

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DODOMA DISTRICT REGISTRY
AT DODOMA**

LABOUR APPLICATION NO. 15 OF 2022

(Arising from Labour Dispute No. CMA/84/2021/8)

**GODFREY NDOSHI SOSTHENESAPPLICANT
VERSUS
BANK OF TANZANIA.....RESPONDENT**

RULING

Last Order: 02nd November 2023

Date of Ruling: 08th December 2023

MASABO, J:-

This is an application for an extension of time to file a revision against an award of the Commission for Mediation and Arbitration in Labour Dispute No. CMA/84/2021/18 dated 10th February 2022. The application is made by way of a chamber summons made under Rule 24(1), (2)(a)(b) (c) (d) (e) (f), 24(3) (a) (b) (c) (d), Rule 55(1) and 56(1) and (3) of the Labour Court Rules 2007, GN.NO. 106 of 2007. It is supported by an affidavit of Godfrey Ndoshi Sosthenes, the applicant himself though which it was deponed that the applicant failed to file his application timely due to delay in being furnished with the CMA award and sickness. It was also deponed that there are illegalities in the CMA award which need be resolved by the Labour Court. The application is contested by the respondent who filed a counter affidavit on 6th February 2023.

The application was heard by way of written submissions. Both parties had representation. The appellant submissions were drawn and filed by Mr.

Adrian Ndunguru whilst those of the respondent were drawn and filed by Ms. Jennifer Kaaya, Senior State Attorney.

Submitting in support of the application Mr Ndunguru stated that Rule 56 (1) of the Labour Court Rules empowers the Labour Court to grant an extension of time when a good cause has been exhibited. He proceeded that such good cause exists in the present application as, *first*, the applicant was sick. He fell sick on 3rd January 2022 and was admitted to Dodoma Regional Hospital where he remained until he was discharged on 17th January 2022. Even after being discharged, he continued with medical treatment until October 2022 when he resumed his daily routine as shown in the medical chits attached to the application. In fortification of his submission that sickness is a good cause, he cited the case of **Nyanza Road Works Limited vs. Giovan Guidon**, Civil Appeal No. 75 of 2020 [2021] TZCA 396 TanzLII and the case of **John David Kashekya vs. The Attorney General**, Civil Application No. 1 of 2012 [2016] TZCA 116 TanzLII. He added that, if the application is granted it will allow the applicant to exercise his right to be heard which is a principle of natural justice and a fundamental constitutional right provided for under article 13(6) (a) of the Constitution of the United Republic of Tanzania, 1977. In support he cited the cases of **Hussein Khanbhai vs. Kodi Ralph Siara**, Civil Revision No. 25 of 2014, [2016] TZCA 35 TanzLII, **Jackson Mwendu vs. Agakhan Education Service**, Misc. Application No. 753 of 2019 [2020] TZHCLD 3757 TanzLII.

Submitting on the point of illegalities of the impugned award, he argued that the Arbitrator violated the requirement of section 37(2) of the Employment

and Labour Relation Act which requires the employer and not the employee, to prove that the termination was fair. Second, the investigation report which was relied on by the respondent to terminate his employment was conducted by an incompetent authority hence illegal. The investigation if any, ought to have been conducted by the Police Force or the Prevention of Corruption Bureau (PCCB). He argued that the third illegality is that the arbitrator changed the triable issue from employment to procurement issue. To bolster his submission and prayer that illegality be considered as a good cause, he cited the case of **Arunaben Chaggan Mistry vs. Naushad Mohamed Hussein and 3 Others**, Criminal Application No. 6 of 2016 [2016] TZCA 2026 TanzLII, and **VIP Engineering and Marketing Limited vs. Citibank Tanzania Limited**, Consolidated Civil References No. 6,7 and 8 of 2006 [2007] TZCA 165 TanzLII. Resting his submission he prayed that the application be allowed.

