THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(IRINGA DISTRICT REGISTRY)

AT IRINGA

MISC. LABOUR APPLICATION NO. 16 OF 2022

THE TRUSTEES OF THE TANZANIA

NATIONAL PARKS.....APPLICANT

AND

WIBIRO MITWANGO KERENGE.....RESPONDENT

12/05 & 14/06/2022

RULING

MATOGOLO, J.

This is an application by the applicant **The Trustees of the Tanzania National Parks** for this court to grant extension of time to the applicant to enable her file an application for revision against the decision of the Commission for Mediation and Arbitration at Iringa in Labour Dispute No. CMA/IR/84/2015/02/2019 delivered on 09/08/2021.

The respondent one **Wibiro Mitwago Kerenge** was employed by the applicant as an Assistant Park Ranger. But his employment was terminated on 14/12/2015. Believing that he was unlawfully terminated, he

filed complaint at the Commission for Mediation and Arbitration Iringa as Labour complaint No. CMA/IR/84/2015/02/2019.

The commission decided in favour of the respondent by ordering the applicant to compensate the respondent 12 month salaries which is equivalent to TShs. 16,954,704/= for unfair termination. The applicant dissatisfied with the decision (uamuzi). According to the applicant's affidavit taken by Theophilo Alexander, the applicant assistant conservation commissioner, the decision by the commission was delivered in their absence and without being notified as hearing of the Labour Dispute competed on 18/12/2020 when both parties filed final submissions. But the decision was delivered on 09/08/2021.

The applicant became aware of the said decision on 23/10/2021 when the same was served to the applicant by the registry officer. As the decision was served on the applicant after the expiry of six months thus beyond 30 days provided by law she could not file an application for revision. It necessitated her to apply for extension of time hence this application. The grounds for extension of time as stated by the applicant in her affidavit supporting the application are that she was supplied with a copy of the decision by the commission late after the prescribed period has expired. But also he alleged illegalities of the decision by the Commission for Mediation and Arbitration. The illegalities complained of are four.

i. Violation of Section 88(11) of the Employment and Labour Relations Act (ELRA), 2004 as the award by the CMA was improperly procured

out of the applicant's knowledge and the same was not served to them as required by law.

ii. The Arbitrator erred in law by delivering the ruling (uamuzi) instead of an award (Tuzo). Thus violated Rule 27(1) of the Labour Institutions (Mediation and Arbitration Guidelines), Rules of 2007,G.N. No. 67published on 23rd March, 2007.

iii. The said ruling (uamuzi) was improperly procured as it was delivered out of the compulsory and statutory thirty (30) days against the requirement of Section 88(11) of the ELRA.

iv. The award is illegal as is based on wrong translation of the law which requires intervention of this court.

This application was argued by way of written submissions. The parties were represented. Mr. Benard S. Mganga learned advocate represented the applicant, on the other part Mr. Evans R. Nzowa learned advocate represented the respondent.

Submitting in support of the application Mr. Benard Mganga argued that the conclusion of the arbitration proceedings was on 18/12/2020 and the Award according to Section 88 (11) of the ELRA had to be delivered within 30 days from the conclusion of the proceedings that is not later than on 17/11/2021. But the same was issued six months later and in absence and without summoning or knowledge by the respondent, now applicant. But Section 91(1)(a) of the ELRA requires the applicant who is dissatisfied with the Arbitrator award to apply for review in the Labour Court within six weeks (42

days) of the date the award was served on the applicant. But the applicant became aware of the ruling (uamuzi) on 23/10/2021 when the respondent submitted the letter for his reliefs claim in the office of the applicant on 13/10/2021 that is 66 days after the said ruling was issued per annexure P1. That is why they are now applying for extension of time.

Regarding the second illegality that the Arbitrator erred to deliver a ruling (uamuzi) instead of an award (Tuzo), Mr. Mganga referred to Rule 27(1) of the Labour Institutions (Mediation and Arbitration Guidelines), Rules which directs an Arbitrator to write and sign a concise award containingthe decision within the prescribed time with reasons.

