

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION
AT TABORA

MISCELLANEOUS LABOUR APPLICATION No. 1 of 2019
(Arising from Labour Dispute No. 50 of 2015)

- | | |
|-------------------------------|---------------------------------|
| 1. TUMAIN JAMAL | 1ST APPLICANT |
| 2. JOHN BUSUNGU | 2ND APPLICANT |
| 3. JOSEPH NYANGO..... | 3RD APPLICANT |
| 4. JUMA MLANDA | 4TH APPLICANT |
| 5. PETER MAPINDA | 5TH APPLICANT |

VERSUS

THE TANZANIA POSTAL BANK RESPONDENT

.....
RULING
.....

Date of last Order: 30/4/2021

Date of Delivery : 30/07/2021

AMOUR S. KHAMIS, J.:

Before the Court is an application for extension of time to file Application for Revision.

The Applicants sought to revise the decision of Labour Dispute No. 50 of 2015 arose from Commission for Mediation and Arbitration at Tabora Zone dated on 28th April, 2017 before Hon. Asnat F. Msaki.

Grounds for extension can be boiled down from Applicants Affidavits, particularly to paragraphs 5, 6, 7 and 8 that: -

1. They delayed to file revision, as this Court (Hon. Mallaba J.) struck out their previous application, and
2. The decision of Commission for Mediation and Arbitration (CMA) in Labour Dispute No. 50 of 2021 (before Asnat F. Msaki, dated 28th April, 2017) tainted with illegality.

The Respondent, through his legal counsel one Innocent Mhina, strenuously opposing the Application for the reason that, the Applicants have not demonstrated good reasons for extension of time.

The Counsel averred in his affidavit that, the Applicant's Application for revision was struck out due to wrong citation enabling provision of law; and there is no illegality because, the Arbitrator arrived into fair and just decision after scrutinizing evidence adduced before CMA.

Those reasons, according to Mr. Mhina, are not good or sufficient reasons warranting for extension of time.

When the application was called for hearing, Ms. Mwanakombo Chaponda who was representing the Applicants prayed for the application to be heard by way of writing.

Mr. Timoth Joseph, principal officer of the Respondent, was in agreement with Ms. Chaponda's prayer.

The Court, thus, ordered hearing this application to be conducted by way of written submission; and prearranged submission dates, which, both parties abided thereto.

In the Applicants submissions, they amplified what they precluded in their respective affidavits.

With regard to first ground, they contended that, the High Court, struck out the first application for revision without giving them leave to re-file proper application; as such, they found themselves out of time to file another application for revision.

The Applicants argued that, the delay for filing revision was technical delay as against actual delay, because their first application was filed within six weeks from the decision of CMA. So, the Applicants were diligently in prosecuting their application immediately after award was pronounced.

The Applicants cited two cases to support their stance. They are, **FORTUNATUS MASHA VS. WILLIAM SHIJA**, [1997] 213 and **BARCLAY BANK (T) LTD VS. KOMBO ALI SINGANO**, Misc. Lab. App. No. 9 of 2013.

Concerning to second ground of illegality, the Applicants pointed out that, the award of CMA tainted with errors, that is why, they seek extension so as, this Court can put away and clear doubts of parties on illegality.

To support their submission, the applicant seek refuge to the case of **PRINCIPAL SECRETARY MINISTRY OF DEFENCE AND NATIONAL SERVICE VS. DEVRAM VALAMBHIA**, [1992] TLR 1985.

The Applicants, surmised their submission by recapping that, the alluded grounds constitute good reasons in term of **Section 14(1) of the Law of Limitation Act, Cap. 89** and cases of **SHANTI VS. HINDOCHA & OTHERS**, [1973] EA 207; **EARL VS. SLATTER & WHEELER (AELYNE) LIMITED**, (1973) 1WLR 51 and **VIP**

ENGINEERING LIMITED & TWO OTHERS VS. CITIBANK TANZANIA LIMITED, consolidated Civil Reference No. 6, 7, 8 and 9 of 2006.

The Respondent prayed for the Court to dismiss the Application as no good cause has been demonstrated.

