

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

MISCELLANEOUS APPLICATION NO. 361 OF 2019

BETWEEN

HUSSEIN KILANGO 1ST APPLICANT

ABDUL YAHAYA MALIPULA 2ND APPLICANT

DAVID MWAIPYANA 3RD APPLICANT

(appearing on their own behalf and in representative
capacity on Behalf of 106 OTHERS)

VERSUS

SWISSPORT INTERNATIONAL 1ST RESPONDENT

SWISSPORT TANZANIA PLC 2ND RESPONDENT

RULING

Date of Last Order: 22/06/2020

Date of Ruling: 24/07/2020

S.A.N. Wambura, J.

This ruling is in respect of an application filed by the applicants
HUSSEIN KILANGO (1st applicant) **ABDUL YAHAYA MALIPULA** (2nd applicant) and
DAVID MWAIPYANA (3rd applicant) **appearing on their own behalf and in
representative capacity on behalf of 106 Others** 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 Applicants to file an application to revise the proceedings, decision and Orders of the Commission for Mediation and Arbitration in Labour Dispute No. CMA/DSM/ILA/R.41/2017/293 and issue an order setting aside and quashing the Arbitration Award given by Hon. Kachenje J.J.Y.M. (Arbitrator) on the 27th day of November, 2017.*
- ii. This Court may be pleased to grant any other relief it may deem fit to grant.*

It is supported by a joint affirmed affidavit of **Hussein Kilango** and **Abdul Yahaya Malipula** as well as a sworn affidavit of **David Mwaipyana** who are representing 106 other applicants.

The respondents **SWISSPORT INTERNATIONAL** (1st respondent) and **SWISSPORT TANZANIA PLC** (2nd respondent) through the Counter affidavit of **Peter Amos Mwelelo**, their Advocate challenged the application.

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

It was submitted by the applicants that the delay was a technical one as they had to apply for leave to represent their 106 colleagues. Leave so sought was granted on 15/5/2019. Because by then, were already time barred they accordingly filed this application.

That there is an illegality in the award as the matter was not time barred at CMA as found by the predecessor arbitrator.

They thus prayed for the application to be granted.

The respondents submitted that the application ought to be dismissed as the applicants have not accounted for each day of the delay as held in the case of **Bushiri Hassan Vs. Latifa Luko Meshango** Civil Appl. No. 3 of 2007.

That the applicants have not broadly explained on the alleged illegality as it has held in the case of **FINCA (T) Ltd & Kipondogoro Auction Mart Vs. Boniface Mwahikisa**, Civil Application No. 589 of 2018.

In rejoinder the applicants insisted that they have adduced sufficient cause for the delay and so the application should be granted.


There is no dispute that this Court has the discretion to grant an application for extension of time where the applicant adduces sufficient cause for the delay in filing the same.

The applicant has stated that the delay is a technical one as they had to apply and be granted leave of representation in order to file an application for revision at this court. They did so and the same was granted on 15/5/2019. By then the six weeks provided for by the law to file an application for revision had lapsed. They thus filed this application.

I believe this is a sufficient cause in the circumstance of the matter.

But again I fail to buy the submissions by the respondent that the ground of illegality ought not to stand as it has not been broadly explained. This is because the same was well explained that though the former arbitrator condoned the matter, the succeeding arbitrator over looked the said order and ruled that the application was hopelessly out of time. I thus find that they had no reason of further expanding the matter.

Having found that all the two grounds raised herein are reasonable I accordingly grant the application for extension of time as prayed for. Applicants to file the intended application within thirty (30) days from the date of this Order.

S.A.N. Wambura

JUDGE
24/07/2020

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VERSUS

SWISSPORT INTERNATIONAL 1ST RESPONDENT
SWISSPORT TANZANIA PLC 2ND RESPONDENT

Date: 24/07/2020

Coram: Hon. F.A. Mtarania, Deputy Registrar

Applicant: Present 1st applicant

For Applicant: Mr. Paulo Eliasi holding brief for Mr. Barnabas Lugua

Respondent: }
For Respondent: } Absent

CC: Lwiza

COURT: Ruling delivered today in presence of the applicant in person
Mr. Paulo Elias who is holding brief for Mr. Barnabas Lugua
Advocate for the Applicant and absence of the Respondent.


F.A. Mtarania
DEPUTY REGISTRAR
24/07/2020