The award was improperly procured as it was delivered out of the compulsory and statutory thirty days contrary to Section 88(11) of the ELRA.

He submitted further that Rule 14(3) of G.N. No. 67/2007 requires that after completion of hearing the Arbitrator shall adhere to the prescribed time limit for issuing an award. He also referred to Rule 17 which provides for penalty to a Mediator or Arbitrator who violate any provisions of the Rules.

The learned counsel submitted further that the award by the CMA Iringa was illegal as it is based on wrong translation of the law

which requires intervention by this court but which is only possible after this application for extension of time is granted.

He said the Arbitrator wrongly interpreted and misapplied the law by holding that the procedure for termination of the respondent was not proper on the ground that the Chairman of the Disciplinary Committee was not supposed to decide on termination of the respondent's employment. He argued that it is not the disciplinary committee chairman who decided on the respondent's employment termination but the employer Director General Tanzania National Parks to whom the recommendation by the Disciplinary Committee was tabled as indicated in annexure P2. Mr. Mganga learned counsel argued further that the order by the Arbitrator that the Employer now applicant to pay the respondent the sum of Tshs. 16,954,704/= as his remuneration during the time he was not working following unlawful termination per annexure P3. He said that was misdirection on part of the Arbitrator and did not take into account the evidence on record. He said it is incomprehensible why the Arbitrator argued in such way. The respondent disputed the contents of paragraphs 4,5,6 and 10 of the applicant's affidavit without stating reasons as to why are in dispute. He said what the chairman did is to comply with law, the Guideline No 4(12) of the Guidelines for Disciplinary Incapacity and Accountability Policy and Procedure, part of the Employment and Labour Relations (Code of Good Practice) Rules, G.N. No. 42/2007.

He said what the chairman did is to submit a written report summarizing reasons for the disciplinary action imposed.

He further argued that, it was a misdirection on part of the Arbitrator not to examine and evaluate the evidence before him otherwise he would decide that the Employer had valid reasons in terminating the respondent and followed proper procedure.

He also argued that despite the above mentioned irregularities the order for compensation of the respondent in the ruling by the Arbitrator was unreasonable and unfair. If he would be present on the date of ruling the order was to be performed within 28 days after being served with the decision which is in violation of the rule concerning the right of appeal or seek for revision which is more than 30 days from the date of award per Section 91(1)(a) and (b) of the ELRA.

The learned counsel for the applicant prayed to this court to grant the application for extension of time.

On his part Mr. Evans Nzowa learned advocate for the respondent essentially did not respond to all complaints raised especially those relating to illegalities of the award. The reason he gave is that the same discusses merit of the case, he responded to the question of delay to be supplied with copy of an award which he submitted that according to the applicant submission she was late for

more than 66 days. Unfortunately she did not account for each day she was late.

On the claim at paragraph 6 of her affidavit that they were served on 23/10/2021 after the registry officer has received the same from the respondent. He said the registry officer was not mentioned his/her name nor was there an affidavit sworn by him/her to support the applicant's assertion. He said that affidavit was so material to be filed to this court as it was held in the case of **John Chuwa Vs Antony Ciza (1992) TLR 233.**

On the argument that the Arbitrator delivered his award on 09/08/2021 out of the applicant's knowledge and the same was not served to them as required by law. Mr. Nzowa argued that parties at the CMA have the duty to make follow ups in order to collect the decision or award if it is ready. Although the applicant at paragraph 4 of her affidavit claimed that they made follow ups to be told by the Arbitrator Hon. Msuli that the award was not yet prepared and he shall inform them via summons the day he shall deliver his decision, but he argued that such contention and claim has not been substantiated at all. Firstly, they did not mention who made the said follow up. Secondly they did not mention the dates follow ups were made. He submitted further that at paragraph 6 of the affidavit applicant claimed to have been served the award on 23/10/2021 when the same was served to them by the registry officer after she has received the same. The respondent's counsel argued that the

letter dated 13/10/2021 from the respondent to the applicant attached to the applicant's submission as Annexure P1, clearly shows that the same was served on 13/10/2021 and not on 23/10/2021 as alleged.

