

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF SHINYANGA**

**AT SHINYANGA**

**MISC. LABOUR APPLICATION NO. 7 OF 2022**

*(Arising from the decision of Labour Dispute No. CMA/SHY/210/2020,*

*Commission for Mediation and Arbitration (CMA) Shinyanga dated 16<sup>th</sup>*

*March, 2021)*

**SHIRECU (1984) LTD..... APPLICANT**

**VERSUS**

**LAWRENCE DEDE BUJIKU AND 28 OTHERS .....RESPONDENTS**

## **RULING**

*25/04/2023 & 16/05/2023.*

**S.M. KULITA, J.**

This is an application for extension of time by the Applicant who intends to lodge an application for revision against the award of the Commission for Mediation and Arbitration (CMA), Shinyanga in the Labour Dispute No. CMA/SHY/210/2020, delivered on 16<sup>th</sup> March, 2021.



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) and 56(1) of the Labour Court Rules of 2007 GN. No. 106 of 2007; and section 94(1)(e) of the Employment and Labour Relation Act No. 6 of 2019. The application is supported with an affidavit affirmed by the Applicant's Counsel, Mr. Mussa Idd Mpogole, State Attorney from the Office of the Solicitor General Shinyanga, on the 6<sup>th</sup> day of July, 2022.

In a nut shell, information as can be gathered from the pleadings and submissions provides that, the relationship between the Applicant and the Respondents herein was that of Employer and Employee. That in compliance of the Registrar of Cooperatives Societies' letter with Ref. No. LA.69/325/02/201 dated 3<sup>rd</sup> June, 2020, the Applicant made a Compulsory Termination against the Respondents for different reasons including attaining the retirement age. It is alleged that the Respondents were not paid their terminal benefits after the said retirement, inspite of the fact that the parties had entered into an agreement on the 6<sup>th</sup> day of January, 2021 that the matter could have been settled by 31<sup>st</sup> January, 2021. That led the Respondents to lodge Labour Dispute No. CMA/SHY/210/2020, at the CMA



Shinyanga whose decision, delivered on 16<sup>th</sup> March, 2021, was for the Respondents herein.

The Applicant herein **SHIRECU (1984) LTD** is aggrieved with the impugned decision and she intends to appeal before this court but she is time barred. Hence, on the 6<sup>th</sup> day of July, 2022, the Applicant, through its Counsel, Mr. Mussa Idd Mpogole, State Attorney, lodged this application seeking for extension of time to file an application for revision against the decision of CMA Shinyanga.

The matter was argued through oral submissions. While the Applicant is represented by Mr. Mussa Idd Mpogole, Learned State Attorney, the Respondents are represented by Mr. Kitua Kinja, Learned Advocate.

In his written submission in support of the application the Applicant's Counsel, Mr. Mpogole, State Attorney started by praying for the contents of his affidavit to be adopted as part of his submission, he then proceeded that the applicant is aggrieved with the impugned decision of the CMA dated 26/03/2021. He said that under section 91(a) of the Employment and Labour Relation Act No. 6 of 2019 the prescribed time to file Revision is 6 weeks, which means that the said duration lapsed on 24/07/2021 from the date of delivery of the CMA decision. He delayed for 447 days.



The Counsel submitted that Rule 56(1) of the Labour Court Rules of 2007 GN. No. 106 of 2007 gives this court powers for extension of time in case of delay of the aggrieved party to lodge the application for revision, if there are good causes for that. He further stated that among the grounds which the court has to consider in granting such application is whether there was **illegality** in the trial tribunal's record. He added that in the proof of illegality, the length of delay is not material issue to be considered.

Mr. Mpogole was of the views that, illegality in the trial tribunal's record is that the presiding Officer did Arbitrate the matter instead of Mediating it, which is contrary to Rule 5 of the Labour Institutions Act. He said that the fact that the Officer did call the decision "UAMUZI" and called/named the relief granted "TUZO" which is wrong, it means she acted on the matter through mediation and not arbitration. He said that that is a collision of Rule 20(2) of the Labour Institutions (Mediation and Arbitration) Guidelines.

As well Mr. Mpogole submitted that under section 86(3) and (4) of the Employment and Labour Relation Act, had the presiding officer conducted mediation, it could have taken a period of not exceeding 30 (thirty) days. He cited the case of BARKLAYS BANK (T) LTD V. AYYAM MATESSA, Civil Appeal No. 481 of 2020, CAT at DSM (unreported) to bolster his assertion.