In reply, Ms. Kaaya, learned State Attorney, submitted that this court has the discretion to enlarge the time for taking an action. However, such powers must be exercised judiciously based on the rules of reasoning and justice and not arbitrarily or according to private opinion. Supporting her submission, she referred the court to the case of **Lyamuya Construction Limited vs. The Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 [2011]TZCA 4 TanzLII where the Court of Appeal held that when a court is determining an application for extension of time, it must consider the following factors: the applicant must show good cause, he must account for each day of delay, the delay should not be inordinate, the applicant must

show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take. Also, the court may enlarge the time if it feels that there are other sufficient reasons such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.

Ms. Kaaya proceeded further that as per section 91(1) of the Employment and Labour Relation Act, Cap 366 the applicant was supposed to file the revision on or before 12th April 2022. In paragraph 4(b) of his affidavit, he deposed that when he was preparing an application for revision, he felt sick and was admitted from 03rd January 2022 to 17th January 2022 which was before the CMA issued the award on 10th February 2022. Hence, the submission as to sickness is untrue and should be disregarded. Furthermore, she submitted that in the applicant's affidavit nothing shows that after his discharge on 17th January 2022, he continued to be sick or remained under medication. Therefore, the applicant's counsel submission that the applicant was restrained to continue with his normal routine during the whole period until October 2022, has no basis from the affidavit and should be disregarded as it is merely a submission from the bar. In fortification of this submission, he cited the case of **The Registered Trustees of the Archdiocese of Dar es Salaam vs. The Chairman Bunju Village Government**, Civil Appeal No. 147 of 2006 (unreported).

On the reasons that he was unable to file revision owing to the delay in being furnished with the copy of the award, it was submitted that this too is with no merit. As per the applicant's affidavit, the impugned award was issued on

10th February 2022 but was furnished to him on 1st March 2022. Thus, it was expected that the applicant would have filed the application by 12th April 2022 but he did not. He waited until October 2022 to file the present application. In the circumstances, she argued, there can be no doubt that the delay was due to the applicant's negligence or ignorance of law. As ignorance of the law and negligence are not a good cause for delay, the application should fail.

Ms. Kaaya submitted further that it is a trite law that in an application for an extension of time, the applicant must account for each day of delay. The applicant herein was duty bound to fully account for the delay of a period of more than eight months from when the award was issued but he miserably failed this test as he made no demonstration of the steps he took after being furnished with the award on 1st March 2022. From his submission, it is crystal clear that after being served he did not take any steps to pursue the revision until on 27th October 2022 when this application was filed.

It was further submitted that not only did the applicant fail to account for the days of the delay but the delay was inordinate as the applicant was late by a period of more than eight months (241 days). Thus, it should not be tolerated in the absence of a good cause for the delay. In fortification of this point, the case of **Vedastus Raphael vs. Mwanza City Council and Others**, Civil Application No. 594/08 of 2021 [2021] TZCA 696 TanzLII and the case of **Elius Mwakalinga vs. Domina Kagaruki and Five Others**, Civil Application No. 120/17 2018 [2019] TZCA 231 TanzLII were cited.

On the point of illegality, it was submitted that for the court to grant an extension of time based on illegality, the applicant must show that the point of illegality is of sufficient importance and is apparent on the face of the record and not one that would be discovered by a long-drawn argument or process. In the present case, none of the three illegalities pointed out by the applicant has such qualities. They are not apparent on the record and can only be established after a long draw argument or process hence inconsistent with the principle in **African Marble Company Ltd vs. Tanzania Saruji Corporation Limited**, Civil Application No. 132 of 2005 (unreported).

Lastly, it was submitted and argued that the argument rendered by the applicant is with no merit as the applicant herein enjoyed his right to be heard when the matter was before by the CMA, and for him to enjoy such right at the revision stage, he had to fulfil certain conditions. Thus, the cases cited while relevant they are distinguishable from this case as the applicant was given his right and exercised it at the CMA. In conclusion, the learned State Attorney prayed and argued that the application be dismissed for want of merit. In rejoinder, the applicant, by and large, reiterated his submission in chief.