Mr. Evans Nzowa learned advocate prayed to this court to dismiss the application because the applicant failed to adduce sufficient reasons to warrant this court to extend time.

In rejoinder Mr. Benard Mganga learned advocate reiterated what he submitted in his submission in chief. He emphasized for this court to consider the illegalities and impropriety of the award which is sufficient cause for extension of time as it was held by the Court of Appeal in the case of **Permanent Secretary Ministry of Defence and National Service Vs D.P. Valambhia**[1992] TLR 185, which was cited with approval in the case of **Zuberi Seluhombo Kandamsite Vs Michael Augustino**, Miscellaneous Land Application N. 513 of 2021 High Court Land Division (unreported).

Having read the rival submissions by the learned advocates and having gone through the court record, the issue for determination in this application is whether the applicant has demonstrated sufficient cause for the delay and sufficient cause for extension of time.

It is cardinal principle of law that granting of extension of time or not is on the discretion of the court. This was so held by the Court

of Appeal in the case of **Benedict Mumeno Vs Bank of Tanzania** [2006] 1 EA 277.

It is not enough for the applicant to advance sufficient cause for the delay but also sufficient reasons for granting such extension of time as it was held in the case of **Yona Kaponda Vs Republic** (1988) TLR 84 Court, of Appeal in which the Court held:-

> *"in deciding whether or not to allow an application to appeal out of time, the court has to consider whether or not there is "sufficient reasons" not only for the delay, but also "sufficient reasons" for extending the time during which to entertain the appeal".*

Having gone through the award and the court record, that award was given on 9/8/2021 as indicated at page 13 of the said award.

However the record is silent as to whether both parties were present on that date of Award delivery. But it is on the copy of award itself shown that the copy was supplied to the complainant (respondent) on 11/8/2021, that is two days after the award was given.

There is contention by the applicant that she was not aware of the date the Award or decision was given on 9/8/2021. She said the hearing was concluded on 18/12/2020 which means that the award should have been delivered by 17/01/2021, that is within 30 days

from the proceedings/hearing were concluded as provided for under Section 88(ii) of the ELRA, which provides:-

> *"Within thirty days of the conclusion of the arbitration proceedings, the arbitrator **shall** issue an award with reasons signed by the arbitrator".*

The provision above quoted has a mandatory requirement due to the word shall used in terms of Section 53(2) of the Interpretation of Laws Act, [Cap 1 RE 2019], which provides that:-

> *"53(2) where in a Written Law the word "shall" is used in conferring a function such word shall be interpreted to mean that the function so conferred must be performed".*

In the present dispute, the Arbitrator did not comply with such mandatory requirement of the law by his failure to issue an Award within 30 days provided after conclusion of the proceedings. He did not even give any reason(s) for issuing the award outside the period provided by law. Failure to do so renders the said award improperly procured. But bad side of it the award was issued in the absence of the applicant as she was not notified of that date an award was issued. Failure to notify the applicant of the date the award was issued denied her right to take necessary action within the period provided after being dissatisfied with the issued award. These two complaints have merit.

In his reply submission Mr. Evans Nzowa contended that the applicant did not account for each day of delay as according to his submission there was a delay of 66 days. It was rightly submitted by the applicant's counsel in his rejoinder that the applicant could not account for the period she was not aware of the issue of the award. The award was issued by the Arbitrator six months after conclusion of the proceedings and without summoning/notifying the applicant, nor was it served to her. The applicant has clearly stated in her affidavit and his submission in chief that she become aware of the issued award on 13/10/2021 after receive a letter Annex P1 from the respondent claiming his rights after the decision by the Arbitrator of 09/8/2021.

Under such circumstances it is unconceivable for the respondent to require the applicant to account for the period of delay. In actual fact she has accounted for according to the explanation she gave for the award not to be issued within 30 days provided by law and for her not to be notified of the date the award was to be issued.

