

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF ARUSHA)**

**AT ARUSHA**

**MISC. APPLICATION NO. 8 OF 2022**

(Arising from an Award of the Commission for Mediation and Arbitration (CMA) Hon. Octavian Mwembuga, Arbitrator, dated 15<sup>th</sup> December 2021 in Employment Dispute Ref. No. CMA/ARS/ARB/44/20)

**HALMASHAURI YA WILAYA KARATU.....APPLICANT**

**VERSUS**

**WILL DAFFI.....RESPONDENT**

**RULING**

06/09/2023 & 20/09/2023

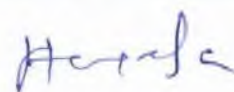
**MWASEBA, J.**

Halmashauri ya Wilaya ya Karatu, the applicant herein is seeking for an extension of time to file a Revision before this court in order to challenge the decision of Commission for Mediation and Arbitration (CMA) delivered on 15/1/2021. The application is predicated under **Sections 91 (1) (a), 91 (2) (c ) and Section 94 (1) (b) (i) of Employment and Labour Relations Act**, Cap 366 R.E 2019 and **Rule 24 (1), (2) (a), (b), (c ), (d), (e) and (f) Rule 24 (3) (a), (b), (c ), (d) and Rule 28 (1) (a), (d) and ( e) and Rule 56 (1) (2) and (3) of the Labour Court Rules**, G.N No. 106 of 2007.

It was supported by an affidavit deposed by Prosper Ndomba, learned State Attorney for the applicant and opposed by a counter affidavit deposed by Qamara Aloyce Peter, Advocate, on behalf of the respondent.

During the hearing of the application, Mr. Mkama Musalama, learned State Attorney represented the applicant whereas Mr. Qamara Peter Aloyce, Learned Counsel represented the respondent. The hearing was done orally.

Submitting in support of the application, Mr. Mkama Prayed for their affidavit supporting the application to be part of his submission. He stated further that as per paragraph 9 of the affidavit supporting the application, one of the grounds for seeking an extension of time is an illegality found on the CMA's award as it had no jurisdiction to entertain the matter for being time barred. He argued further that the respondent was terminated on 16/12/2016 and the dispute at CMA was filed on 27/7/2017 contrary to **Rule 10 (1) of the Labour Institution (Mediation and Arbitration Guidelines)**, GN N8. 64 of 2007 which needs a dispute to be filed within 30 days from the termination date. He stated further that if the claim is out of time the CMA lacks jurisdiction to entertain the matter. He cited several cases including the case of **NBC**



**Ltd and Another v. Bruno Vitus Swalo**, Civil Appeal No. 331 of 2019 (CAT-Unreported) to support his argument.

Mr. Mkama pointed out another illegality as the failure of the Mediator not to append his signature at the end of the evidence of each witness, which is an error in law. His argument was supported by the case of **Attu J. Myna v. CFAO Motors Tanzania Ltd**, Civil Appeal No. 269 of 2021 where the court insisted on the need for appending signature at the end of the evidence of each witness.

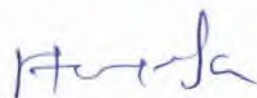
Another reason submitted by Mr. Mkama was that, the learned State attorney who was assigned to pursue the matter fell sick on 28/1/2022 and when he was taken to Mount Meru for treatment, he was given ten (10) days for E.D., the same was proved by Annexure KDC3 (record of attendance at the hospital). After recovering the time for filing a revision was already lapsed. Proving that they had intention to file a revision, he annexed a notice of intention to file the same as evidenced by annexure KDC2. He referred this court to the case of **Masunga Mbegeta and 784 Others v. The Honourable Attorney General and Another**, Civil Application No. 173/01 of 2019 in which the Court of Appeal facing the same scenario stated that sickness of the counsel for the applicant was a reasonable ground for granting extension of time. The Court

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clarified further that a person to be discharged from hospital is not enough but needs time to recover in order to proceed with his daily activities. Therefore, he prayed for the application to be granted.

Opposing the application, firstly, Mr. Qamara prayed to adopt their counter affidavit to be part of his submission. He stated further that this matter is not time barred. The respondent first filed his dispute within the time on 16/12/2007 against Mamlaka ya Mji Mdogo Karatu and after arbitration failed an arbitration was filed via CMA/ARS/ARB/106/2017. Thereafter, the objection was raised that Mamlaka ya Mji Mdogo was not an employee, and on 4/7/2017, a preliminary objection was sustained, and the dispute was struck out with leave to refile within 14 days. The current application was filed on 17/7/2017 within 14 days given by the court, therefore the application was not time barred.

Coming to the 2<sup>nd</sup> point of illegality that the Mediator did not append his signature after receiving evidence, Mr. Qamara argued that at the typed proceedings after each date of hearing it was shown "Sgd" which means signed. The Mediator followed all the procedures as per **Rule 25 of Labour Institution (Mediation and Arbitration Guidelines)**. Thus, the proceedings were duly signed, and this reason has no merit.

