

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

(IN THE DISTRICT REGISTRY OF TANGA)

AT TANGA

LABOUR APPLICATION No. 15 OF 2018

*(Arising from the Commission for Mediation and Arbitration in Labour Dispute
referenced CMA/TAN/5/2015 CMA-Tanga)*

TANGA FRESH LIMITED APPLICANT

Versus

KANUMBA MASTA& FOUR OTHERS RESPONDENTS

RULING

27.07.2021 & 30.07.2021

F.H. Mtulya, J.:

A Labour Dispute Referenced **CMA/TAN/5/2015** (the Dispute) was filed in the **Commission for Meditational and Arbitration** (the Commission) based in Tanga by Mr. Kanumba Masta and four other persons (the Respondents) complaining for unfair termination from employment by Tanga Fresh Limited (the Applicant) and prayed for re-instatement and payment of one month salary amounting to Tanzanian Shillings Eight Million Eight Hundred Twenty Thousand Only (8,820,000 Tshs).

At the conclusion of the matter on 7th September 2016, the Commission invited the provisions of section 40(1) & 44 of the **Employment and Labour Relations Act** [Cap. 366 R.E. 2019] and ordered the Applicant to pay a total of Tanzanian Shillings Thirteen Million One Hundred Sixteen Thousand Nine Hundred Twenty One Only (13,116, 921 Tsh) to the Respondent within Twenty One (21) days from 7th September 2016.

Following the order of the Commission, the Applicant neither preferred Revision nor paid the Respondents until on 28th November 2016 when the Applicant approached this court and lodged **Labour Revision No. 24 of 2016**. The registered Revision was struck out on 11th November 2018 for want of competence with regard to time limitation and proper citation of the law. After the struck out order of this court, the Applicant took a clear month to approach this court again on 11th December 2018 seeking for extension of time in **Application No. 15 of 2018** (the Application) and in its Fifth Paragraph of the Affidavit, the Applicant states that: *the Applicant is still intends to pursue the matter for revision and the chances of succeeding in the revision are overwhelming.*

When the Application was scheduled for hearing on 27th April 2021, the parties agreed to argue the Application by way of written

submissions and scheduling order was set to complete on 1st June 2021. It was fortunate that both parties complied with the order and today the Application was set for ruling.

I have had an opportunity to peruse the submissions of both parties. In brief, the reason of delay as from the Applicant side is displayed at page 1 of its submission that: *the basis of this application is to afford the Applicant an avenue to cure the noted illegalities in the original proceedings.* This submission was protested by the Respondents in two limbs, *viz:* first, the Applicant did not account on every day of delay; and, second, the issue of illegality is not reflected in the Applicant's Affidavit.

To bolster their argument, the Respondent cited the authority of the Court of Appeal in **Interchick Company Limited v. Mwaitenda Ahobokile Michael**, Civil Application No. 218 of 2016, where at page 12 the Court stated that: *it is this Court's firmly entrenched position that any applicant seeking extension of time is required to account for each day of delay.*

In a brief rejoinder submission, the Applicant cited Third Paragraph in the Affidavit contending that the words *applicant discovered some defects* capture the point of illegality. In order to substantiate his claim, the Applicant submitted that when there is

claim of illegality that alone constitutes good cause in an application for enlargement of time. Finally, the Applicant cited the authority of the **Principal Secretary, Ministry of Defence & National Service v. D. P. Valambhia** [1992] TLR 185 arguing that the Court of Appeal held that when a point at issue is illegality, it constitutes sufficient reason for extension of time.

On my part, I think, it is established law that applicants for enlargement of time must provide relevant materials to persuade courts in exercising their discretionary powers to decide in their favour (see: **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008 and **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014). However, there are no pigeon holes on relevant materials established in our courts of record, the High Court and Court of Appeal. That would have been easier for the courts to pinpoint the specific pigeon holes and determine applications brought before them.

Our superior court in this country has already confirmed on the difficulties involved in determining the relevant materials. In the precedent of **Oswald Masatu Mwizarubi v. Tanzania Processing**

Ltd, Civil Application No. 13 of 2010, the Court of Appeal stated that:

*What constitutes **good cause cannot be laid down by any hard and fast rules**. The term good cause is a relative one and is dependent upon party seeking extension of time to provide the **relevant material** in order to move the court to exercise its discretion.*

(Emphasis supplied).

