

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

MISC LABOUR APPLICATION NO. 15 OF 2021

*(Arising from Misc. Labour Application No. 19 of 2020 before Hon. Simfukwe, J;
Labour Revision No. 30/2019 before Hon. B.R. Mutungi, J; Labour Revision No. 15 of
2020 and Labour Dispute No. MOS.CMA/ARB/38/2019)*

PATRICK MNGOFI APPLICANT

VERSUS

KATIBU MKUU KANISA LA KILUTHERI

TANZANIA DAYOSIS YA PARE RESPONDENT

3/6/2022 & 28/06/2022

RULING

MWENEMPAZI, J:

The applicant has made an application under Rule 24(1), 24(2) (a) (b) (c) (d)(e)(f) and 24(3) (a)(b)(c) (d) and Rule 56(1)(c) and (3) of Labour Court



Rules, 2007, GN No. 106 of 2007 and any other enabling provision of law. He is praying for an order of extension of time to enable the applicant to file fresh application for Revision arising from the award of CMA at Moshi in Labour Dispute No. MOS/CMA/ARB/38/2019 before Hon. R. Massawe (Arbitrator) and for any other order(s) this Honourable court may deem fit and just to grant.

The application is supported with an affidavit of Zuhura Twalib, Advocate. In it she has stated that the applicant was the applicant in the case, Labour Revision No. 30 of 2019. The case was struck out. The same was lodged on the 20th December, 2019. It was intended to seek revision order for Labour Dispute No. MOS/CMA/KLM/ARB/38/2019. The respondent raised an objection that the application was an incomplete application due to lack of some documents which ought to have been included in the application but they were not included; and the same was sustained. Thus, it was struck out on the 20th September, 2020.

On 8th October 2020, the applicant obtained copies of ruling and orders and on the next day, an application No. 15 of 2020 was filed seeking extension of time to file a revision of the decision of the High Court in

Labour Revision No. 30/2019. This application was struck out as it was a confusion according to an averment in the affidavit. The ruling for striking out of application No. 15 of 2020 was delivered on the 30th November 2020. The applicant applied for copies of ruling and drawn order which were obtained on the 11th November, 2020 and on the same day an application was filed and registered as Application No. 19 of 2020. However, it was attacked by the respondent again by way of preliminary objection. On the 1st September, 2021 the applicant conceded to the objection and was granted 14 days to file a complete application.

The applicant has averred that his concern is to challenge the award in Labour Dispute No. MOS/CMA/ARB/38/2019 before Hon. R. Massawe (Arbitrator) dated 18th November 2019, in that it is tainted with illegalities.

The said illegalities are listed under paragraph 15 of the affidavit as follows:-

1. The arbitrator failed to use its jurisdiction to call for employment record.
2. The award by arbitrator was improperly procured

3. The award by arbitrator was unlawful and illogical.

The Respondents are opposing the application. They have filed a counter affidavit sworn by Mr. Isack Samson who is also the advocate of the respondent.

At the hearing the Ms. Zuhura Twalib, Advocate represented the applicant and Mr. Isack Samson was fending the respondent. The application was heard *viva voce* or by oral hearing.

The applicant's position is that the delay to file this application is due to the striking out of the application for revision and consequent applications and also illegality.

As to the application to be tainted with illegalities the counsel has submitted that it is on the face of the record. However, it has not been that way explained as to show how it is featuring as submitted.

The counsel has cited the case of **Lyamuya Construciotn Co. Ltd vs Board of Registered Trustees of young women's Christina Association of Tanzania, Civil Application NO. 2/2010** (unreported).

According to the case cited, "*extension of time is a matter of discretion by*

the court. The same has to be exercised judicially, according to the rules of reasons and justice guidelines have been outlined as follows:-

a) The applicant must account for all the period of delay.

b) The delay should not be inordinate.

c) The application must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.

d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such illegality of the decision sought to be challenged."

The counsel for the applicant has narrated the chronology of events. There has been a striking out of Revision No. 30/2019. Then, application No. 15/2020 filed, this was struck out as a confused application by setting the impugned ruling in, or as the target challenge to, the decision of the High Court in Revision No. 30/2019. Applicant filed application No. 19/2020 which was struck out again after the counsel for the applicant had conceded to the preliminary objection raised, hence the present application. The counsel argues that the applicant has accounted for delay

and they, in all situations, acted promptly citing the case of **Dr. Fortunatus Masha vs Dr. William Shija and another [1997] TLR 41.**

The Respondent's counsel has replied with vigor starting with the point an illegality. He has opined that the counsel has failed to show the illegality on the face of the record. She has not shown the law which has been breached. The award was genuine due to failure to prove claims. That was his duty.