Apart from the applicant's complaint on the issue of delay to be supplied with the award, there are illegalities committed in this case. The first illegality as explained above is for the Arbitrator not to issue an award within 30 days the period provided after the conclusion of the proceedings as herein above demonstrated. For so not delivering the award within 30 days, the Arbitrator also violated Rule 14(3) of

the Labour Institutions (Mediation and Arbitration Guidelines) Rules, G.N. No. 67/2007, which provides that:-

> *"Upon the completion of a hearing arbitrator shall adhere to the prescribed period time limit for issuing an award".*

Another illegality emanates from improper interpretation of law by the Arbitrator. In his award the Arbitrator concluded that by holding that the procedure for termination of the respondent was not proper on the ground that the Chairman of the Disciplinary Committee was not supposed to decide on termination of the respondent's employment. The true fact is that the respondent's employment was not terminated by the Chairman to the Disciplinary Committee but it was terminated by the Director General of Tanzania National Parks who confirmed the Disciplinary Committee recommendations, and terminated the respondent's employment.

It was correctly submitted by Mr. Benard Mganga learned advocate who represented the applicant that, what the Disciplinary Committee did is based on the evidence tendered and received, on the allegation against the respondent for breaching regulation 89(7) (15) (16) (36) of the Tanzania National Parks Staff Regulations, G.N. No. 337 of 2011 read together with Rule 12(3) (a) and (c) of the Employment and Labour Relations (Code of Good Practice) Rules, G.N. No. 42 of 2007 for gross negligence, gross dishonest and willful endangering the safety of others.

The respondent's employment termination is in accordance to the letter from the Director General as appearing in Annex P2. So it was wrong for the Arbitration to assert that the respondent's employment was terminated by the Chairman to the Disciplinary Committee. As the award was based on improper interpretation of the law that renders the said award illegal.

Another complaint by the applicant is for the Arbitrator to issue a ruling instead of an award. It is true the Arbitrator issued a ruling instead of an award as directed under section 88 (11) of the ELRA. However by so writing I do not see if the applicant was prejudiced. The applicant herself did not explain how he was prejudiced.

Having so explained, it suffices to say that the complained of illegalities is sufficient cause for this court to grant extension of time to the applicant. In the case of **Principal Secretary Ministry of Defence and National Service Vs Devram Valambhia** (supra), it was held:-

> *"when the point at issue is one alleging illegality of the decision being challenged, the court has a duty, even if it means extending the time for the purpose, to ascertain the point and, if the alleged illegality be established, to take appropriate measures to put the matter and the record right".*

Again in the case of **Kashinde Machibya Vs Hafidhi Said**, Civil Application No.48 of 2009 Court of Appeal of Tanzania (unreported) it was held that:-

> *"We have already accepted it as established law in this country that where the point of law at issue is the illegality or otherwise of the decision being challenged that by itself constitutes sufficient reasons".*

I have pointed out in this ruling above that the award by the Arbitrator is tainted with illegalities and that is the applicant's complaint. Basing on the decisions of the Court of Appeal above cited, that is sufficient reasons for this court to extend time to the applicant so that the illegalities pointed out can be ascertained and appropriate measure be taken.

Basing on that explanation I grant the application. The applicant has to file an application for revision to this court within six weeks (42 days) from this ruling.

It is so ordered.

F.N. MATOGOLO

JUDGE

09/06/2022.

Date:	14/06/2022
Coram:	Hon. F. N. Matogolo – Judge
Applicant:	Absent
For the Applicant:	Rehema Daffi holding brief
Respondent:	Absent
For the Respondent:	Ignas Charaji
C/C:	Grace

Mr. Ignas Charaji:

My Lord I am the representative of the respondent Wibiro Mitwango Kerenge.

Rehema Daffi – Advocate;

My Lord I am holding brief for Mr. Bernard Mganga advocate who represent the applicant.

My Lord the matter is for ruling we are ready.

COURT:

Ruling delivered.

F. N. MATOGOLO

JUDGE

14/06/2022