

**IN THE HIGH COURT OF TANZANIA  
(SONGEA DISTRICT REGISTRY)**

**AT SONGEA**

**MISC. LABOUR APPLICATION NO. 4 OF 2021**

*(Originating from Labour Dispute No. CMA/SON/SEPT/03/2013)*

**ADOLF HAMISI.....1<sup>ST</sup> APPLICANT**

**BAKARI ALLY.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**SERENGETI FOOD LIMITED..... RESPONDENT**

**RULING**

15.02.2022 & 17.03.2022

U. E. Madeha, J.

By a Chamber Summons extracted under Rules 24 (1) (a), (b) (c) (d) (f), 24 (3) (a) (b) (c) (d) (f), together with Rules 55 (1) and 56 (1) of the Labour Courts Rules, G.N No. 106 of 2007, the Applicants are seeking to be granted the extension of time so as to file an application for Revision of the judgment and decree of the CMA dated on 8.10.2013, in dispute No. CMA/SON/SEPT/03/2013 out of time prescribed by the law. The Chamber Summons specifies the two grounds on which the application is made.

The major ground is that this Court be pleased to grant leave to the Applicants to apply for the Revision out of time to challenge the decision of the CMA delivered on 8.10.2013 in dispute No. CMA/SON/SEPT/03/2013. The application is also supported by the Applicant's affidavit in which he alleges in paragraphs 2, 3, 4, 5, 6, 7, 8, 9,10, 11 and 12 that:

- 2. the Applicants herein were the complainant in labour dispute No. CMA/SON/SEPT/03/2013 is in Commission for Mediation and Arbitration at Songea in Ruvuma Region in which its decision was delivered on the 8<sup>th</sup> day of October 2013. Based on preliminary objections.*
- 3. Having aggrieved with the said decision the Applicants herein timely referred the matter for the Revision to the High Court of Tanzania Songea Registry and the same was registered as Revision No.10 of 2013 but unfortunately, the mentioned application was found incompetent for the failure to file a proper notice of application, the matter was struck out on 23<sup>rd</sup> June 2014 and the leave to file the proper application was granted.*
- 4. The applicant filed another application the same was registered as Revision No. 9 of 2014 but in the result on 3.12.2015 the said*

- application was struck out for being filed under the wrong citation of the law and the court went further to grant leave to the Applicants to file the proper application within three days.*
- 5. The Applicants instituted another application before this Court it was registered as Revision No. 13 of 2015 but again due to the technical ground on 17.5.2017 the said application was also struck out for being supported with the defective affidavit.*
  - 6. The Applicants instated another application which was registered as Revision Application No.6 of 2017 on 7.3.2019 the application was not heard on merits it was been struck out by Hon Deputy Registrar for the technical grounds due to the wrong citation of the law.*
  - 7. That, after Revision Application No. 6 of 2017 being structed out the Applicants herein found to be out of time within which to apply for Revision, hence filed in this Court application for leave to file Revision out of the time of which the said Misc. Application No. 03 of 2019, but due to some shortfalls in the legal ground eventually on 11/06/2019 the Court struck out the application*
  - 8. That, after the said application for extension of time being struck out, the Applicants very immediately filed another application, and the*

*same was registered as Misc. Labour Application No. 1 of 2020 of which the said application now was heard on merits and eventually on 17/07/2020 the court granted the application and leave to file Revision out of time was granted as prayed and the time frame was within 21 days.*

*9. That, having granted the leave the Applicants herein timely as ordered by the court filed an application for Revision and the same was registered as Revision No. 06 of 2020, but further the said application was also suffered from preliminary objection and eventually on 30/10/2020 the said application was struck out on the ground that affidavit of Bakari Ally falls short as it has no address of the person making the declaration.*

*10. That, being diligent to pursue the matter eventually the Applicants herein successfully managed to find another Advocate who will able to handle the matter competently and at the meantime another application for leave to file Revision out of Application No. 3 of 2020, but during the hearing of the said application the Court found that the said application to be incompetent and the same was struck*

*out and further to that leave to file other competent application was granted.*

11. *That, the Applicants have an overwhelming chance of success as the decision intend to challenge are encountered with fundamental irregularities on the face of law which need the intervention of this honorable Court inter alia being the trial Commission decided preliminary objection based on evidence and further the Commission decided the matter contrary to the law.*

