

IN THE HIGH COURT OF TANZANIA
(MOROGORO SUB-REGISTRY)

AT MOROGORO

MISC. LABOUR APPLICATION NO. 1 OF 2023

(Arising from Labour Dispute No. CMA/MOR/185/2020 and Labour
Revision Case No. 01 of 2022)

FLOMI HOTEL LIMITED APPLICANT

VERSUS

EMMANUEL SYLVESTER MANGA 1ST RESPONDENT

WARREN G. MBWAMBO 2ND RESPONDENT

RULING

22nd Sept, 2023 & 16th Jan, 2024

CHABA, J.

On 2nd February, 2023, the applicant herein through the legal services of Mr. Benjamin Jonas, Learned Advocate from PJC Premier Attorneys lodged this Application under Rules 24 (1), 24 (2) (a), (b), (c), (d), (e) and (f), 24 (3) (a), (b), (c) and (d), 24 (11) (c), 55 (1) & (2), 56 (1), (2) & (3) of the Labour Court Rules, 2007, (GN. No. 106 of 2007), seeking for the following orders: -

1. That, this Honorable Court be pleased to extend time within which to file an Application for Revision against the Award of the Commission for Mediation and Arbitration (CMA) in **Labour Dispute No. CMA/MOR/185/2020** delivered by Honorable Kayugwa, Haji (Arbitrator) on 10th day of December, 2021; and



2. That, this Honourable Court be pleased to make any other order(s) as it may deem just and equitable to grant.

The application was supported by an affidavit of Mr. Jacob Julius Masongo, Principal Officer of the applicant, which was lodged in this Court on 2nd day of February, 2023.

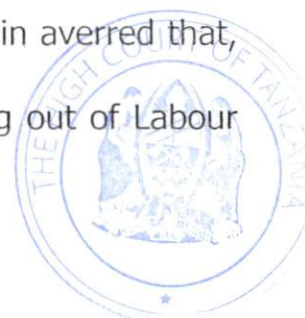
At the hearing of this application, the applicant was represented by Mr. Benjamin Jonas, Learned Advocate, whereas Mr. Jovin Manyama, also Learned Advocate entered appearance for the respondents. With the parties' consensus, the application was argued and disposed of by way of written submissions.

Submitting in support of the application, Mr. Benjamin commenced his submission by adopting the contents of the applicant's affidavit and went on stating that, from the contents of paragraphs 3 (i), (3j), 3 (k), 3 (l), 3 (m) and 3 (n); 4 (a), 4 (b), 4 (c) (i-vi) of the affidavit in support of the application it can be garnered that, the applicant timely filed Labour Revision Case No. 1 of 2020 but the same was struck-out by the ruling of this Honorable Court dated and delivered on the 30th day of December, 2022 in the absence of the applicant and his advocate as they had no notice that, the said ruling was to be delivered on that date as they had previously, on 25th day of November, 2022 been ordered to appear in Court for ruling on the 25th day of January, 2023.



He argues that, as such, the applicant came to learn of the existence of the ruling on 25th January, 2023 when they appeared as previously ordered. Hence, from the hereinabove brief set of factual background, the Counsel was of the view that, the grounds advanced to support the application include the issue of technical delay, diligence on the part of the applicant, and illegality as per paragraphs 4 (c) (i)-(v) of the applicant's affidavit.

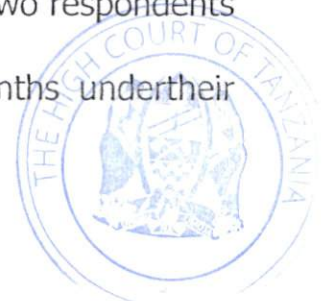
Substantiating on the point of technical delay, Mr. Benjamin elaborated that, there is time lapse between the time when the applicant was pursuing Labour Revision Case No. 01 of 2020, when it was struck-out and the time when this application was filed. He said, the applicant could not have filed this application during that time, but could only proceed after the order striking out the Labour Revision Case No. 01 of 2020 was made, which is after 30th day of December, 2022. Placing reliance on the case of **Philemon Simwandete Mbanga Vs. The Permanent Secretary, Ministry of Defense and Attorney General**, Civil Application No. 168/01 of 2018 (unreported); and **Hamisi Mohamed (Suing as an Administrator of the Estates of the Late Risasi Ngawe) Vs. Mtumwa Moshi (As the Administratrix of the Estates of the Late Moshi Abdallah)**, Civil Application No. 407/17 of 2019 quoted at page 9 of the decision of the CAT in **Zuberi Athumani Mbuguni Vs. National Bank of Commerce Limited**, Civil Application No. 311/12 of 2020 (unreported), Mr. Benjamin averred that, the time between the filing of this application and the striking out of Labour



Revision Case No. 01 of 2020 is considered to be as an excusable technical delay.

