

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

MISC. LABOUR APPLICATION NO. 16 OF 2021

(Arising from the Award of Commission for Mediation and Arbitration (CMA)

Shinyanga in CMA/SHY/66, 67 & 68/2019) dated 15th October, 2020)

EL-HILLAL MINERALS LTD..... APPLICANT

VERSUS

DOTTO PELEKA AND 29 OTHERS RESPONDENTS

RULING

29/08/2022 & 25/04/2023.

S.M. KULITA, J.

This is an application for extension of time to appeal before this court against the decision of the Commission for Mediation and Arbitration (CMA) Shinyanga in CMA/SHY/66, 67 & 68/2019 delivered on 15th October, 2020. It has been made under the provisions of Rules 24(1), 24(2)(a), (b), (c), (d), (e), (f), 24(3)(a), (b), (c), (d), 55(1), (2), (3) of the Labour Court Rules of 2007 GN. No. 106 Published on 18th May, 2007; and section 14 of the Law

of Limitation Act [Cap 89 RE 2019]. The application is supported with an affidavit sworn by the Applicant's Counsel, Mr. Frank Samwel on the 25th day of August, 2021.

In a nut shell, information as can be gathered from the pleadings and submissions provides that, having been aggrieved with the decision of the Arbitrator delivered on 15th October, 2020 which granted the Respondents herein an award of Tsh. 38,392,708/= as against the Applicant herein, El-Hillal Minerals Ltd, the Applicant lodged this application for extension of time on 25th August, 2021 for him to appeal before this court out of time.

The matter was argued through oral submissions. While the Applicant is represented by Mr. Frank Samwel, Advocate, the Respondents are represented by Mr. Shaban Mvungi, Advocate.

In his oral submission, Advocate for the Applicant, Mr. Frank Samwel stated that the Applicant was unaware of this matter until 25th January, 2021 when he was served with the copy for the said CMA Award dated 15th October, 2020. The Counsel further submitted that the matter was tabled for execution before the Deputy Registrar but the Applicant disputed the same as it was presented before the said Executing Officer without a

certificate which is Form No. V (CMA F5), hence execution would be illegal. He said that unavailability of the said form implies that there was no award to be executed. He averred that those illegalities are sufficient grounds for this application of extension of time to be granted.

In the reply thereto Mr. Shaban Mvungi, Advocate vehemently disputed the application by stating that it is a delay tactic by the Applicant. He provided the reason that on 15th October, 2020 when the award was issued by the CMA both parties were present. Mr. Mvungi said that he was there representing the Respondents herein while the Applicant's Supervisor, one Hemed Mohamed was representing the Applicant herein, as it can be seen at page 3 of the award copy (Anexture FS-1) in the Applicant's Affidavit. It is the submission of Mr. Mvungi that the Applicant was therefore aware of the issuance of the award since that 15th October, 2020, hence his prayer for extension of time for the reason of unawareness of the award before 25th January, 2021 is not true and has no legal weight. Thus, it shouldn't be granted.

As for the issue of unavailability of the said forms no. 5 in the CMA case file, Mr. Mvungi submitted that it is none of the Respondent's business

as it is used to be issued by the court, hence, even if the allegation is true the Respondent should not be blamed.

In rejoinder the Applicant's Counsel submitted that the Award in question is illegal hence should not be acted upon, as it has been signed by the person purported to be the Applicant's official while not.

From the above submissions the following are my findings. It is undisputable that the said CMA Award was issued on 15th October, 2020. The Applicant's Counsel, Mr. Frank Samwel alleges that the Applicant became aware of it on 25th January, 2021 when he was served with the said CMA Award. The Counsel further argued that the said Award has been signed by the person purported to be the Applicant's official while not. That led the Applicant's Counsel to conclude that, the Award in question is illegal hence should not be acted upon. Having gone through the pleadings and submissions, I find this argument with no legal weight as the Counsel never submitted on this serious allegation during his submission in chief that nobody from the Applicant's company had been sent to the CMA on that 15th October, 2020 when the Award is purported to have been issued.

This Court's proceedings transpire that the Applicant's Counsel, Mr. Frank Samwel submitted on this submission during the rejoinder, the thing which is not only illegal as the opponent's (Respondent's) counsel had already closed his submission, but also regarded as an afterthought. Furthermore, that said fact was not pleaded in the affidavit.

On this, I can agree with the Respondent's counsel, Mr. Mvungi that what the Applicant is doing is just a delay tactic as the said Award (Anexture FS-1) whose copy has been annexed in the Applicant's application transpires it being signed on the 15th October, 2020 by the representatives of both parties, to wit, Mvungi Shaban, Advocate for the Respondent and the Applicant's Supervisor one Hemed Mohamed. Therefore, contrary to its Counsel's allegations, the Applicant herein was aware of the said award since that 15th October, 2020.