12. *That failure to file an appeal on time is not in fault of the Applicants herein rather caused by factors that are beyond our control as all the time has been in the corridor of this honorable court from 2013 prosecuting our case to pursue our right. For the interest of justice, all that has been sought in the Chamber Summons be granted unless the Applicants will suffer irreparable loss.*

On the date when the application was brought for mention the Counsel for the Applicants prayed in this Court that the application to be heard by way of written submission. Due to the absence of any objection from the opposite party, this Court adhered to the Applicant's Counsel prayer. The Applicants were represented by Mr. Zuberi Mauridi the learned Advocate whereas the

Respondent was represented by Mr. D.P Ndunguru the learned Advocate. The Applicants raised two grounds for delay.

Mr. Zuberi Mauridi the learned Counsel for the Applicants argued that they applied for the leave to file an application for revision out of time based on two grounds: First, technical delay, as demonstrated in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10 and 12 of the Applicant's affidavit, where the Applicants elaborated that the whole time since 2013 when the first Revision was filed to date, the Applicants were prosecuting their case. Therefore, their counsel regarded that time as a technical delay since they acted promptly and diligently.

Second, illegality is deposed under paragraph 11 of the same affidavit. In his submission, the Applicant's Advocates averred that the decision they intend to challenge if the leave to file the Revision out of time will be granted, was riddled with fundamental irregularities on the face of the law. The Arbitrator decided the preliminary objection based on evidence. Further, he decided the matter contrary to the law. The applicant's advocate supported his argument with the case of **The Principal Secretary Ministry of Defence and National Service v. DP Valambhia** [1992] T. L. R 185. He prayed to the Court that this application to be granted with costs.

Mr. Zuberi Mauridi, the learned Advocate submitted further that it is a cardinal principle of the law in our jurisdiction that the power of the Court is both broad and discretionary as the Court will extend time only upon the Applicants showing good cause such as the illegality which is shown in paragraph 11 of the affidavit and prayed to this Court to grant the extension of time to file Revision out of time. He cited the case of **Fortunatus Masha v. William Shija and Another** (1979) TLR 154 in which the Court allowed the application for the extension of time based on illegality.

In response to the Applicant's Advocate submissions, Mr. D.P. Ndunguru the Counsel for the Respondent opposed the application because the said technical delay adduced by the Counsel for the Applicants is beyond excuse and tolerance the fact being that the Applicants has committed the same errors more than ten times. He said that, this is negligence and the same cannot be a good ground for extension of time. He backed up his argument with the case of **Ernest Maguha v. Dalia Hassani & another**, Misc Land Application No. 08/2019 HCT (unreported) whereas, the Court said that negligent of an Advocate cannot be a good reason for the extension of time, he added that series of errors can be taken to be lack of seriousness enough to dismiss the application.

Additionally, the Arbitrator decided the preliminary objection based on evidence, Mr. Ndunguru averred that this is not a good cause for an extension of time, as the Arbitrator has a prime duty to ensure that justice is achieved at the earliest opportunity, no wrong was committed by the Arbitrator by calling evidence to prove the time limit of the complaint brought before the Commission of Mediation and Arbitration. He prayed that this application to be dismissed for want of merits.

Having carefully considered the written submission from the counsel for the parties, this Court has observed that the issue to be determined in this application is, whether the Applicants has adduced sufficient cause for the delay to file the revision out of time as prescribed by the law to warrant the Court so as to grant him an extension of time to file the same. The question is, what amount to sufficient cause for the delay to file a Revision in Court within the time frame? The answer to the above question can be found in the case of **CRDB (1996) Limited V. George Kilindu** Civil Application No. 162 of 2006, CAT at Dar-es-Salaam (Unreported) where it was stated *inter alia*: -

*"What amount to sufficient cause has not been defined but from cases decided by the Court it includes among others, bringing*



*the application promptly, valid explanation for the delay and lack of negligence on the part of the Applicant.”*

Starting with the factor of bringing the application promptly the Court has found that, as stated by the Applicant’s Counsel the decision which the Applicants intends to challenge, if the extension of time will be granted was delivered on the 8<sup>th</sup> day of October, 2013. He applied for Revision within the time. Furthermore, they filed simultaneous applications but all were struck out due to technicalities.