From the above authorities, Mr. Benjamin highlighted that, the fact that the applicant took only two days to lodge this application electronically, and less than seven (7) days to lodge the same manually, after learning of the existence of the decision striking out the Labour Revision Case No. 01 of 2020 is enough to demonstrate that, and as per the authority hereinabove cited, the applicant was diligent. The delay between 30th December, 2022 to 27th January, 2023 was because of the fact that, the applicant was not notified of the change of the date of the ruling to 30th December, 2022 instead of the previously set on 25th January, 2023. He concluded that, as such, the delay though not due to any negligence or indolence on the part of the applicant, but the same is not inordinate.

Arguing on the second ground of illegality, it was the Counsel's argument that, there is an apparent illegality on the decision of the CMA which needs to be challenged by way of revision. He submitted that, at page 17 of the decision of the CMA, it is clearly indicated that the employment contract of the second respondent herein, began on the 1st day of October, 2020 and he was terminated on 16th day of November, 2020. In respect of the first respondent, his employment began on the 3rd day of September, 2020 and was terminated on 16th day of November, 2020 which shows that none of the two respondents herein had worked for the applicant for more than six months under their

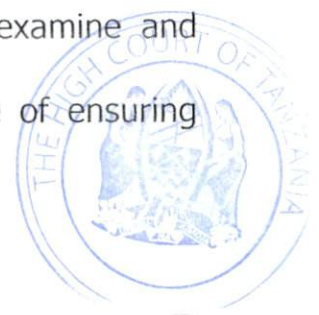


respective contracts, but the CMA proceeded to entertain the respondent's claim for unfair termination.

He went on stating that, the CMA did this regardless of the fact that, the respondents, at the time of filling their claims, were still under probation period (probationary employees). Fortified by the case of **Daudi Jeremia Magezi Vs. Sinohydro Corporation Limited**, Civil Appeal No.309 of 2022 (unreported), and **Good Samaritan Vs. Joseph Robert Savari Munthu** (2013) LCCD No. 9, the Counsel substantiated that, it is clear that the CMA slipped into a jurisdictional error when entertained a claim alleging unfair termination by employees who have not worked for the duration that would entitle them to bring such a claim as per the law.

He stated that, the jurisdictional blunder herein elaborated is coupled with other serious irregularities including entertaining a claim for unfair termination by employees who were on probation period, granting relief grantable in respect of breach of contract while the claim for unfair termination, delivering the award outside the time frame stipulated under section 88 (1) of the Employment and Labour Relations Act (CAP. 89 R.E. 2019).

According to him, the glaring irregularities in the decision of the CMA are fundamental as they go into the jurisdiction of the CMA. As such, if time is extended this Honorable Court shall have an opportunity to examine and correct the errors complained of thereby fulfilling its mandate of ensuring



proper administration of justice. To buttress his stance, Mr. Benjamin referred the Court to the case of **Ibrahim Twahil Kusundwa and Another Vs. Epimaki S. Mako**, Civil Application No.437/17 of 2022 where the Court of Appeal of Tanzania expounded the purpose of extension of time in the following terms: -

"This is so, because, under normal circumstances, the Court extends time on that account for purposes of rectifying the noted illegality in the intended application, appeal and or revision".

He further submitted that, the illegality in this case is clear on the face of the records, citing the case of **Hamis Babu Ally Vs. The Judicial Officers Ethics Committee, The Chief Court Administrator, The Judicial Service Commission and the Attorney General**, Civil Application No. 130/01 of 2020 (unreported), where the Court of Appeal of Tanzania dully acknowledged that, the existence of illegality is a good ground for extension of time to afford room for correction of apparent errors. The Court observed that: -

"The law is settled that where an issue of illegality has been raised as a ground in an application for extension of time, the said ground constitutes sufficient cause. In



Devram Valambia's case(supra) the Court gave the following stance on the issue: -

"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".

He went on underlining that, the Court has further reaffirmed the stated stance in the case of **VIP Engineering and Marketing Limited and Three Others Vs. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 (CAT) (unreported), wherein it was clearly stated that: -

"It is, therefore, settled law that a claim of illegality of the challenged decision constitutes sufficient reason for 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."

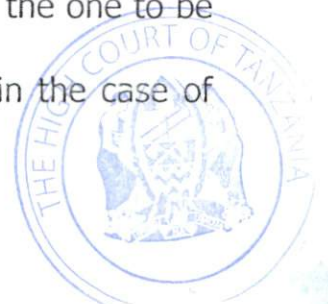
To conclude, Mr. Benjamin insisted that, the granting of this application will therefore afford this Honorable Court an opportunity to correct the glaring illegalities in the CMA's decision and further stressed that, the applicant's application is meritorious and deserves to be granted.



