

**IN THE HIGH COURT OF TANZANIA**  
**LABOUR DIVISION**  
**AT DAR ES SALAAM**

**MISCELLANEOUS APPLICATION NO. 314 OF 2019**

**BETWEEN**

**TANZANIA TELECOMMUNICATIONS CO. LIMITED ..... APPLICANT**

**VERSUS**

**ERNEST NANGI ..... RESPONDENT**

**RULING**

*Date of Last Order: 19/05/2020*

*Date of Ruling: 17/07/2020*

**S.A.N. Wambura, J.**

The applicant herein **TANZANIA TELECOMMUNICATIONS CO. LIMITED** has filed this application under the provisions of Rules 24(1), (2) (a)(b)(c)(d)(e)(f), (3)(a)(b)(c)(d), (11)(a) and 56(1) of the Labour Court Rules GN No. 106 of 2007 praying for the Orders that:-

- i. This Honourable Court be pleased to extend time for the Applicant to file the Revision out of time before your Honorable Court.*

*ii. Any other relief your Honorable Court may feel fit to grant.*

The application is supported by a sworn affidavit of Richard Moshi Applicant's Human Resources Officer.

The respondent, **ERNEST NANGI** swore a counter affidavit challenging the application. Richard Moshi swore a reply to the counter affidavit.

With leave of the Court the application was disposed of by way of written submissions. I thank both parties for adhering to the schedule and for their submissions.

The matter goes back to December, 2017, when CMA delivered an award in favour of the respondent, and the applicant was not served with the copy of the award. Thereafter, the applicant filed an application for extension of time through Miscellaneous Application No. 271 of 2018 which was withdrawn with leave to file a proper application if they so wished on 14/03/2019. The applicant is now seeking leave to file an application for revision out of time on two grounds;-

i. That the award was not delivered on the agreed date which was 28<sup>th</sup> October, 2016 and adjourned to 7<sup>th</sup> December, 2017.

That they had not been issued with a copy of award as

provided for under Rule 27(2) regardless of the fact that the applicants physical address has been the same for years.

- ii. There is an illegality of the award in that CMA erred in interpreting the mode of termination of employment. That the employment was terminated by mutual agreement and not unfair termination which requires disciplinary process before terminating employment. Hence there is a likely hood of the revision to succeed.

They thus prayed for the application to be granted.

The respondent challenges the application stating that on 25<sup>th</sup> May, 2018 they communicated with the applicant regarding the award, and further the applicant filed an application for extension of time on 20<sup>th</sup> June, 2018 which is Miscellaneous Application No. 271 of 2018 instead of filing an application for revision as they were within the time frame citing the case of **Aggrey Sapali Vs. Mkuu wa Chuo MUST**, Civil Appl. No. 153 of 2015 to that effect.

He further submitted that the applicant has not shown sufficient grounds as to what he was doing from 14/03/2019 when their first

application was withdrawn to 22<sup>nd</sup> May, 2019 when this present application was filed in court.

That the issue of success of the revision is prejudicial to this application and it is premature and tantamount to the Respondent's interest.

He thus prayed for the dismissal of the application.

In law and practice, the Court can grant an application of this nature where it is satisfied that good cause has been adduced as provided for under Rule 56(1) of the Labour Court Rules, 2007 which provides this:-

*"Rule 56(1) The **Court may extend** or abridge **any period** prescribed by these Rules **on application and on good cause shown**, unless the Court is precluded from doing so by any written law."*

*[Emphasis is mine].*

Since there is no law which precludes this Court from adjudicating upon the same, then this Court has to look into the reasons which led to the delay in filing the matter, considering that CMA's award was delivered on 7<sup>th</sup> December, 2017.

After considering the pleadings and parties arguments, One major issue emerges for decision namely, **whether or not the applicant has shown good cause to justify the grant of the sought for order.**

The applicant has alleged that they were not served with a copy of the award by CMA as provided for under Rule 27(1) of LIA GN No. 64 of 2007 citing the case of **Serengeti Breweries Ltd Vs. Joseph Boniface**, Civil Appeal No. 150 of 2015 (CA) to that effect. There is no dispute that the applicant was not served with a copy of the award. However it is on record that on the 17<sup>th</sup> May, 2018 the respondent received a copy of the award and informed the applicants Attorney on 25<sup>th</sup> May, 2018. On 20<sup>th</sup> June, 2018 the applicant filed an application for extension of time which was however withdrawn on 14<sup>th</sup> March, 2019. The application at hand was filed on 22<sup>nd</sup> May, 2019. This ground can therefore not stand.

It could be said there was lack of diligence on the part of the applicants for filing the present application on 22<sup>nd</sup> May, 2019 as no reason was adduced for the delay in each and every day after the application withdrawn.

Having failed to adduce reasons for the delay of every day as it was held in the cases of **Karibu Textile Mills Vs. Commissioner General TRA**, Civil Application No. 192/20 of 2016 (unreported) and **Bushiri Hassan Vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) would have made the application fail to stand.

However the applicant has also raised another ground on the illegality of the award citing the case of **Kalunga and Company Advocates Vs. National Bank of Commerce Limited**, Civil Application No. 24 Of 2005 (CA) to that effect.

Illegality of the award on the face of the record may have merit as it was held in the case of **VIP Engineering and Marketing Limited & 3 Others Vs. Citibank Tanzania Limited**, Consolidated Civil References No. 6, 7 and 8 of 2006.

In the cases of **JHPIEGO Vs. Emmanuel Mmbaga**, Misc. Labour Application No. 238 of 2019 and **Hezron Magessa Mariogo Vs. Kassim Mohamed Said**, Civil Application No. 227 of 2015 it was held that where an issue of illegality is raised, it constitutes sufficient cause of granting an

application for extension of time regardless of whether or not a reasonable explanation has been given by the applicant to account for the delay.

This being the situation in the matter at hand, I accordingly allow the application as prayed for. Applicant to file the intended Revision within fourteen (14) days from the date of this Order.

S.A.N. Wambura  
**JUDGE**  
17/07/2020

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**Date: 17/07/2020**

Coram: Hon. S.R. Ding'ohi, Deputy Registrar

Applicant:

For Applicant: Mr. Emmanuel Mkonyi State Attorney

Respondent:

For Respondent: Mr. Elibariki Zackaria for Advocate Luteja

CC: Lwiza

**COURT:** Ruling delivered this 17<sup>th</sup> day of July, 2020.

  
S.R. Ding'ohi  
**DEPUTY REGISTRAR**  
17/07/2020