The court has considered the above sequence of events. After going through the record of the matter it has found that, although the decision of the CMA was delivered on 8<sup>th</sup> October 2013 and certified on the same date the Applicants filed the applications which were struck out for technical factors, this shows that the Applicants were diligent and prompt to deal with their case.

I have examined closely at the previous applications and realized that the problems started when the Applicants applied for Revision No. 6 of 2020 which was struck out on 3.10.2020. The Applicants filed Misc. Labour Application No. 3 of 2021 was for the extension of time to be allowed to file

an application for Revision which was on 18.11.2021. They are therefore supposed to count for each day of delay from 3.10.2020 when Application No. 6. Of 2020 was struck out until 18.11.2021 when the Applicants applied for the extension of time so that they could file an appeal out of time. They have been wandering around the Court for about seven years from 2016 to 2022, and have not yet found their rights, this is the spirit of the wilderness.

The Applicants alleged that the trial Arbitrator decided the preliminary objection raised by the Respondent based on evidence and decided the matter contrary to the law, which was conceded by the Counsel for the Respondent who said that, it was Arbitrator's work to ensure justice was achieved at the earliest opportunity, no wrong was committed by the Arbitrator by calling the evidence to prove the time limit for the complaint to be brought to CMA.

Furthermore, it is a cardinal rule that the point of preliminary objection has to be based on a pure point of law and not otherwise. This was stated in many decisions of the Court, to mention the few, the case of **Alliance Insurance Corporation LTD v. Arusha Arts LTD**, Civil Appeal No. 297/2017, and the case of **Mukisa Biscuits Manufacturing LTD v. West End Distributors LTD (1969) EA 699**, where the Court held that;

*"A preliminary objection is like what used to be a demurrer. It raised a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. **It cannot be raised if any fact has to be ascertained** or if what is sought is the exercise of judicial discretion".*

As submitted by the Counsel for the Applicants, illegality can be a ground for the extension of time only when such illegality is obvious on the face of the record. To stress on this point, reference is made to the cases of **Amour Habib Salim Husein v. Husein Bafagi** Civil Application No. 52 of 2009 and the **Principal Secretary, Ministry of Defense and National Service V. Devram Valambhia** (1992) TLR 185, where it was held that:

*"In our view when the issue is one alleging illegality of the decision challenged, the court has a duty, in any means extending the time for the purpose to ascertain the point and if the alleged illegality is established, to take the appropriate measure to put the matter and the records right."*

On the same note consider the case of **VIP Engineering and Marketing Limited and three others v. City Bank Tanzania Limited**, Consolidated Civil Reference No. 6, 7, and 8 of 2006 CAT (unreported) where it was stated thus.

*"We have already accepted it as established law in this country that where the point of law at issue is illegality or otherwise of the decision being challenged that by itself constitute sufficient reasons".* The court went further and states that:

*"It is, therefore, settled law that a claim of the illegality of the challenged decision constitutes sufficient reasons for the extension of time under Rule 8 regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay."*

As much as the case at hand is considered, the records show that the Arbitrator called the evidence to deal with the point of the preliminary objection raised by the Complainant contrary to the law which guides on how to deal with the preliminary objection contrary to that it amounts to illegality. The illegality alleged by the Counsel for the Applicants is apparent and visible

on the face of the record hence it qualifies to be a good ground for the Court to grant them leave to file Revision out of time.

Since it has not been stated if the Applicants will be granted an extension of time to file their application for Revision in Court out of time the Respondents will not be prejudiced in any way as stated in the case of **Mobrama Gold Corporation Ltd v. Minister for Energy and Minerals and others** [1998] TLR 425 it will be inappropriate to deny the applicant prayer from this Court as such denial will stifle his case.

For the foregoing reasons, I find the Applicants are entitled to an extension of time. Accordingly, this application is granted. The Applicants shall file the application for Revision within the period of the limitation provided by the law from today. I give no order to costs.

**DATED and DELIVERED at SONGEA this 17<sup>th</sup> day of March 2022**



*[Handwritten signature]*

**U. E. MADEHA**

**Judge**

**17/03/2022**