He also submitted that; the applicant has failed to defend his application. All the circumstances which made the application to be struck out was due to filing improper documents for revision. In the case of **Misc. Comm. Case Application No. 131 of 2019, Teclong Packaging Machinery Ltd and another vs A-one Products and Bottlers Ltd**. The application was not granted because the advocate did not perform her duties properly.

Coming back to the case of **Lyamuya Construction Ltd** (supra), the counsel has argued that the case does not support the applicant. The applicant has no sufficient reasons to allow extension of time. If the judge enlarged time for 14 days and the applicant delayed for 12 days and that



has not been explained in the affidavit then the applicant has not produced evidence, even the order of the court was not complied to.

Normally, reasons are contained in the affidavit and are short requiring expansion by the applicant. The applicant has not been able to explain even the way follow up was made. The counsel prayed for the application to be dismissed. We pray also to be granted costs as the application is frivolous. It is not a duty of the court to feel pity for the party in the case. The applicant should not be made to benefit for their own wrong.

In rejoinder, Ms. Zuhura Twalib Advocate prayed to add on the issue of illegality. She submitted that the CMA failed to issue an order for production of documents supporting payment by the respondent and failure to rely on the evidence by the applicant. The law is very clear, Section 15(6) of the LREA. The employer has a duty to keep records of her employee.

On the requirement to account of each day of delay, the applicant's counsel has submitted the applicant has accounted for the days he delayed and for the purposes she has prayed the affidavit be adopted to form part of submission.

I have read the record, application, counter affidavit and also heard the submissions by the parties. No doubt, the applicant has been able to explain the chronology of the events. However, no reasons have been explained. In the case of **Waziri Mgovano vs Jenepher Enson Kayuni, Labour Division Mbeya Revision No. 22 of 2011, C016/2013** Hon. Aboud, J held:-

"It is established principle in law that sufficient reason is a pre-condition for the court to grant extension of time, Rule 56(1) of the Labour Court Rules, 2007."

In the cited case, a case has been cited to explain what sufficient reasons or good cause. That is the case of **Tanga Cement Company Ltd vs Jumanne Masangwa & another, Civil Application No. 6 of 2001, HC Dar es Salaam** (unreported) where the court held that:

"What amounts to sufficient cause has been defined. From decided cases a number of factors have to be taken into account including whether or not the application has been brought promptly, the absence of any or valid explanation for the delay, lack of diligent on the part of the applicant."



The Respondent has complained that the applicant was filing improper documents that has made this matter to be protracted. I observed herein above that there has been an account of chronology of events by the applicant. But the reasons have not been shown explicitly. The respondent has said it all and I have noted, there was lack of diligence on the part of the applicant. Each time there were striking out of an application due to concession to the objection raised by the adverse party, the Respondent.

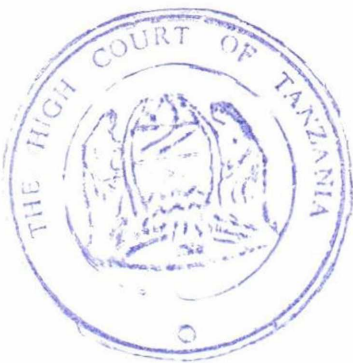
On the issue of illegality, the point suggested must be illegal on the face of the record and not to be drawn out process to decipher "the point of law" on illegality in the decision that is sought to be challenged. The case of **Lyamuya Construction Company Ltd vs Board of Registered Trustee of Young Women's Christian Association of Tanzania** (supra) cannot be used to back up the point.

In final analysis, illegality is turned down as not a sufficient cause and the account for delay in my view must come after the reasons for delay have been exposed. In this case, I have found there was no due diligence on the part of the applicant.



The application therefore has no merit as the applicant has failed to show sufficient cause, it is therefore dismissed. As this is a labor case, I issue no order as to costs. It is ordered accordingly.

DATED and DELIVERED at Moshi this 28th day of June, 2022.




T. M. MWENEMPAZI
JUDGE

Ruling delivered in court this 20th day of June, 2022 in the presence of the applicant and Ms. Zuhura Twalib, his advocate and Mr. Isack Samson, Advocate for the Respondent.


T. M. MWENEMPAZI
JUDGE