Nevertheless, even if we take it 15th October, 2020 when the award was issued or 25th January, 2021 when the Applicant was served with the said CMA Award, it doesn't change the fact that the Applicant herein came to lodge this application for extension of time after a long time lapse, that is 25th August, 2021, over 7 (seven) months later. Apart from saying that the matter was thereafter taken to the Deputy Registrar of the High Court for

execution of the award, the Applicant's Counsel never stated as to when and for how long the said matter was before the said Executing Officer, before he had lodged this application for extension of time. As a long time had passed since then, and the counsel submitted nothing on that, obvious there was **no prompt action** taken by the Applicant and that he has **failed to account for day to day delay in lodging the intended Application for Revision**. Be it noted that these are among the conditions to be considered in granting the extension of time.

In the Court of Appeal case namely **Bushiri Hassan Vs. Latifa Lukio Mashayo, Civil application No. 3 of 2007** (unreported) it was held;

"Delay of even a single day, has to be accounted for, otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken".

The question is, in his raised ground for delay, has the applicant managed to account for all days of delay? The answer is not. Going through the submissions made by Mr. Frank Samwel, the applicant said that he was supplied with the copy of the impugned decision on 25th January, 2021. But

he came to file this application No. 16 of 2021 on 25th August, 2021. This is clear that, during that time, between 25th January, 2021, when the Applicant was supplied with the copy of the impugned Award and 25th August, 2021 when this application was filed, the Applicant's Counsel has not accounted for the delay. He gave no reason for each day of delay for the said period of seven months. On that aspect alone, I see it that, the applicant has failed to account for all days of delay as per the requirement of the law. This position of the law was also blessed by the Court of Appeal in **Wambele Mtumwa Shahame V. Mohamed Hamis, Civil Reference No. 8 of 2016, CAT at DSM (unreported)**.

In the case of **Tanga Cement Company Ltd V. Jumanne D. Masangwa and Amos A. Mwalwanda, Civil Application No. 6 of 2001, CAT (unreported)** while dealing with an application for extension of time the Court of Appeal held;

"an application for extension of time is entirely in the discretion of the Court to grant or refuse it. This unfettered discretion however has to be exercised judicially, and the overriding consideration is that there must be "sufficient cause" for doing so. What amounts to sufficient cause has not been defined. From decided cases a number of factors

*has been taken into account, including **whether or not the application was brought promptly; valid explanation for the delay; and diligence on the part of the applicant***"

For the same findings see also the cases of **Chawe Transport Import & Export Co. Ltd. V. Pan Construction Co. Ltd and Three Others, Civil Application No. 146 of 2005 (unreported)** and **Standard Chartered Bank (Tanzania) Ltd V. Bata Shoe Company (T) Limited Civil Application No. 101 of 2006.**

In his submission Mr. Frank Samwel, Advocate also raised the issue of **illegality**, that Form No. 5 (CMA 5) which are mandatory in the execution of the award are not available in the CMA case file. Basically, illegality as ground for extension of time, if found apparently on the impugned decision, in itself constitutes a good and sufficient cause for extension of time. See, **Paul Juma v Diesel & Auto Electric Services Ltd and others, Civil Application No. 54 of 2007, CAT (unreported)**. In the case of **Principal Secretary, Ministry of Defence and National Service V. Devram Valambhia [1992] TLR 182** it was held;

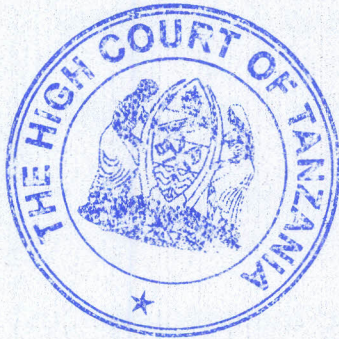
"In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record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

In this matter the Deputy Registrar rightly stayed the execution just because there was this matter to be determined by the Judge, which is a proper procedure. He didn't do so for the reason of illegality on the CMA Award.

Be it noted that the most important thing in the execution of the award is the court's/tribunal's decision. The non-availability of Form No. V (CMA 5) does not change the verdict. As it is for the Decree or Drawn Order in the ordinary civil cases that they can be prepared even subsequently to the delivery of the judgment if its copies are not there in the case file for the reasons of misplacement or not being issued at all. Further, if the said forms are necessary in executing the award, it should be the argument in the execution proceedings. In that sense, I don't see even the issue of illegality

on the matter at hand which could compel this court to allow the application for extension so as cure the said irregularity.

In upshot I find the application with no merit, hence **dismissed**. This being the Labour dispute, I make **no order as to costs**.




S.M. KULITA
JUDGE
25/04/2023