

**IN THE HIGH COURT OF TANZANIA
TABORA DISTRICT REGISTRY
AT TABORA**

MISC. LABOUR APPLICATION NO. 6 OF 2019

(Arising from Labour Dispute No. CAM/TABORA/46/214)

RICHARD GEORGE WEREMA APPLICANT

VERSUS

TANESCO RESPONDENT

RULING

Date of Last Order: 18/06/2021

Date of Delivery: 20/08/2021

AMOUR S. KHAMIS, J.

Richard George Werema (hereafter the applicant) seeks for this Court to extend time upon which he can file an Application for revision out of time.

The intended application is sought to revise the CMA award in Labour Dispute No. CMA/TABORA/46/2014 of the Commission for Mediation and Arbitration for Tabora dated 13th October, 2016.

The application, which was brought under **Rule 24(1), (2)(a)(b)(c)(d)(e)(f), 3(a)(b)(c)(d) and Rule 56(1) and (3) of the Labour Court Rules, GN No. 106 of 2007** (the Rules) is supported by the applicant's affidavit sworn on 6/09/2019.

Main grounds for extension of time are depicted from the Applicant's affidavit particularly in paragraphs 11-16 in which he alleged that his delay to file revision was not caused by dilatory conduct but due to technical delay.

The applicant deposed that his previous proceedings, namely: Labour Revision No. 10 of 2018 was struck out by this Court for being incurably defective coupled with illegality cropped in the CMA decision. The Applicant entreated this Court to enlarge time for him to file an application for revision.

The Respondent filed a counter-affidavit duly sworn by Advocate Juliana William. In the counter affidavit, Juliana William vigorously disputed averments by the Applicant and subjected him to strictest proof thereof.

When the application was scheduled for hearing, Richard George Werema fended for himself while the Respondent was represented by Ms. Juliana William, learned advocate.

Both sides settled on battling out this application by way of written submissions.

In the submission, the Applicant accounted a chronology of events that took place before institution of the present application.

The applicant contended that there was an illegality in the CMA decision and that he actively pursued his rights in a Court of law only to find that the application was defective in form.

Concerning an illegality, the applicant contended that the arbitrator acted with prejudice in the entire process of determining the dispute in question and failed to interpret relevant provisions of the law.



With regard to technical delay, the applicant submitted that immediately upon delivery of the decision of CMA, he promptly filed an application for revision in the High Court but the same was found to be incompetent and thus struck out by Hon. Utamwa J. on 08/04/2019.

The applicant argued that he was diligent in filing the application for revision in time.

In rebuttal, Ms. Juliana William contended that the applicant's application for revision No. 10 of 2018 which was struck out on 8th April, 2019 was not timely attended as the applicant did not file an application for extension of time until on 8th April 2019.

Ms. Juliana William asserted that the delay to file an application for extension of time showed that the applicant failed to account for each day of delay and was thus not diligent.

Ms. Juliana William supported her contention by referring this Court to the cases of **Omary Ally Nyamalege (as Administrator of Estate of the late Seleman Ally Nyamalege & Others v Mwanza Engineering Works**, Civil Application No. 94/08 of 2017 and **Finca (T) Ltd & Another v Boniface Mwalukisa**, Civil Application No. 589/12 2018 both unreported.

With regard to the issue of illegality, the Counsel for the Respondent argued that, the decision of CMA was proper, no illegalities were shown and both sides were sufficiently heard.

The main issue is whether the application disclosed a good cause for extension of time.

The Power to grant extension of time, is provided for under **Rule 56(3) of the Labour Court Rules, GN No. 106 of 2007** (the Rules). The Rule provide thus: -



“The Court may, on good cause shown condone non-compliance with the period prescribed by the Court”.

From the language of the Rule, the Court has discretion to grant extension of time where there is a good cause shown by the applicant.

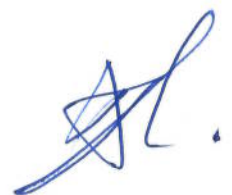
The term good cause is not defined in the Rules, but, was well explained in the case of **Oswald Masatu Mwizambi v Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (unreported) in which it was held that: -

“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 the party seeking extension of time to provide relevant material in order to move the Court to exercise its discretion”

Apart from giving relevant material for extension of time, an applicant must also be diligent in pursuing his right. The delay should not occasion due to dilatory conducts. In the case of **Elias Msonde v Republic Criminal Appeal No. 93 of 2005**, the Court of Appeal held that: -

“We need not belabor, the fact that it is now settled law that in applications for extension of time to do an act required by law, all that is expected of the applicant is to show that he was reasonable or good cause and that the delay was not caused or contributed by dilatory conducted or lack of diligence on his part”.

Yet in the case of case of **Principal Secretary, Ministry of Defence and National Service v Devran Valambia**, [1992] TLR 182 at page 189, the Court of Appeal laid down another principle which



constitute good cause. It is an illegality rule. At page 389, Court of Appeal held thus: -

“Where the point of law at issue is the illegality or otherwise of the decision being challenged, that is a point of law of sufficient importance to constitute a sufficient reason ...”

In this application, the applicant, contended that, prior to this application, he filed an application for revision before this Court; but, due to a defect which cropped up in the affidavit in support of the application, the application was struck out by this Court.

Further, the applicant strongly argued that, the decision of CMA was tainted with illegality.

It is not disputed that the applicant’s Labour Revision No. 10 of 2018 was struck out by this Court on grounds of incompetency.

That being the case, in my view, the applicant demonstrated that he was determined to pursue his right.

Further, the applicant sufficiently exhibited existence of an illegality in the trial CMA’s decision which warrants the exercise of this Court’s powers under Rule 56 (3) of the Labour Court Rules, namely: failure to address relevant provisions of the law.

In the circumstances, the application succeeds. Let the applicant lodge an application for revision within thirty (30) days from date of delivery of this ruling. It is so ordered.


AMOUR S. KHAMIS
JUDGE
20/08/2021

ORDER:

Ruling delivered in chambers in presence of the applicant in person and Mr. Amosi Gahise, learned advocate holding brief of Ms. Juliana William for TANESCO. Right of Appeal explained.



AMOUR S. KHAMIS

JUDGE

20/8/2021