The advice from our superior court in identifying relevant materials in an application for extension of time has been that every case has to be decided on its own peculiar facts. For instance, in the precedent of **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2019, it was stated at page 7 of the typed Ruling that:

*It is now settled that **in its discretionary powers, apart from a point of illegality where raised**, the court has to also consider such factors as the length of delay, the reason for delay, the degree of prejudice and whether or not the applicant was diligent. In applying those principles [the court must bear in mind]...the*

*general principle that **every case is decided upon its peculiar facts***

(Emphasis supplied).

Upon noting the point of illegality constitutes relevant materials and deletes accountability of days, the Applicant decided to construe its Third Paragraph in the Affidavit to capture the point of illegality. It is true that when there is a claim of illegality, applicants for extension of time may not be questioned on accountability of days of delay. In the precedent of **Attorney General v. Tanzania Ports Authority & Another**, Civil Application No. 87 of 2016 the Court stated:

*It is a settled law that **a claim of illegality of the challenged decision constitutes 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*

(Emphasis supplied).

The reasons for such explanations are available in the precedent in **Diamond Trust Bank Tanzania Bank Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017 in the following texts available at page 11 & 12 of the typed decision:

*We wish to point out that, the Court cannot normally justifiably close its eyes on glaring illegality in any particular case because it has a duty of ensuring proper application of the laws by the subordinates courts (see: **Marwa Mahende v. Republic** [1998] TLR 249)...we think, the superior courts have the additional duty of ensuring proper application of the laws by the courts below... for the interest of justice, the Court has a duty to address a vivid illegality and that cannot justifiably close its eyes thereof.*

However, having noted the allegation of illegality is the penetration point to a bundle of applications filed in our courts, the superior court had put in place criteria in considering the reason of illegality in applications like the present one, viz: first, existence of special circumstance of sufficient importance; and, second, the illegally complained must be obvious at a glance. There is a bundle of precedents on the record of our superior court and this court cannot either detained analysing the subject or depart from the directives of the Court of Appeal (see: **The Bishop of the Roman Catholic Diocese of Tanga v. Casmir Richard Shemkai**, Civil Application No. 507/12 of 2017; **Lyamuya Construction Company**

Ltd v. The Board of Trustees of Young Women's Christian Association of Tanzania, Civil Application No.2 of 2010; **Samwel Munsuro v. Chacha Mwikwabe**, Civil Application No. 539/08 of 2019; **The Principal Secretary, Ministry of Defense & National Service v. Devram Valambia** [1992] TLR 387; and **Hanspaul Automechs Limited v. RSA Limited**, Civil Application No. 126/02 of 2018).

In the present Application, I do not see any special circumstance of sufficient importance and illegality complained at a glance of the record. The registered reason of illegality in the present Application cannot persuade this court to grant extension of time to the Applicant. At least there could have been general explanations on what transpired between 7th September 2016, when the matter was concluded at the Commission and 28th November 2016 when it was filed in this court, or else between 11th November 2018 when the matter was struck out in this court and 11th December 2018, when the present Application was filed in this court.

The settled principle of law has been that applicants for enlargement of time cannot file an applications for extension of time as and when they wish (**Bank of Tanzania v. Saidi Malinda & 30 Others**, Civil Ref. 3 of 2014). Although, I am reminded by our

superior court that every case is decided upon its peculiar facts (see: **NBC Limited & Another v. Bruno Vitus Swalo** (supra), but in a situation where the application suggests to have been brought in this court in bad faith to delay justice to the parties, it cannot be granted (see: **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited** (supra).

Having said so, and considering the submissions of the parties, I think, the Applicant failed to persuade this court to exercise its discretionary mandate to decide in its favor. I therefore hereby dismiss the Application. As I said, the Application was brought in this court in bad faith, I award costs to the Respondents.

It is accordingly ordered.



A handwritten signature in blue ink, which appears to read "F.H. Mtulya", is written over a horizontal line.

F.H. Mtulya

Judge

30.07.2021

This Ruling was delivered under the seal of this court in Chambers in the presence of the Respondents, namely: Kanumba Masta, Faraji Abdallah, Zema Ahmed and their Personal Representative, Mr. David Kapoma and in the presence of the Applicant's Personal Representative, Mr. Henry Mlang'a.




F.H. Mtulya

Judge

30.07.2021