

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(LABOUR DIVISION)
AT MBEYA

MISC. APPLICATION NO. 21 OF 2020

(Originating from Complaint Ref. CMA/MBY/23/2015 in the Commission for Mediation and Arbitration for Mbeya at Mbeya)

HIGHLAND SEEDS GROWERS LTD.....APPLICANT

VERSUS

BERNARD MAPUNGA.....1ST RESPONDENT

RICHARD KAYOMBO.....2ND RESPONDENT

ELIUD MWASYEBA.....3RD RESPONDENT

JOSEPH KAYOMBO.....4TH RESPONDENT

RULING

Date of Last Order : 21/05/2021
Date of Ruling : 02/07/2021

MONGELLA, J.

This application is brought under Rule 24 (1) (2) (a) (b) (c) (d) (e) and (f), (3) (a) (b) (c) and (d), 55 (1) and 56 (1) of the Labour Court Rules, 2007, G.N. 106 of 2007. The applicant is seeking to be granted extension of time within which to file an application for revision against the decision of the Commission for Mediation and Arbitration (CMA) for Mbeya in Complaint



with Reference No. CMA/MBY/23/2015. It is supported by the affidavit of one Bonavela Mlelwa, the principal officer of the applicant.

The applicant was represented by Mr. Faraja Msuya, learned advocate while the respondents were assisted in writing their written submission by Mr. Gerald Msegeya, learned advocate.

The applicant's application for extension is pegged on an alleged illegality by the CMA in delivering the award. The applicant claims that the CMA award is illegal for being delivered outside the prescribed time limit under the law.

Arguing on this point, Mr. Msuya started by referring to section 88(11) of the Employment and Labour Relations Act, Cap 366 R.E. 2019 (ELRA) and Rule 27 (1) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, G.N. No. 67 of 2007 which prescribe the time limit to deliver judgment to be thirty days from the date of completion of the proceedings. Referring to what transpired in the CMA, Mr. Msuya contended that the proceedings in the CMA were closed on 26th August 2015, thus the award ought to have been delivered on or before 26th September 2015. To the contrary however, he said, the award came to be delivered on 28th January 2016 with no reasons assigned for the delay. Given the situation, he argued that since the parties never contributed to the delay, it was fatal for the Hon. Arbitrator to deliver the award lately without assigning any reasons.



Mr. Msuya was of the stance that the illegality he has pointed out is sufficient to cause the applicant be granted extension of time sought. To buttress his argument he referred the court to a number of cases which require courts to extend time on basis of illegality on impugned decisions. These are: **Selina Chibago v. Finihas Chibago**, Civil Application No. 182 "A" of 2007 (CAT at DSM, unreported); **Kalunga & Co. Advocates v. NBC Ltd.**, Civil Application No. 124 of 2005 (CAT, unreported); **VIP Engineering & 2 Others v. CITIBANK (T) LTD**, Consolidated References No. 6, 7, and 8 of 2006 (CAT, unreported); and that of **Amour Habib Salim v. Hussein Bafari**, Civil Application No. 52 of 2009 (unreported).

The respondents opposed the application on the ground that the illegality relied upon by the applicant is misconceived. They contended that the delay by the Hon. Arbitrator to issue the award within the prescribed time is a procedural impropriety which cannot be equated to an illegality. They said that practically it is difficult for the CMA to issue an award within 30 days due to various reasons such as sickness or travel by the arbitrator. Besides, they said, the applicant has not stated how he was prejudiced by the delay in issuing the award. Considering the fact that the applicant has raised this issue after the elapse of more than four years, they were of the stance that the illegality has been raised as an afterthought.

Referring to section 88 (11) of the ELRA and Rule 27 of G.N. No 67 of 2007, the respondents were of the view that the applicant has misconceived and misinterpreted the law with regard to the requirement to assign reasons. They contended that the term "reasons" stipulated in the provisions does not meant reasons for the delay in issuing the award, but

rather reasons for the decision of the CMA. In support of their argument they referred the court to the case of ***Finca Tanzania Ltd v. Wildman Masika & 11 Others***, Civil Appeal No. 173 of 2016 (CAT at Iringa, unreported).

From the foregoing, they concluded that the applicant has delayed to file the intended revision for more than four years and has not advanced any sufficient reasons. Since the only reason advanced was based on illegality, they remain with no other sufficient reasons as the illegality raised does not fit as an illegality under the law.

I have accorded the arguments by both parties due consideration. First of all I agree with the applicant that when the question of illegality is raised, the court is left with no choice than to grant extension of time so that the illegality is dealt with. However, it is trite law that not every illegality raised suffices to move the court to grant extension of time. The position has been settled in a number of decisions to the effect that for an illegality to suffice in granting extension of time, it has to be of sufficient importance, must constitute an error on face of record; and must not involve a long drawn process of argument. See: ***Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania***, Civil Application No. 2 of 2010; ***Kalunga and Company Advocates v. National Bank of Commerce Ltd***, (supra); ***Aruwaben Chagan Mistry v. Naushad Mohamed Hussein & 3 Others***, Civil Application No. 6 of 2016; and ***Jehangir Aziz Abubakar v. Balozi Ibrahim Abubakar & Another***, Civil Application No. 79 of 2016.



The only illegality raised by the applicant regards the delay by the Hon. Arbitrator in pronouncing the award. In this, the applicant claimed that the Hon. Arbitrator delayed for about six months in pronouncing the award. I have gone through the provision of the law, that is, section 88(11) of the ELRA and Rule 27 of G.N. 67 of 2007 which provide for the time limit of thirty days. In my perusal I have not come across any consequences provided under the said law where there exists such delay. Therefore, in my considered view, questions as to how the delay prejudiced the parties; and as to whether the delay renders the award a nullity shall have to be dealt with in the appeal if extension of time is granted. In my settled view, the determination of such questions shall involve a long drawn process of argument contrary to settled legal position.

Besides, as argued by the respondent, to which I subscribe, the CAT in the case of ***Finca Tanzania Limited*** (supra) ruled that the delay does not constitute a material irregularity. While considering section 88 (9) of the ELRA, which under the revised edition of 2019 falls under section 88 (11) the Court had this to say:

“... It is true that the CMA’s decision in this case was delivered after 4 months. However, the delay in our view is not a material irregularity in procurement of an award, sufficient to have the same invalidated. We say so if for example the award is nullified merely because the decision was not given within thirty days the effect is to have the process commence afresh causing further delay which is to the disadvantage of both parties. To us that is not the spirit behind section 88 (9). The spirit is to have a time frame in completing matters brought before the CMA but failure to meet the deadline stipulated in section 88(9) will not



invalidate the proceedings and the award..." [Emphasis added]

In consideration of the foregoing observation, I find the applicant has not advanced any sufficient reason to warrant this Court to grant the extension of time sought. Consequently, the application is dismissed. Since this is a labour matter I grant no orders as to costs.

Dated at Mbeya on this 02nd day of July 2021.


L. M. MONGELLA
JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 02nd day of July 2021 in the presence of Ms. Amina Mkuya, learned advocate, holding brief for Mr. Faraja Msuya, learned advocate for the applicant; and the 1st respondents.


L. M. MONGELLA
JUDGE

