

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS LABOUR APPLICATION NO. 50 OF 2020

(Originating from CMA/MZ/NYAM/83/2019)

ABT ASSOCIATES INC. TANZANIA OFFICE.....APPLICANT

VERSUS

AMBROCE ASENGA RESPONDENT

RULING

30/12/2021 & 17/03/2022

F. K. MANYANDA, J.

In this application, the Applicant, **ABT Associates Inc. Tanzania Office**, is moving this Court to issue order extending the time within which the Applicant to file an application for revision against the award of the Commission for Mediation and Arbitration (CMA) by Hon. K. Nnembuka, Arbitrator, dated 07/10/2019 in Labour Dispute No. CMA/MZ/NYAM/83/2019.

The application is supported by an affidavit sworn by Mubita Lifwatila which contain 25 paragraphs giving the following background. That the



Applicant is an International Non-Government Organization which deals with among others implementation of IRS in the United Republic of Tanzania, referred a labour dispute to the CMA which on 07/10/2019 was decided in favour of the Respondent, **Ambrose Asenga**.

Dissatisfied, the Applicant lodged an application for revision in time, however, after doubting the correctness and propriety of the proceedings and the award, the application was withdrawn with leave to refile the same within ten (10) days in order to incorporate grounds for impeaching the proceedings. In the course of preparing fresh application by thoroughly perusing the original file they found themselves out of time, hence the instant application.

The Respondent challenged the affidavit in his counter affidavit averring that the Applicant has not advanced cogent grounds for extension of time.

The Applicant replied via reply to the counter affidavit explaining how tedious the processes of registering afresh the application contributed to the delay in filing the application.

Hearing, with leave of this Court was conducted by way of written submissions. Ms. Blandina Kihampa, learned Advocate, drew and filed



the submissions for the Applicant and those for the Respondent were drawn and filed by the Respondent himself personally.

Submitting in support of the application, Ms. Blandina Kihampa argued that the criteria for extension of time have been established, the Counsel named the same as length of delay, reason for delay, lack of prejudice to the opposing party, likelihood of success of intended application and illegality. She cited the case of **Maulid Swedi vs. Republic**, Criminal Appeal No. 66/11 of 2017 (unreported).

The Counsel argued that the delay is of one month and two days from 18/09/2020 to 22/10/2020, which is not inordinate. As to reasons for delay, the Counsel submitted that it was partly due to waiting for supply of the necessary documents especially the order granting leave to refile the application and partly due to absence of one Mubita Lifwatila, the responsible officer to depone the facts. Moreover, the Counsel was of the views that there will be no prejudice to the Respondent in case time is extended because there is illegality on the proceedings. She paraded a number of cases in support of her position. It suffices to say that she rightly cited cases which support the position of the law in extension of time like the instant one.



On his side, the Respondent submitted that there are no justifiable reasons for failure to file the application within ten (10) days of the leave order. He argued that since there is no specified person who was allegedly making the follow ups and absence of an affidavit from the registry office renders the facts sworn in the affidavit hearsay. He cited a case of this Court of **Rashid Ahmed Kilindi vs. Attorney General**, Misc. Civil Application No. 49 of 2020 (unreported).

The Respondent also challenged the contention the Mr. Mubita Lifwatila travelling out of the country due to absence of any travelling document. Moreover, the Respondent challenged the allegations of delay due to registration process. The Respondent also contested the issue of illegality arguing that there is no illegality on the face of the record. He cited the case of **Ngao Godwin Losero vs. Julius Mwarabu**, Civil Application No. 221/18 of 2018 (unreported) where it was stated that illegality must be glary on the face of the record not one drawn from a long process of reasoning. As regard to the degree of prejudice, the Respondent argued that he will be prejudiced because his rights were violated due to termination of his employment.

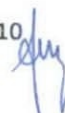


Those were the submissions by the parties in this application. In the first place I sincerely register my apology for late delivery of this judgement, the causes of delay were out of my control.

Secondly, I agree with them as to the position of the law in extension of time to do an act where time limit is prescribed. That among the criteria looked at include, but not limited to, length of the delay, reasons for delay, the prejudice the opposing side is likely to suffer, likelihood of success of the matter for which the application is made and whether there are illegalities on the record.