In reply, Mr. Manyama, Counsel for the respondent averred that, it is undisputed fact that, the Counsel for the applicant had prior lodged an application for revision which was admitted and registered as Labour Revision No. 01 of 2022 and that the same was struck out on the 30th day of December, 2022 for being incompetent. As to the present application, the same was filed before the Court on the 02nd day of February, 2023 where thirty-three clear (33) days had already elapsed.

He asserted further that, the Counsel for the applicant alleged that, the matter was scheduled for ruling on 25th January, 2023 and further that, he was not aware if the same was delivered on the 30th day of December, 2022 but there is no sufficient evidence to justify his contention to that effect. It was Mr. Manyama's opinion that, proceedings of the struck-out ought to have been produced to substantiate the allegation and that failure to do so have left a lot to be desired, hence leaving the period between 30th day of December, 2022 to 25th day of January, 2023 uncounted for and without substantiation.

Mr. Manyama accentuated that, in as much as the issue of illegality is concerned, in the decision of the CMA, there is nowhere it is stated that the respondents were unfairly terminated but rather it shows only the details of their respective contract. He argues that, it is settled principle of the law that, illegality it must be apparent on the face of the records and not the one to be discovered after a long-drawn argument as it was enunciated in the case of



The Principal Secretary Ministry of Defence and National Service Vs. Devram Valambia (1992) TLR 185, wherein the Court observed *inter-alia* that: -

"However, for illegality to be the basis of the grant, it is now settled, it must be apparent on the face of the record and of significant importance to deserve the attention of the appellate court".

He averred that, the issue as to whether or not the trial CMA was correct in its award is not the prerogative of this Honorable Court at the moment as illegality asserted by the Counsel for the applicant is not on the face of the records of the CMA and the same requires a long-drawn process for its determination.

In the end, Mr. Manyama opined that, since the application at hand is without merit, he accordingly, invited the Court to dismiss it as so deserves.

By way of rejoinder, Mr. Benjamin briefly submitted that, regarding the claim that no Court proceedings have been attached to prove the sequence of events, the Counsel for the respondents is misguided as the ruling of this Court was attached and it contains relevant dates including the date of its delivery, the date on which the applicant was supplied with the same and the ruling clearly indicate that, the applicant and their Counsel were not in Court on the 30th day of December, 2022 when the ruling was delivered. According



to him, the legal basis for requiring records of proceedings to be attached to the application is wanting. He insisted that, he clearly demonstrated in his submission in chief that, the delay is an excusable technical delay and the same is not inordinate.

As regards to Mr. Manyama's comments that, the alleged illegality will require a long-drawn process to be established and therefore not an apparent one, Mr. Benjamin stressed that, the illegality complained of is based and founded on a straight forward point of law which is want of jurisdiction and not on whether or not the decision reached is correct or wrong as claimed by the respondents' Counsel but on lack of jurisdiction to act on the matter as the CMA did. In his view, the illegality is apparent and does not need an elongated process to establish.

Having gone through the parties' submission, Courts records as well as the affidavit in support of the application, the sole issue for consideration, determination and decision thereon is whether the applicant has demonstrated sufficient cause for this Court to grant extension of time.

As correctly submitted by both parties, this Court has discretionary power to extent time upon good cause been shown by the applicant. **See: Yazid Kassim Mbakileki Vs. CRDB (1996) LTD Bukoba Branch & Another**, Civil Application 412/04 of 2018; **Tanga Cement Co. Ltd Vs. Jumanne Masangwa & Another**, Civil Application No. 06 of 2001, and **Osward**



Masatu Mwizarubi Vs. Tanzania Fish Processing Ltd, Civil Application No. 13 of 2010, (CAT) (unreported), just to mention a few.

From the submission made by the Counsel for the applicant as well as the affidavit in support of the application, the applicant is imploring this Court to grant the prayers sought in the chamber summons based on the grounds of technical delay as well as illegality.