I have carefully and dispassionately considered the submission for and against the application. As stated in the prelude, the leave for extension of time is sought to enable the applicant to file an application for revision in this court challenging the CMA award issued on 10th February 2022. Admittedly and in view of section 91(1) of the Employment and Labour Relation Act, the applicant was to lodge his application within 6 weeks after

the award. Principally this court can enlarge the time to allow the applicant to file his application out of time but, as correctly argued by the learned State Attorney, the discretion to enlarge the time must be judiciously exercised upon a good cause for delay being demonstrated by the applicant. Rule 56(1) of the Labour Court Rules from which this court derives the powers for enlargement of time provides that:

The Court may extend or abridge any period prescribed by these rules and on good cause shown, unless the Court is precluded from doing so by any written law.

Also see **Abdalla Salanga and 63 Others vs. Tanzania Harbours Authority**, Civil reference No 08 of 2003 [2005] TZCA 19 TanzLII and **Sebastian Ndaula vs. Grace Rwaafa**, Civil Application No. 4 of 2014 (CAT-Unreported). Therefore, the sole question for determination is whether a good cause has been shown. It is now settled that, since the expression good cause has not been universally defined, the court seized to determine an application for an extension of time has to look at various factors. As correctly submitted by Ms. Kaaya such factors include: whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; the lack of diligence on the part of the applicant, whether the applicant has fully accounted for the entire period of delay and existence of a point of law of sufficient importance such as the illegality of the decision sought to be challenged (see **Lyamuya Construction** (supra) and **Omary Shaban Nyambu vs. Dodoma Water and Sewerage Authority**, Civil Application No. 146 of 2016 [2016] TZCA 2024 TanzLII.

Turning to the case at hand, the decision intended to be challenged if the leave is granted was delivered on 10th February 2022 whereas the present application was filed on 27th October 2022 which was almost eight months later. In his affidavit, the applicant has deponed that the delay was occasioned by his sickness and delay in being furnished with the copy of the award. He has in addition asserted that there are illegalities in the award which need to be interrogated and determined by this court.

Starting with the delay in being furnished with a copy of the award, the law is tolerable and favourable to the applicant whose delay in taking a court action was occasioned by delay in being furnished with the copy of proceedings or the decision which he intends to appeal against. Thus, if it is established that the applicant was not furnished with the copy of the CMA award in good time to enable him to file his application for revision, that alone would suffice as a good cause, but only if he has accounted for the days of delay as the law requires that the days for delay be fully accounted for even if it is just a single day (see the case of **Lyamuya Construction Company Limited** (supra), **Hassan Bushiiri vs. Latifa Lukiko Mahayo**, Civil Application No. 3 of 2007 (unreported); **Elius Mwakalinga** (supra) and **Ludger Bernard Nyoni vs. National Housing Corporation**, Civil Application No. 372/01 of 2018 (unreported)). In my perusal of the affidavit and the submissions, I have observed that much as the applicant deponed that he was belatedly furnished with the copy of the award, his submission is silent about this issue which suggests that he found this ground worthless and consequently abandoned it. Even if he did not, this ground would not have sailed as from his disposition, the copy of the award was furnished to

him on 1st March 2022 which was 6 to 7 months before he lodged the present application.

As for sickness which is the second ground, I agree with Mr. Ndunguru that for purposes of extension of time, sickness is a good ground. The law is settled that once the sickness is established and proved as to justify the delay it constitutes a sufficient cause for an extension of time. Dealing with a similar issue in **Tiluhuma Pima vs. Malagoi Muhoyi**, Civil Application No. 418/08 of 2022[2022] TZCA 807 TanzLII, the Court of Appeal held that:-

On the second ground which is about sickness, indeed the law is settled that once sickness is established and proved as to justify the delay, it constitutes sufficient cause for extension of time.

I need not emphasize that for sickness to suffice as a good cause it must be established. That is, it is not sufficient for the applicant to just assert that he was sick. He must produce evidence to show that, indeed sickness prevented him from taking the necessary legal action. In particular, proof must be rendered to show that the applicant was indeed sick and that the sickness prevented him from lodging the application. The Court of Appeal has a similar view in **Nyanza Road Works Limited vs. Giovan Guidon**, (supra) where having considered the applicant's prayer that his delay be excused due to sickness and having reckoned its previous decision in **John David Kashekya vs. The Attorney General** (supra), it held that:

We think the learned advocates for the respondent's reference to **John David Kashekya v. The Attorney General** (supra) can only be relevant where sickness is the sole reason for the delay and properly explained.