There is plethora of authorities on this position of the law which including the famous case of **Lyamuya Construction Company Ltd Vs Board of Registered Trustee of Young Women Christian Association of Tanzania**, Civil Application No 2 of 2010 (Unreported), where the Court of Appeal provided the following guidelines for the grant of extension of time: -

- a) The applicant must account for all the period of delay;*
- b) The delay should not be inordinate;*
- c) The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intended to take; and*



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

These guidelines were restated by Hon. Kahyoza, Judge, in the case of **Ryoba Msogore @ Marwa vs Republic**, Miscellaneous Criminal Application No. 17 of 2020 (unreported). See also the cases of **Maulid Swedi vs. Republic (supra)**, **Hussein Kisarawe vs Thomas Amir Jeuri and Another**, Misc. Land Application No. 865 of 2018 and **Royal Insurance Tanzania Limited vs Kiwengwa Strand Hotel Limited**, Civil Application No. 111 of 2009 (unreported).

In the latter case the tests were listed to be that; first, length of the delay; two, reason of the delay; three, degree of prejudice to the respondent if the application is granted; four, chances of appeal succeeding if the application is granted.

The question is whether the application meets the said tests. Starting with the first test that is the length of delay. It has been argued that the delay is that of one month and two days. To the Applicant, it was argued that the delay is not inordinate; the Respondent say it is. In my opinion this issue is subject to the evidence and the circumstances of the case. What matters most in my considered views is the ability of the



Applicant to account for each day of delay. Whether the Applicant managed to account for the delay, it is a question addressed in the second test.

In respect of the second test, it was argued by the Applicant's Counsel that there are two reasons which contributed to the delay. The first is delay due to waiting for a copy of an order granting the leave to refile the application. The second is travel out of the country by Mr. Muita Lifwatila, the affiant of the Applicant. The Respondent disputed these contentions arguing that the same are not supported by the evidence as copies were ready for collection earlier and there is no documentary evidence evidencing the travel. I have gone through the record, I could not find any evidence support the reasons advanced by the Applicant's Counsel because there is no any attachment to the affidavit showing that the affiant for the Applicant did travel out of the country, therefore it is mere assertion.

Thirdly, it was argued that the application has likelihood of success, the Respondent responded that there is no such likelihood. In my considered view this test is not fit one for determination at this stage as determination of the same may lead to the determination of the revision itself.



I will consider deeply the contention of availability of illegalities on the record. The Counsel for the Applicant contends that the proceedings suffer serious omissions of some evidence adduced at the hearing, thus the award is unsupported with evidence. The Respondent contends that, that is not illegality on the face of the record because it entails a long process of reasoning from the evidence.

I think the Respondent is missing the point. In my considered opinion illegality may be deducted from the proceedings and the decision thereon where special circumstances are alleged, such as in this matter, where the very record is questioned.

In the case of **VIP Engineering & Marketing Limited and 2 Others vs. Citibank Tanzania Limited**, Consolidated References No. 6, 7 and 8 of 2006. (Unreported) the Court of Appeal of Tanzania stated as follows: -

*"It is therefore, settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time, regardless of **whether or not a reasonable explanation has been given by the applicant to account for the delay.**" (emphasis added)*



Other cases on point include those of **Citibank (Tanzania) Ltd vs. TTCL & Others**, Civil Application No. 97 of 2003; **William Malaba Butabutemi vs. Republic**, Criminal Application No. 5 of 2005 and **Property & Revisionary Investment Corporation vs. Temper and Another** [1978] All E.R. 433; **Ministry of Defence, National Service vs. Devram Vallambhia** [1992] T.L.R. 185 **Veronica Fubile vs. National Insurance Corporation & 2 Others**, Civil Application No. 168 of 2008, to mention a few.

In the latter case, the Court of Appeal of Tanzania said that, the existence of special circumstances warrants grant of extension of time to lodge an appeal out of time. Among the listed special circumstances, include the claim of illegality.

From the authorities cited above, I am of firm views that there are special circumstances in this matter which this Court need to address such as illegalities in the record which challenge of the authenticity and sanctity of the record itself.

In the result, for reasons stated above, I do hereby find that the application as meritorious, deserving to be granted. Consequently, I do hereby grant extension of time for thirty (30) days from the date of this

ruling for the Applicant to file revision in this Court as prayed. It is so ordered.




F. K. MANYANDA
JUDGE
17/03/2022