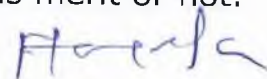




It was his further submission that no sufficient cause was advanced by the counsel for the applicant for the time to be extended as it was decided in **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (CAT at Arusha, Unreported). He argued further that the applicant also failed to account for each day of delay from 15/12/2021 when the award was issued up to 21/2/2022 when this application was filed. As for the issue of days when counsel for the applicant fell sick, it was from 28/1/2022 to 7/02/2022 there were only 10 days and the remaining 16 days were not accounted for. He stated further that, as there was no sufficient reason and they did not account for the delay, he prayed for the application to dismiss the award to be upheld.

In a brief rejoinder, Mr. Mkama apart from reiterating what he had already submitted in his submission in chief, he asserted that the alleged ruling delivered on 4/7/2017 was not pleaded anywhere hence he prayed for the same to be disregarded. He maintained his prayer for the application to be granted.

Having heard the submissions from both parties, this court will now determine the issue of whether the application has merit or not.

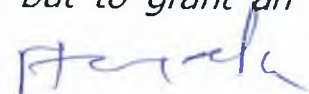


It is trite law that, for the court to extend the time sought, the applicant must adduce sufficient reasons and account for each day of delay. See the case of **Dominic Ishengoma v. Geita Gold Mining Ltd** (Civil Application 146 of 2020) [2022] TZCA 803 (08 December 2022).

In our present case, the applicant raised two reasons for the grant of extension of time one of illegality due to the fact that the award was determined despite of being time barred and that the Arbitrator did not append his signature at the end of every witness's evidence. The second reason was that the learned State Attorney who was handling the matter fell sick and he was given E.D. by the Mount Meru Hospital that's why they failed to file their application for revision within the time.

I am aware that illegality is one of the reasons that suffice the court to extend the time. As it was held in the case of **Kashinde Machibya v. Hafidhi Said**, Civil Application No. 48 of 2009 (Unreported) where it was observed that: -

*"Bearing in mind that it is now established law in this country that where a point of law involves the illegality of the decision, that by itself constitutes sufficient reason to grant an extension of time...even if the appellant's appeal is out of time, there is no other option but to grant an extension of time."*



In the case at hand, the illegality that is pointed out by the applicant is based on two aspects. Starting with the first aspect that the matter was time barred when it was instituted at the Commission. Mr. Qamara disputed this allegation on the fact that after the application being struck out, the respondent were given 14 days to institute a fresh application and that they filed within time. Indeed, I concur with the counsel for the respondent as the records speaks by itself that the respondent filed his dispute at the tribunal within the time. However, it was struck out after the raised preliminary objection was sustained that Mamlaka ya Mji Mdogo Karatu was not a proper party to be sued. The Commission gave the respondent leave to file another dispute within 14 days, and from 4/7/2017 up to 17/7/2017, the respondent's dispute was filed within the time.

Regarding the second aspect of illegality that the arbitrator failed to append his signature, this court upon visiting the records of the trial tribunal noted that the Hon. Arbitrator did sign at the end of every testimony. Therefore, there is no illegality to the trial Commission's proceedings.

Coming to another reason with regard to sickness, it is alleged that the Hon. State Attorney who was assigned a case fell sick and was given an



E.D. for ten days which lapsed on 09/02/2022. I am alive that Sickness, when proven, is a sufficient cause upon which an application for extension of time can be granted. In the case of **Sabena Technics Limited v. Michael J. Luwungu**, Civil Application No. 451/18 of 2020 the Court reiterated its stance by holding that, to amount to a good cause for the delay, there must be evidence that sickness had a bearing on the delay.

In our present case as it was well submitted by Mr. Qamara counsel for the respondent, the applicant is an Institution and not a single person who is represented by the Solicitor General where there are more than one state Attorneys. I fully agree with his stand and thus, the issue of sickness cannot be a sufficient reason to merit this application.

More to that, the applicant failed to account for each day of delay, as the award was delivered on 15/12/2021 and this application was filed on 28/2/2022. Apart from the days, they alleged one of their state attorneys fell sick, there are more than 13 days that were not accounted for. See the case of **William Kasanga v. Republic**, (Criminal Application 79 of 2020) [2021] TZCA 145 (15 April 2021).

For the reasons submitted herein, the applicant has failed to adduce sufficient reasons for the grant of the order sought as explained herein




above. Hence the application is worthy of being dismissed for want of merit as I hereby do. No order as to costs.

It is so ordered.

**DATED** at **ARUSHA** this 20<sup>th</sup> day of September, 2023.



  
**N.R. MWASEBA**  
**JUDGE**