Labour Dispute No. CMA/BUK/55/2016)

JUNIOR CONSTRUCTION CO. LTD.....APPLICANT

VERSUS

JOVIN FLORIAN.....RESPONDENT

RULING

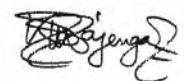
24th May & 03^d June 2021

Kilekamajenga, J.

This application was preferred after the applicant failed to lodge the application for revision on time against the decision of the Commission for Mediation and Arbitration of Bukoba. In the application the applicant prayed for the following orders:

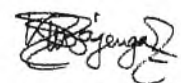
- (i) That the Honourable court be please to extend time for the applicant to file the application for revision before this Honourable Court against the award of the Commission for Mediation and Arbitration in Labour Dispute No. CMA/BUK.55/2016, dated 23^d June 2017 delivered by Hon. Ndimyake L. Mwebeza, Arbitrator.*
- (ii) Any other and further orders as this Honourable Court will deem just and equitable to grant.*

The application was filed under **Rule 24(1), 24(2)(a)(b)(c)(d)(e)&(f), 24(3)(a)(b)(c)&(d) and 11(b); 55(1)&(2) and 56(1)&(3) of the Labour**



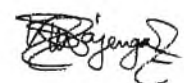
Court Rules GN No. 106 of 2007. To comply with the legal requirement, an affidavit deposed by Suleiman Masoud Suleiman accompanied the application.

When the application was scheduled for hearing, the applicant was absent but was well represented by the learned advocate, Mr. Mashauri Miasi. On the other hand, the learned counsel, Mr. Alli Chamani appeared to resist the application on behalf of the respondent. During the oral submission, the counsel for the applicant prayed to adopt the applicant's affidavit and further advanced the reason for the applicant's delay to file the revision application. The application before the CMA was heard inter-parties and parties were promised for the notice for the award. On 08th March 2019, the applicant was supplied with an order attaching one of her properties. This is the time when the applicant became aware of what was going on. After the follow-up to the CMA, the applicant found out that the award was issued to the respondent on 23rd June 2017 but the applicant was not notified. Mr. Miasi vehemently argued that the CMA had the duty to notify the parties including the applicant on the date of the award. In bolstering the argument, the counsel for the applicant invited the Court to be guided with the cases of **Tanzania China Friendship Textile Co. LTD v. Charles Kabweza and others, Civil Application No. 62 of 2016**, CAT at Dar es salaam; **Monica Mbare v. Benedict Subi, Civil Reference No. 8 of 2017**.



Furthermore, Mr. Miasi informed the Court that there is illegality on the CMA award because there is confusion between what is claimed by the respondent and what was addressed by the Commission. On top of that, there is dearth of evidence on the actual salary of the respondent. He supported the argument with the case of **Principal Secretary-Ministry of Defence and National Service v. Dav-ram Vallambhia [1992] TLR 182** where illegality was stated to be the major reason for extension of time. He finally urged the court to grant the order of extension of time.

The counsel for the respondent, Mr. Chamani resisted the allegation that the award was supposed to be delivered on notice because the decision (award) was delivered in absence of all the parties. It was an obligation of the parties, including the applicant, to follow-up the outcome of the case. His argument was supported with the cases of **Himid Mbaye v. Bridget Commander [1984] TLR 294; Transport Equipment LTD v. DP Vallambhia [1993] TLR 99**. The counsel argued further that the instant application was an afterthought because the applicant became aware about the progress of the case one year and six months later. Also, the alleged illegality does not feature on the face of the records hence the application intends to deprive the respondent's rights.



When rejoining, the counsel for the applicant did not raise any substantial argument apart from reiterating the prayers in the submission in chief.

It is already a settled law that application for extension of time is the discretion of the court which must be exercised after the applicant has shown good cause for the delay. Furthermore, it is already established under the law that when an applicant alleges illegality, the court must grant extension of time to allow the clearance of the illegality on appeal. In case of **Principal Secretary, Ministry of Defence and National Service Versus Devram P. Valambli** [1992] TLR 185 the court stated that:-

"We think that where, as here, the point of law at issue is the illegality of or otherwise of the decision being challenged, that is of sufficient reason" Within the meaning of Rule 8 of the Rules for extension of time. To hold otherwise would amount to permitting a decision, which in law might not exist, to stand...in our view when the point at issue is one challenging illegality of the decision being challenged, the court has a duty even if it means extending the time for the purpose, to ascertain the point and, if the alleged be established, to take appropriate measures to put the matter and the record right."

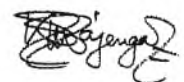
Also, in the case of **Patrobert D. Ishengoma v. Kahama Mining Corporation LTD (Barrick Tanzania Bulyankulu) and 2 others, Civil Application No. 02 of 2013**, the Court reiterated that:

"...I am of the considered view that even though there is a considerable delay in the application, pertinent issues have been raised. First the applicant is alleging to have been...There is an allegation of illegality, irregularities and impropriety. There is the reason of illness advanced by the applicant which cannot be brushed aside."

In the instant case, albeit the applicant delayed for more than a year, together with other reasons for the delay stated during the oral submission, he also alleged illegality in the records of the Commission for Mediation and Arbitration. Based on the stated principle of law, I hereby allow the application for the appellate court to determine the rights of the parties and clear the alleged illegality. Order accordingly.

DATED at BUKOBA this 03rd Day of June, 2021.


Ntemi N. Kilekamajenga.
JUDGE
03/06/2021



Court:

Ruling delivered this 03rd June 2021 in the presence of the counsel for the respondent, Mr. Sethi Niikiza (Adv).



Ntemi N. Kilekamajenga.
JUDGE
03/06/2021