On the ground of technical delay, it was Mr. Benjamin contention that, the delay between 30th December, 2022 to 27th January, 2023 was due to the fact that, the applicant was not notified of the change of the date of the ruling of this Court which struck out the initially filed Labour Application Case No. 01 of 2022 for being incompetent. It is evident from the affidavit of the applicant, that, the first Revision Application was struck out on the 30th day of December, 2022 in the absence of the applicant who became aware of the outcome of the said ruling on 25th January, 2023, the date which was previously set for delivering the ruling. The records further bear out that, it was on the 2nd February, 2023 when the applicant lodged the instant application for enlargement of time. On this facet, I am at one with the Counsel for the respondents that, the period from 25th January, 2023 to 2nd February, 2023 was not accounted for by the applicant. It is now a settled position of the law that, before granting an application for extension of time, the Court should and it must be satisfied that, the applicant has accounted for all the period of delays. **See - Lyamuya Construction Company Ltd Vs. Board of**

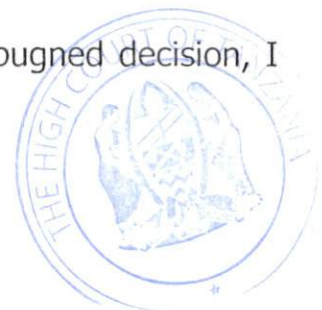


Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (unreported), Hassan Bushiri Vs. Latifa Lukio Mashayo, (CAT) Civil Application No. 3 of 2007 (unreported), and Elius Mwakalinga Vs. Domina Kagaruki & Five Others, Civil Application No. 120/17 of 2018; just to mention a few. In the latter case, the Court underlined that: -

"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".

Turning to the instant application, it is my considered view that, the applicant was unable to justify his delay from 25th January, 2023 when he became aware of the ruling up to 2nd February, 2023 when this application was lodged in this Court. I therefore shake hands with Mr. Manyama that, the applicant has failed to account for each day of delay as the law requires, hence this ground crumble.

As regards to the ground of illegality, it was the applicant's contention that, the CMA had no jurisdiction to entertain the matter. However, it is a settled principle of law that, the alleged illegality must be clearly apparent on the face of the impugned decision and not something, which will take a long-drawn process to discover it. Having gone through the impugned decision, I



would straight away hold that, the issue of jurisdiction complained of herein in the judgment of CMA cannot be termed as illegality. I say so because, as it can be gathered on pages 4, 5 and 6 of the impugned decision, during the trial, the issue of jurisdiction was one of the disputable issues and the same was considered, determined and overruled by the CMA after the Arbitrator was satisfied that, the respondents were not on probation period but rather they were working in a renewable (renewed) contract of employment.

With the above findings, I find and safely hold that, the facts deposed in the applicant's affidavit on the issue of jurisdiction did not establish illegality on the decision of the CMA but rather a ground for the intended Revision Application as the same had already heard, resolved and determined by the CMA. In the case of **Charles Richard Kombe Vs. Kinondoni Municipal Council (Civil Reference No. 13 of 2019) 2023 TZCA 137 (23 March 2023)**[Extracted from www.tanzlii.org], the Court of Appeal of Tanzania was once faced with a similar scenario where in the course of resolving the issue locked horns between the parties, the Court had an opportunity to deliberate on the term "illegality" and underscored that:

*"The term illegality as defined in Black's Law Dictionary
11th Edition, Page 815, means:*

*"An act that is not authorized by law, The state of not
being legally authorized."*



The Court went on stating that: -

"The above definition is consistent with Mulla's Code of Civil Procedure where the learned authors write at page 1381 that: -

It is settled law that where a court has jurisdiction to determine a question and it determines that question, it cannot be said that it has acted illegally or with material irregularity, merely because it has come to an erroneous decision on a question of fact or even of law".

Guided by the principles of law, and in view of what I have endeavoured to demonstrate hereinabove, in my considered view, since I am satisfied that the CMA had the requisite jurisdiction to determine the matter placed before it, the ground of illegality raised by the applicant in a bid to pursue this Court to grant the order sought for extension of time to file the intended Application for Revision cannot stand as well.

In the upshot, this application is unmerited and I proceed to dismiss it with no order as to costs.

It is so ordered.

DATED at MOROGORO this 16th day of January, 2024.





A handwritten signature in black ink, appearing to read "M. J. Chaba", is written over the seal.

M. J. CHABA

JUDGE

16/01/2024

Court:

Ruling to be delivered by the Hon. Deputy Registrar of the High Court of Tanzania, Morogoro Sub-Registry.



A handwritten signature in black ink, appearing to read "M. J. Chaba", is written over the seal.

M. J. CHABA

JUDGE

16/01/2024

Court:

This Ruling delivered under my Hand and the Seal of the Court in Chamber's this 16th day of January, 2024 in the absence of the Applicant and 2nd Respondent respectively, and in the presence of the 1st Respondent who appeared in person, and unrepresented.



SUSAN P. KIHAWA
DEPUTY REGISTRAR
16/01/2024

Court:

Rights of the parties to appeal to the Court of Appeal of Tanzania fully explained.



SUSAN P. KIHAWA
DEPUTY REGISTRAR
16/01/2024