

**IN THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA**

MISC. LABOUR APPLICATION NO.36 OF 2020

(Arising from Labour Dispute No. CMA/GTA/90/2017)

GEITA GOLD MINE LIMITED APPLICANT

VERSUS

SAMWEL JAPHAT RESPONDENT

RULING

Date of last Order: 17.06.2021

Date of Ruling: 18.06.2021

A.Z.MGEYEKWA, J

I am called upon in this matter to decide whether this court should exercise its discretion under section 46 (1), (2), and (3) of the Labour Court Rules, GN. No. 106 of 2007 to extend the time within the applicant to file an application for revision of an award in Labour Dispute No. CMA/ GTA/ 90/ 2017 to the Court of Appeal of Tanzania against the Ruling and Order of this Court in Misc. Application No.23 of 2015 dated 20th October 2017.

The application is supported by an affidavit deposed by Stella Josiah Manongi, the applicant. The application has encountered formidable

opposition from the respondent and has demonstrated his resistance by filing a counter affidavit, deposed by Mr. Samwel Japhet, the respondent.

When the matter was called for hearing on 17th June, 2021, the appellant enjoyed the legal service of Mr. Deus Richard, learned counsel, the respondent appeared.

Mr. Deus was the first one to kick the ball rolling. Reiterating what was deposed in the supporting affidavit, the learned counsel urged this court to adopt the applicant's application and form part of his submission. Mr. Deus asserted that in the application for extension of time the applicant has to state good reasons for his delay. The learned counsel for the applicant contended that the applicant filed a Revision No. 81 of 2019 within time, however, before hearing the matter on merit, the respondent filed a preliminary objection repercussion the preliminary was sustained and the applicant's application was struck out without leave to appeal. Hence this application for extension of time to file a Revision out of time. Mr. Deus went on to state that the applicant was in court corridors thus he found himself out of time.

It was Mr. Deus further submission that the applicant wants also to challenge the CMA award since it was tainted with illegalities. To bolster his submission he cited the case of **FINCA Tanzania Ltd and Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 He added that

the arbitrator in his findings found that termination was substantive and procedure fair, surprisingly in his award he ordered the applicant to compensate the respondent a four months salaries. He valiantly contended that the award was contrary to section 40 (1), (2) of the Employment and Labour Relation Act, Cap.366, because the respondent was fairly terminated from the employment. He added that there was no any relevancy of awarding a compensation of salary (ies) because the respondent's termination was fair.

In conclusion, the learned counsel for the applicant beckoned upon this court to grant the applicant's application as stated in his chamber summons and affidavit.

The respondent, had not much to say. He urged this court to find that he was unfairly terminated from the employment. He urged this court not to grant the applicant's application.

In his rejoinder, Mr. Deus reiterated his submission in chief.

Having carefully considered the submissions made by the learned counsel and the respondent, the issue for our determination is ***whether the applicant is meritorious.***

The position of the law is settled that an application for extension of time is entirely the discretion of the Court. But, that discretion is judicial

and so it must be exercised according to the rules of reason and justice as it was observed in the case of **Mbogo and Another v Shah** [1968] EALR 93.

Additionally, the Court will exercise its discretion in favour of an applicant only upon showing good cause for the delay. The term "good cause" having not been defined by the Rules, cannot be laid by any hard and fast rules but is dependent upon the facts obtained in each particular case. This stance has been taken by the Court of Appeal in a number of its decision, in the cases of **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007, **Tanga Cement Company Ltd v Jumanne D. Massanga and another**, Civil Application No. 6 of 2001, **Vodacom Foundation v Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 (all unreported). To mention a few.

I have keenly followed the grounds deposed in the supporting applicant's affidavit and the respondent's counter-affidavit, Mr. Deus has shown the path navigated by the applicant is trying to file his revision application in this court. Mr. Deus has raised two main limbs for his delay, technical delay, and illegality. I will start to address the first limb for delay. The applicant in paragraph 17 of his affidavit stated that he delayed to file the revision because the applicant was prosecuting Revision

No.81/2019 which was struck out and during that the time limitation for filing a revision had lapsed. In my view, the applicant's delay was purely technical in the sense that the original revision was lodged in time but the same was found incompetent thus fresh revision has to be instituted. In the landmark case of **Fortunatus Msha v William Shija and Another** [1997] TLR 154, the Court of Appeal of Tanzania held that:-

*"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which only involved **technical delays in the sense that the original appeal was lodged in time but has been found to be incompetent for one or another reason and a fresh appeal had to be instituted.** In the present application, the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances, an extension of time ought to be granted."*
[Emphasis added].

Applying the above position of the law, it is crystal clear that the applicant's delay was a technical delay therefore the same is a good reason for extension of time.

In addressing the second limb, the applicant alleges that the CMA Award is tainted with illegality.

Reading, the applicant's affidavit specifically in paragraphs 18, 19, 20, and 21. He urged this court to grant the extension of time to allow the applicant to file an application for revision so that important legal and factual issues be determined and justice be served for both parties. In his submission, the learned counsel for the applicant stated that the alleged illegality resides in the powers exercised by the CMA for awarding compensation of salaries to the respondent while the CMA findings was to the extent that the termination was procedural and substantive fairness.

On his side, the respondent opposed the application generally. The legal position, as it currently obtains, is that where illegality exists and is pleaded as a ground, the same may constitute the basis for extension of time. This principle was accentuated in the celebrated decision of **Lyamuya Construction Company Limited and Citibank (Tanzania) Limited v. T.C.C.L. & Others**, Civil Application No. 97 of 2003 (unreported). In **Principal Secretary, Ministry of Defence and National Service v Devram Valambhia** [1992] TLR 185 at page 89 thus:

*"In our view, when the point at issue is one alleging 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 illegality be established, to take appropriate***

measures to put the matter and the record straight." [Emphasis added].

Similarly, in the cases of **Arunaben Chaggan Mistry v Naushad Mohamed Hussein & 3 Others**, CAT-Civil Application No. 6 of 2016 (unreported) and **Lyamuya Construction** (supra), the scope of illegality was taken a first-rate when the Court of Appeal of Tanzania propounded as follows:-

*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in Vaiambia's case, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. **The Court there emphasized that such point of law must be that of sufficient importance** and, I would add that **it must also be apparent on the face of the record, such as the question of jurisdiction**; not one that would be discovered by a long drawn argument or process."* [Emphasis added].

In my view, the raised illegality bears sufficient importance, this point of illegality meets the requisite threshold for consideration as the basis for enlargement of time, the same weighty enough to constitute sufficient cause for an extension of time.

In sum, based on the foregoing analysis I am satisfied that the above-ground for delay is evident that the present application has merit. Therefore, I proceed to grant the applicant's application to file an application for revision within one month from today.

Order accordingly.

Dated at Mwanza this date 18th June, 2021.




A.Z.MGEYEKWA

JUDGE

18.06.2021

Ruling delivered on 18th June, 2021 via audio teleconference, whereas Mr. Deus Richard, learned counsel for the applicant the respondent were remotely present.


A.Z.MGEYEKWA

JUDGE

18.06.2021