Going back to the affidavit, annexure GHS 2 to the affidavit and the submissions, I have observed that, the medical chit appended to the affidavit shows that the applicant was admitted to the hospital on 3rd January 2022 and was discharged on 17th January 2022 which was before the date of the impugned ruling. It shows further that, he was to return to the hospital for stitches removal on 31st October 2022. Nothing shows that his ailment continued for all the period between 17/1/2022 and 31/10/2022 or that during this time he was unable to perform his duties and file his application before this court. Accordingly, I have found that sickness as the bar for filling the application has not been established hence not a good cause warranting the extension of time.

Turning to illegality which is the third ground in support of the application, the submission by Mr. Ndunguru is to the effect that, the CMA erred in interpreting section 37 of the Employment and Labour Relation Act, it erroneously relied on an invalid investigation report, and that the arbitrator shifted the issues from employment to procurement. On her part, Ms. Kaaya, has argued that the point of illegalities is devoid of merit as the alleged illegalities are not apparent on the face of the record and they are mere submissions from the bar. I have combed through the affidavit to discern the alleged illegalities. The same is provided under paragraph (e) where it is deponed that:

(e) That, the granting of this application is also in the interest of justice to cure the illegalities in the award.

As it is vividly clear from this paragraph, the applicant's assertion of illegality is too general. It does not indicate the type of illegalities and their nature. The three illegalities mentioned in Mr. Ndunguru's submissions are neither listed nor explained in the affidavit hence new inventions and, as correctly submitted by Ms. Kaaya, they are mere submissions from the bar and hence attract no weight.

Assuming, just for the sake of completeness, that the three alleged illegalities were deponed in the applicant's affidavit, can they be said to constitute a good cause for an extension of time? Indeed, as correctly submitted by both counsels, the law recognizes a point of illegality as a good ground for an extension of time (see **Lyamuya Construction** (supra), of **Arunaben Chaggan Mistry vs. Naushad Mohamed Hussein and 3 Others** (supra), **The Attorney General vs. Emmanuel Marangakisi and Three Others** (supra) and **VIP Engineering and Marketing Limited vs. Citibank Tanzania Limited** (supra)). However, for such point to be considered a good cause, it must have the qualities required by law. As correctly submitted by the learned State Attorney, the law is now settled that, for illegality to suffice as a good cause, the illegality asserted must be of sufficient importance and apparent on the face of the record as opposed to one that would only be discovered after a long-drawn argument or process as stated in the case of **Ngao Godwin Losero Vs Julius Mwarabu**, Civil Application No. 10 of 2015 CAT (unreported). In this case, the Court of Appeal while referring to its previous decision in **Principal Secretary, Ministry of Defence and National Service v Devlan Valambia** [1992]

TLR, 82 and **Lyamuya Construction Company Limited** (supra), it instructively held that:

“But, it is noteworthy that in **Valambhia** (supra), the illegality of the impugned decision was clearly visible on the face of the record in that the High Court had issued a garnishee order against the Government without affording it a hearing which was contrary to the rules of natural; justice. Incidentally, the court in the case of **Lyamuya Construction Company Limited Vs Board of Registered Trustees of Young Women’s Christian Association of Tanzania** (attached for ease of reference) made the following observations:- “Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in Vallambhia’s case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. The court there emphasized that such point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process” [the emphasis is mine]

Moved by this reasoning I have found the three asserted illegalities to be outside the scope of points of illegality as all of them intend to challenge the CMA award on point of law and facts not as opposed to the illegality of the decision or the proceedings from which it emanates. As I wind up, I would like to state that, much as the applicant has a right to be heard as argued in his submission, the right to be heard is not absolute. It is subject to certain responsibilities and limitations, which in the present case involve the duty to

lodge the application for revision within the prescribed time or in the event of failure, demonstration of a good cause for delay and fully account for all the days of delay even if it was just for single day.

In the totality of what I have demonstrated, the application fails and it is consequently dismissed. Each party shall bear its costs.

DATED at **DODOMA** this 08th day of December, 2023



A handwritten signature in blue ink, consisting of stylized loops and a long horizontal stroke.

J. L. MASABO
JUDGE