Mr. Mpogole mentioned another irregularity being that the 1<sup>st</sup> Respondent herein one **LAWRENCE DEDE BUJIKU** instituted the impugned case at CMA as a representative of the other 28 without leave of the trial court, which is contrary to Rule 44(2) of the Labour Court Rules, GN. No. 106 of 2007. He added that there is nowhere the said 28 others have been mentioned which means that they are unknown. The Counsel cited the case of VICTORIA JOHN MWAKALASYA & ANOTHER V. FIRST NATIONAL BANK TANZANIA LIMITED, Labour Revision No. 304 of 2020 (unreported) to cement his argument. For those reasons the Applicant's Counsel sought for the application for extension of time to be granted.

The Counsel concluded by submitting that for those irregularities the impugned matter should be revised so that it can be cured, and that can only be done upon extension of time for the applicant to lodge application for Revision at High Court out of time.

In the reply thereto, Advocate for the Respondents, Mr. Kitua Kinja admitted that under Rule 56(1) of the Labour Court Rules, GN. No. 106 of 2007 this court has powers to extend time for filing revision, but it is upon the applicant presenting reasonable grounds for that purpose. He said that, as for the matter at hand the Applicant has not submitted reasonable



grounds for failure to lodge the application for revision within the prescribed time of 6 (six) weeks which is 42 (forty two) days period.

Submitting on the issue of seeking for leave of the court before filing a representative suit, the Respondent's Counsel replied that, the provision of Rule 44 of the Labour Court Rules, GN. No. 106 of 2007 is not applicable at CMA. He argued that the case of VICTORIA JOHN MWAKALASYA (supra) cited by Mr. Mpogole is distinguishable to the matter at hand. He said that it is Rule 5(1)(2) and (3) of the Labour Institution (Mediation and Arbitration) GN. 64 of 2007 which provide for the procedures to be followed by the CMA in case of multiplicity of the Applicants. He said that under those provisions documents can be signed by the appointed employee on behalf of others.

As for the issue of the allegation that the trial tribunal arbitrated the matter instead of mediating it, Mr. Kitua Kinja, Advocate submitted that the parties herein already had a consensus agreement that the Applicant was going to pay the Respondents their total claim amounting Tsh. 279,896,686/=. It just happened that the Applicant herein defaulted to execute the said agreement. Thus, the Applicant had to go back to CMA to seek for the Award for executing the agreement.



The Respondents' counsel also stated that Mediation should be done in 30 days period but the parties themselves have the right to agree on extension of time for that. The counsel averred that the time was extended for that purpose though the Applicant's Counsel never disclosed it in his submission. He averred that this application has been lodged just as a delay tactic, it has no merit at all. He prayed for the same to be dismissed.

In rejoinder the Applicant's Counsel resisted Mr. Kinja's submission that Rule 44(2) of the Labour Court Rules, GN. No. 106 of 2007 is not applicable in the matter at hand. He said that in order to lodge a representative suit, there must be leave of the court. He averred that the said procedure is applicable not only at High Court (Labour Division) but also at CMA. He further stated that the fact that there was no document transpiring representation of all 29 Respondents by Lawrence Dede Bujiku, it means the original case was lodged without consent of others and with no leave of the court.

That was the end of submissions by both parties to the case.

Upon going through the vehemently submissions of both parties, their pleadings, as well as the CMA records, I have the following to analyze; Starting with the allegation that the impugned suit was lodged without leave



of the court while it was a representative suit. While the Applicant's Counsel, Mr. Mpogole, State Attorney alleged that it was contrary to the law, particularly Rule 44(2) of the Labour Court Rules, GN. No. 106 of 2007, hence this application for extension of time should be allowed on the ground of **illegality**, the Respondent Counsel, Mr. Kinja asserted that the provision of Rule 44(2) of the Labour Court Rules, GN. No. 106 of 2007 that Mr. Mpogole has relied on in raising the issue of illegality is not applicable at CMA. He was of the views that the said matter is governed by Rule 5(1)(2) and (3) of the Labour Institution (Mediation and Arbitration) GN 64 of 2007 which provide for the procedures to be followed by the CMA in case of multiplicity of the Applicants. He said that under those provisions documents can be signed by the appointed employee on behalf of others.

