

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF TANGA)**

**AT TANGA**

**(LABOUR DIVISION)**

**REVISION No. 09 OF 2019**

(Arising from the Commission for Mediation and Arbitration in Labour Dispute  
referenced CMA/TAN/ 136/2018 CMA - Tanga)

- 1. ABDALLAH RAMADHANI NONDO**
  - 2. KASSIMU MUTESI KASINGA**
  - 3. YASINI MUHAJI ALLY**
  - 4. ABDALLAH MUSSA KAKOYOLLAH**
  - 5. WAZIRI JUMA ISMAIL &**
  - 6. AMBELE OSWALD MWASWALA**
- ..... **APPLICANTS**

**Versus**

**COMARCO TANZANIA LTD.....RESPONDENT**

**RULING**

**12.07.2021 & 12.07.2021**

**Mtulya, J.:**

A Labour Dispute Referenced **CMA/TAN/136/2018** (the Dispute) was filed in the **Commission for Meditational and Arbitration** (the Commission) based in Tanga by Mr. Abdallah Nondo and five other persons (the Applicants) seeking for condonation of late referral of the Dispute in the Commission. The

Commission heard the parties and on 12<sup>th</sup> April 2019 rendered down its Ruling. In the First Paragraph of page 6, the learned Arbitrator stated that:

*I take note of letter dated 27<sup>th</sup> September, 2017 which titled "E" Employment of contract (Exhibit R1-R6). The letter were received and signed by each applicant. Basing on this fact is became clear that the employment terminated from 30<sup>th</sup> September 2017. Now looking into their claim they seem to claim salaries from October 2017 to August 2018. There is no basis upon which the claim is made because employment already terminated....There is no any prospect of success....*

This statement of the Commission was spotted by personal representative of the Applicants Mr. David Kapoma who rushed to this court on behalf of the Applicants and preferred **Labour Revision No. 9 of 2019** (the Revision) contending that: first, the Arbitrator extended his mandate in deciding the merit of the matter in an application for enlargement of time; second, exhibits R1-R6 which were cited by learned Arbitrator found their way into the Application

by using irregular route; and third, the Arbitrator had decided the matter without reasoning in arriving his decision.

The Revision was scheduled today morning for hearing. In order to assist this court in arriving to justice, **COMARCO Tanzania Ltd** (the Respondent) decided to call learned counsel Mr. Warehema Kibaha to argue against the Application whereas the Applicants marshalled Mr. David Kapoma to argue for the Revision. After short discussions and consultations, the dual representatives agreed that exhibit R1–R6 were admitted in the Commission without abiding with proper procedure in the **Labour Court Rules, 2007 GN. No. 106**, (the Rules) as there were faults on, *viz*: first, absence of notice to produce; second, after admission, the exhibits were not read loud before the Commission; and third, the exhibits were admitted without affording an opportunity to the Applicants to cross examine the Respondent.

To the opinion of Mr. Kapoma, the exhibits were prayed and admitted prematurely as they were admitted before enlargement of time to file a labour dispute was granted to afford the Applicants to file their complaints. With reasoning of the Commission, Mr. Kapoma submitted that the Commission did not provide any reason in denying the Applicants access to the Commission. Finally, Mr.

Kapoma invited this court to use its revisionary powers under Rule 55 (1) and (2) of the Rules to rectify the irregular proceedings.

His submission was received well by Mr. Kibaha save for the issue of reasoning of the Tribunal. According to Mr. Kibaha, the Commission in last paragraph of the proceedings at page 6 stated that: *for the reason above, I dismiss the application out right* and at page 5 the reasons are displayed at last paragraph that: *there is no sufficient reason for delay. This Commission does not find any material upon which to grant the application.* In a brief rejoinder, Mr. Kapoma submitted that the arbitrator in the Commission decided the matter without reasons and determined the merit of Application instead of good causes in enlargement of time by heavily relying on exhibit R1–R6 which were incorrectly admitted in the Application. To his opinion, the issue of irregularity in admission of exhibits R1-R6 ends the Review in favour of the Applicants.

On my part, I perused the record of this Revision. It is correct as submitted by representatives of the parties. Page 6 of the Ruling shows exactly what is quoted in page 1 of this Ruling. I also visited page 6 of the proceeding conducted on 11<sup>th</sup> April, 2019 as is depicted in last paragraph of the proceedings where Applicant's representative Mr. Kapoma protested the admission of exhibits in the

Commission without notice to produce and complained of ambush inserted in the right to be heard, but the Commission declined to reply the complaint.

My reading of First Paragraph of page 6, I think, to my opinion, the learned Arbitrator was determining the main Application as he invited evidence and reasoned on them instead of good causes. The test in an application for enlargement of time is to check on whether or not the applicant has produced relevant materials to persuade the court to grant the extension for him (see: **Alliance Insurance Corporation Ltd v. Arusha Art Ltd**, Civil Application No. 33 of 2015 and **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014).

In the present Revision, record shows that there were vivid irregularities committed by the Commission and this court cannot let vivid irregularities to remain on record as this is not only the court of law, but also a court of justice mandated to see proper record in lower courts, tribunal and commissions (see: **Diamond trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017, and **The Principal Secretary, Ministry of Defence and National Services v. Devram P. Valambia** [1991] TLR 185.

In this Revision the representatives of the entered into agreement that the proceedings in the Tribunal were tainted with irregularities in admission of exhibits R1-R6. Since there were irregularities Committed by the Commission and in search of proper record, the Ruling of the Commission must be quashed. With extension of time on matters like the present one, the position is correctly stated by our superior court in **Attorney General v. Tanzania Ports Authority & Another**, Civil Application No. 87 of 2016, where it was said that:

*It is a settled law that a Claim of illegality of the challenged decision constituted sufficient reason for extension of time regardless of whether or not a reasonable explanation has been given by the Applicant under the rule to account for the delay*

This position was repeated and insisted last year in the precedent of **Jaliya Felix Rutahiwa v. Kalokora Bwasha & Cecilia B. Shiyo**, Civil Application No. 392 of 2020. Having noted there is Court of Appeal precedents in illegality and extension of time, and considering this is a labour dispute of 2018, bearing in mind that the Applicants are claiming the right to be heard by the Commission, and reading the facts in the record, I have decided to invoke Rule

55 (1) & (2) of the Rules to quash decision, set aside proceedings and any order of the Commission in the Dispute for want of fair proceedings in the dispute and grant the Applicants fourteen (14) days leave to file labour dispute in the Commission without any further delay.

It is so ordered.



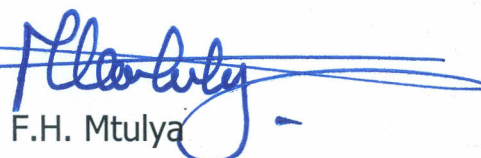
  
F.H. Mtulya

**Judge**

12.07.2021

This Ruling was delivered in Chambers under the seal of this court in the presence of the First Appellant, Mr. Abdallah Ramadhani Nondo and Applicants' Personal Representative Mr. David Kapoma and in the presence of the Respondent's learned counsel, Mr. Warehema Kibaha.



  
F.H. Mtulya

**Judge**

12.07.2021