IN THE HIGH COURT OF TANZANIA

(LABOUR COURT DIVISION)

IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

LABOUR APPLICATION NO.28 OF 2020

MSILIKALE MICRO INVESTIMENT CO.LTD..... APPLICANT

VERSUS

GODSON ISAYA BAGEMBEKI.....RESPONDENT

(Arising from the Award of the Commission for Mediation and Arbitration-Shinyanga)

(Rodney Mutalis-Arbitrator)

Dated the 24th of January, 2020

In

Labour Dispute No. CMA/SHY/173/2019

.....

RULING

26th July&6thAugust,2021

MDEMU, J.:

This is an application for extension of time to file revision to this court made under the provisions of Rule 24 and 56 of the Labour Court Rules, GN No.106 of 2007 and is supported by the affidavit of Robert Msilikale, principal officer of the Applicant Company sworn on 20th of June, 2020. Briefly, in an ex-parte award dated 24th of January, 2020, the Respondent was awarded a compensation at the tune of tshs. 6,053,384.684/= by the Commission for

Mediation and Arbitration (the CMA) for unfair termination. On 2nd of April 2020, he was unsuccessful in an application to set aside an ex-parte award, hence this application.

Parties appeared before me on 21st of June, 2021. By consensus, hearing of the application was by way of written submissions. The Applicant filed his written submissions on 5th of July, 2021. He generally submitted on two grounds being sufficient cause for extension of time. **One** is illegality constituted in the impugned ex-parte award and **two** is technology exigencies of the High Court Registry.

As to illegality, he submitted that, the Arbitrator fixed the matter directly for arbitration without having first passed the stage of mediation as legally required. In his view, the conduct of the Arbitrator violated the provisions of section 86(1)(2)(3) (a-c) of the Employment and Labour Relations Act, Rules 12(1)(2), 13 and 14 of the Labour Institutions (Mediation and Arbitration) Rules, GN No.64 of 2007. He submitted therefore that, under the provisions of section 88(3)(a) of ELRA, the Arbitrator have to be appointed before the dispute is mediated and in his opinion, this provision doesn't forgo and ignore the mandatory mediation processes before arbitration. He cited the case of **Richard Masyole Luhaga vs Gaki**

Investment, Consolidated Labour Revisions No.5&9 of 2020(unreported) on the flaws regarding irregularities committed by the arbitrator and further cited the case of the **Principal Sectretary, Ministry of Defence and National Service vs. Devram P. Valambhia (1992) TLR 182** insisting that, the pleaded technical delay and illegality is a warrant to extension of time.

The learned Counsel also cited the following cases without amplifying what are they supporting for: **Tanzania Rent a Car Limited vs Peter Kimunu, Civil Application No. 210/01 of 2019** and that of **Afriline General Transport Limited vs Registrar of Tittles, Misc. Civil Application No.66 of 2020** (both unreported). Reading relevant parts of the decisions as quoted by the learned counsel, I think he meant to expound what happened in this registry as deposed in paragraph 9 of the affidavit as follows:

> *9. that, I timely filed an application for revision after the aforementioned ruling but the same was rejected by the Deputy Registrar (Honorable Eugenia Gerard Rwujahuka) on the ground that I was supposed to file the same electronically.*

It was on those premises I was urged to allow the application as there are sufficient cause to do so.

In reply, the Respondent filed his written submissions on 19th of July, 2021. He argued that there are no merits in the application because, the Applicant has not accounted for days of delay from 2nd of April, 2020 when the ex-parte award was delivered to 8th of July, 2020 when he lodged this application. He thought the issue of e-filing and that, the learned Advocate was waiting for e-filing training, senior as he is, are irrelevant.

He thus thought, under the provisions of Rule 56(1)(2) and (3) of GN No.106 of 2007, the Applicant should show good cause as defined in **Bryan &Garner ,Black Law Dictionary, Ninth Edition,** to mean legally sufficient reasons. He added that, the Applicant has not shown reasons and length for delay and whether he was diligent as stated in **Bertha Bwire vs Alex Maganga, Civil Reference No.7 of 2016**(unreported). He also faulted the Applicant for not accounting for every day of the delay as was held in **Bushfire Hassan vs Latina Lucia Masanya, Civil Application No.3 of 2007** (unreported). As the Applicant has not shown sufficient cause, he urged me to exercise discretion power by denying to extend time

(Benedict Mumelo vs Bank of Tanzania, Civil Appeal No.12 of 2002(unreported).

As to subjecting the dispute to arbitration before mediation, he cited the provisions of Rule 6(1) of the Labour Institutions (Mediation and Arbitrations) Guidelines, GN No.67 on the exceptions to skip mediation processes. In his view, if the CMA considers consequences of the delay in the mediation proceedings; prospects of settlement; the effects of utilizing CMA's resources; interests of the parties and that of the public generally, may arbitrate the dispute ignoring mediation processes. He thus even thought the provisions of section 88 of ELRA is misplaced because is on appointment of Arbitrator, time and place of mediation.

In all he thought, the application has no merit and urged me to dismiss the same. In rejoinder, the Applicants counsel filed the written rejoinder on 26th of July, 2021. He simply reiterated his previous positions save for the question of Rule 6(1) of the Labour Institutions (Mediation and Arbitrations) Guidelines, GN No.67 which he thought, the record is silent as to whether the Arbitrator took into account those conditions when skipping the mediation processes. Parties ended this way.

Is there any sufficient cause? As submitted by the two parties, there are two main grounds. **One** is the technical delay in which the Applicant contentions is that as the first application for revision on denial of the CMA to set aside ex-parte award was in time, then the act of the Deputy Registrar to reject the application on the basis that had to file electronically, be termed as a technical delay. In this one, I think, prudence should have been the dictates to the Deputy Registrar. As the registry was for the first time introducing e-filing, she was either supposed to assist the Applicant in the service bureau of the Judiciary, if at all it was available or admitting the application manually.

Two, in the question of illegality, parties are in agreement on the point that, the ex-parte award in the arbitration proceedings did not pass the test of mediation as a mandatory process. I also share the same views after havening going through the record and noted such an undertaking. Nonetheless, the Respondent submitted on the exception to Rule 6(1) of the Labour Institutions (Mediation and Arbitrations) Guidelines. Where this is the correct legal position, I entirely agree with Mr. Kaunda that, the record should speak so that the Arbitrator, after having considered that Rule, decided that, the dispute should not be mediated. In essence, this is illegality

which may only be resolved where the court is vested with revision jurisdiction.

As stated in the case of **Principal Secretary, Ministry of Defence and National Service vs. Devram P. Valambhia** (supra), this serves to this court as a ground to extend time within which the Applicant to ask this court to revise the ex-parte award of the CMA after an attempt to set the same aside proved futile. That said, this application is hereby allowed. The Applicant is given six weeks within which to apply for revision to this court.

Parties to bear own costs. It is so ordered.

Gerson J.Mdemu
JUDGE
6/8/2021

DATED at **SHINYANGA** this 6th day of August, 2021

Gerson J.Mdemu
JUDGE
6/8/2021