In my analysis on this ground, I went through the provision of Rule 44(2) of the Labour Court Rules, GN. No. 106 of 2007. I also went through Rule 5(1)(2) and (3) of the Labour Institution (Mediation and Arbitration) GN 64 of 2007. Starting with **Rule 44(2) of the Labour Court Rules, GN. No. 106 of 2007**, it has been prescribed that;

*"where there are numerous persons having the same interest in the suit, one or more of such person may, with leave of the court appear*



*and be heard or defend in such dispute, on behalf of or for the benefit of all persons so interested, except that the court shall in such case give at the complainant expenses notice of the institution of the suit to all such person either by personal service or where it is from the number of person or any other service reasonably practicable, by public advertisement or otherwise as the court in each case may direct..."*

Similar position was stated in the case of **Christopher Gasper and Richard Rukizangabo and 437 Others Vs. Tanzania Ports Authority Misc. Application No. 281 of 2013 (unreported)** where it was held *inter alia* that;

*"Leave is mandatory, employee who want to appear in a representative suit in CMA or labour Court should seek and obtain leave"*

It is therefore a principle of law that, when there are numerous persons having the same interest in a suit, and one or some of them have to appear on behalf of others, the representative(s) must seek leave of the court for that purpose.



As for the provision of **Rule 5 of the Labour Institution (Mediation and Arbitration) GN 64 of 2007**, it is about the procedure to be adopted by the Mediator in conducting mediation, its contents are as follows;

*"(1) A mediator has powers to determine how the mediation shall be conducted.*

*(2) The powers of the mediator include-*

*(a) to inquire further mediation meetings between the parties, after the initial hearing scheduled by the commission, provided that the mediator may do this after the period set aside for mediation has expired and in deciding whether to require further meetings, the mediator may consider the following-*

*(i) the prospects of the progress towards settlement;*

*(ii) the consequences of a settlement or non-settlement being reached;*

*(iii) the interests of the parties; and*

*(iv) the public interest generally.*



*(b) to respond in particular ways if a party or parties attend mediation hearings;*

*(c) to summon a person for questioning, attending a hearing, and order a person to produce a book, document or object relevant to the dispute if that person's attendance may assist in resolving the dispute."*

Sincerely speaking, the above citation of **Rule 5 of the Labour Institution (Mediation and Arbitration) GN 64 of 2007** cited by the Respondents' Counsel, Mr. Kinja has no relevance to the matter at hand. It just speaks about the procedure to be adopted by the Mediator in conducting mediation. But, the matter in question here is ***whether the representative suit can be lodged without leave of the court.*** From the analysis, it has been found "**not**". As it has been so submitted by the Applicant's Counsel, Mr. Mpogole that, Rule 44(2) of the **Labour Court Rules, Government Notice No. 106 of 2007** provides the answer.

That is a position of the law even in the case of **VICTORIA JOHN MWAKALASYA (Supra)** cited by Mr. Mpogole. The Court of Appeal also had the same view in the case of **Hamisi Kaka and 78 others Vs.**



**Tanzania Railways Corporation and Kunduchi Leisure and Farming Co. Ltd, Civil Application No. 68 of 2008, CAT at DSM [unreported]**

in which it also added that, prosecuting the matter on behalf of another or others without consent of those who are represented may lead to refusal of those persons from being bound by the decision made against them. In the said case it was held;

*"....a part whom leave is not sought and obtained may refuse to be bound by a decree passed by the court against him..."*

Back to the matter at hand, from the above findings, the issue of illegality in the trial tribunal's case has been properly shown by the applicant and satisfied this court accordingly.


The law is fairly settled that in applications of this nature, once the issue of illegality in the decision sought to be challenged is raised and amounts to good cause, even if the question of day to day delay is not accounted for, extension of time should be granted so as to rectify the illegality(s) on appeal. This position of the law has been stated in **MOHAMED SALUM NAHDI V. ELIZABETH JEREMIAH, Civil Reference No. 14 of 2017, CAT at DSM**, in which the case of **The Principal**



**Secretary, Ministry of Defense and National Service v. D. P. Valambhia [1992] TLR 387** was cited. It was also held in the other cases of the Court of Appeal, namely **Theresia Mahoza Mganga v. The Administrator General RITA, Civil Application No. 85 of 2015**, and the case of **Said Nassor Zahor & 3 Others v. Nassor Zahor Abdallah EI Nabahany, Civil Application No. 278/15 of 2016**.

The aforesaid analysis and finding showing that there was **illegality** in the impugned decision of the trial tribunal, the application for extension of time to file revision before this court must be allowed. As this ground is sufficient to dispose of this matter to the finality, I find it unnecessary to deal with the other grounds of application. In upshot the application is hereby allowed. This being a Labour case, I grant no order as to costs.



  
**S.M. KULITA**  
**JUDGE**  
**16/05/2023**