As the Respondent put in the submission, she contended that, the Applicants were not diligent in prosecuting the Application for revision because, this application have been filed after four (4) months from the date when the struck out order was given on 19th September, 2018.

Since the present application was filed beyond 100 days, the Applicants have to show reasons for delay. Absence of reasons, the Respondent argue that, the Applicant delay have been contributed by their dilatory conduct, lack of diligence and negligent of the Applicant counsel.

The Respondent took shield of **WILLIAM SHIJA VS. FORTUNATUS MASHA [1997] TLR 213** and **UMOJA GARAGE VS. NATIONAL MICROFINANCE BANK [1997] TLR 109** to support the first ground.

On the issue of illegality, the Respondent submitted that, illegality is good reason for extension of time where the Applicants can point out such illegality without going further to explain;

The Respondent referred the cases of **SEIF STORE LIMITED VS. ZULFIKAR H. KARIM, CIVIL APPLICATION**, No. 181 of 2013, CAT (unreported) and **MARY RWABIZI T/A AMUGA ENTERPRISES VS.**

NATIONAL MICROFINACE PLC, Civil Application No, 378/01 of 2019.

The Respondent concluded the submission by arguing that, circumstances found in Applicants cited cases are distinguishable with present application.

In rejoinder, the Applicants reiterated what were submitted in chief.

In term of **RULE 56(1) OF THE LABOUR COURT RULES, G.N. NO. 106 OF 2007** (the Rules) this court may, for any reasonable or sufficient/good cause, extend the period of limitation for the institution of an application for Revision.

The discretion envisaged under **Rule 56(1) of the Rules**, to extend the time fixed for the doing of an act is one to be exercised judicious. What constitutes good cause cannot be laid down by any hard and fast rules.

This depends on the prevailing circumstances of each particular case. It is upon the party to provide the relevant material in order for the Court to exercise its discretion – See **RATNAM VS. CUMARASAMY AND ANOTHER** (1964) 3 ALL ER 933 and **REGIONAL MANAGER TANROADS KAGERA VS. RUAHA CONCRETE COMPANY LIMITED** Civil Application No. 96 of 2007 CAT (unreported).

In **RATNAM VS. CUMARASAMY** (supra) Lord Guest stated as under:-

“The rules of court must, prima facie, be obeyed, and in order to justify a court in extending the time during which

(Emphasis mine)

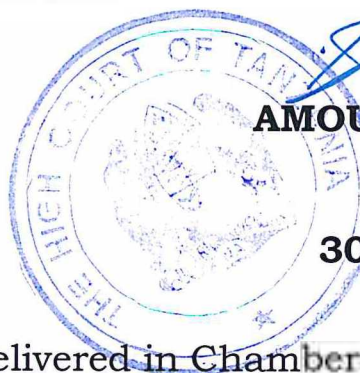
In instance case, since there is questions touching illegality, among others, is disregarding consideration of Applicants submissions that by itself is tantamount of unfair hearing.

Therefore, it is my view that, the question raised fall within the sphere of illegality articulated in the case of **VALAMBHIA** (supra) and as such, pursuant to **Rule 56(1) of the Rules**, I find the application, meritorious; as such, I allow the Application as I hereby do.

The applicants are at liberty to file an application for revision within thirty (30) days from the date of delivery of this ruling.

Since this is labour matter, there will be no orders as to costs.

It is so ordered.

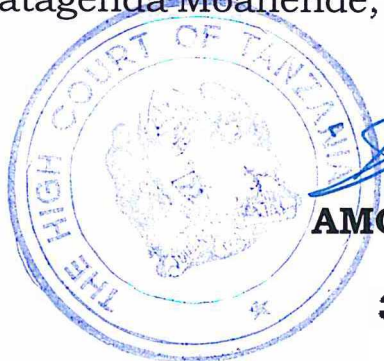



AMOUR S. KHAMIS

JUDGE

30/07/2021

Ruling delivered in Chambers on presence of Ms. Felista Chimola, TUICO Regional Assistant Secretary for the applicant. The first and second applicant are also presence. The respondent is represented by Mr. Batagenda Moahende, Loan Officer. Right of Appeal explained.




AMOUR S. KHAMIS

JUDGE

30/07/2021