

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS LABOUR APPLICATION NO. 416 OF 2019

BETWEEN

UDA MANAGEMENT AGENCY LIMITED.....APPLICANT

VERSUS

HIPOLITY JANUARY MALYA..... RESPONDENT

RULING

Date of Last Order: 26/08/2020

Date of Ruling: 11/12/2020

Aboud, J.

This is an application for extension of time to file application for revision made under Rule 56 (1), 24 (1) (2) (a) (b) (c) (d) (e) (f), 24 (3) (a) (b) (c) and Rule 55 (1) (2) of the Labour Court Rules GN. No. 106 of 2007, (herein the Labour Court Rules). The applicant prayed for the following orders: -

- (i) That this Honourable Court be pleased to extend time in order the applicant to make an application for Revision of an award given by Hon. Msina, H. in Labour Dispute No. CMA/DSM/KIN/R.830/16/142 of the Commission for Mediation and Arbitration (herein CMA) Dar es Salaam Zone.

- (ii) Any other order as this Honourable Court may deem fit to grant.
- (iii) Costs of the application.

The respondent filed a counter affidavit challenging the application.

At the hearing the applicant was represented by Mr. Sechelela Chitinka, Learned Counsel where as Mr. Edward Simkoko, Personal Representative appeared for the respondent. The matter was argued by way of written submissions.

Arguing in support of the application Mr. Sechelela Chitinka submitted that, the CMA award has some irregularities because the arbitrator wrongly awarded the respondent payment of eleven-month salary which was the remaining period of contract as if he was a confirmed employee. She argued that the respondent was in probation when his employment contract was terminated as was clearly stated in his contract. It was submitted that in such circumstance he did not deserve to be awarded for the remaining period of the contract. To robust her argument, she cited a range of Court of Appeal cases including the case of Charles **Zephania Mwenesano v. Daniel Samweli Chuma**, Civil Appl. No. 274 of

2015, CAT at DSM. She stated that on such illegality it is sufficient reason of extending time.

Mr. Sechelela Chitinka submitted further that, by the time the award was pronounced and collected the applicant had no legal representation at the CMA. Thus, she argued that applicant had no service of a lawyer to file the intended revision until when he engaged one on 16th April 2018. It was submitted that, the applicant in this application is a legal Corporate which is registered under the Companies laws of Tanzania and, by the time when the arbitration was proceeding at CMA, her Head of Legal Department was out of the office for certain reasons. So, in that situation it was difficult for the applicant handle or act upon legal matters, specifically to challenge the CMA award in issue. Hence, the applicant was time barred to file the revision application.

She therefore prayed for the application to be allowed.

Resisting this application Mr. Edward Simkoko submitted that, the reasons advanced by the applicant counsel for extension of time lacks legal basis, because no any evidence has been presented in support of her arguments. It was also argued that, physical absence of the applicant's Head of Legal Department is not a sufficient reason

for the applicant failure to file the revision within the prescribed time. It was submitted that; the applicant would have used other means including mobile or email to communicate with the said head of legal department to facilitate filing of the intended revision on time. He said, apart from that, applicant being a Company with all resources was capable of hiring an Advocate to represent her without wasting time. In support of his submission, he cited the case of **Oscar Mbwambo and Another vs. M/S Tanga Cement Co. Ltd Misc.Appl. No. 12 of 2014** and the case of **Siemens Limited, Siemens (propriety) Limited vs. Mtibwa Sugar Estates**, Misc. Appl. No. 247 of 2015. He added that, the applicant delay was inordinate to the extent that the Court could not exercise its discretion.

Mr. Edward Simkoko further submitted that, the point of illegality advanced by the applicant is not a sufficient reason for this Court to grant extension of time but rather should be advanced as a ground of revision. Therefore, he urged the court not to consider such reason as sufficient one to grant the order sought.

He finally prayed the application be dismissed.

Having gone through the rival submissions by the parties, Court's records as well as relevant labour laws, it is my considered

view that, the issue for determination before the Court is whether the applicant has adduced sufficient reasons for the grant of the application at hand.

It is apparent that, this court is vested with powers to grant an extension of time upon good cause shown as provided under the provision of Rule 56(1) of the Labour Court Rules. The relevant provision is to the effect that: -

'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'.

What amounts to sufficient or good cause have been discussed in a number of cases including the Court of Appeal in the case of **John Mosses and Three Others Vs. The Republic, Criminal Appeal No. 145 of 2006** when quoting the position of that court in the case of **Elias Msonde vs. The Republic, Criminal Appeal No. 93 of 2005** where Mandia J.A. held that: -

'We need not belabor, the fact that it is now settled law that in application for extension of time to do an act required by law, all that is expected by the applicant is to show that he

was prevented by sufficient or reasonable or good cause and that the delay was not caused or contributed by dilatory conduct or lack of diligence on his part'.

In the application at hand the applicant moved the court to extent time within which to file revision application in respect of Labour Dispute No. CMA/DSM/KIN/R.830/16/142. In this application two reasons are advanced by the applicant that, illegality of the award and absence of his Head of Legal Department which crippled him to act promptly to challenge the CMA award.

Starting with the first advanced reason for the extension of time, that is illegality of the award, it has been established that where a point of law involves the illegality of the decision, that by itself constitutes sufficient reason to grant an extension of time. In the case of **Principal Secretary, Ministry of Defence vs. Devran Valambia (1992) TLR. 185**, the Court of Appeal held that: -

'Where the point at issue is one alleging illegality of the decision being challenged, the court has a duty even if extending time for the purpose to ascertain the point and if the alleged illegality be established to take to put the matter and record right'

However, it is the position in law that the point of law involving illegality must be apparent on the face of record and not otherwise. In the case **Zuberi Nassor Mohamed Vs. Mkurugenzi Mkuu Shirika la Bandari Zanzibar**, Civil Application No.93/15 of 2015 and in the case of **Lymuya Construction Co. Ltd.** as cited in the case of **Omary Ally Nyamalege and 2 Others Vs. Mwanza Engineering Works** Civil Application No. 94/08 of 2017 (unreported) the Court emphasized that: -

'Such point of law must be of sufficient importance and I would add that it must be apparent on the face of record, such as the question of jurisdiction not that one would be discovered by long drawn argument or process'.

Having gone through parties' submission and record I noted that the applicant's point of illegality of the award is based on jurisdiction of the arbitrator to change the terms of contract of the respondent.

Therefore, I am of the view that the point in issue needs to be determined by the court to put the matter and record right for the interest of justice to both parties.

Under the circumstance of the application, I find the applicant has adduced sufficient reason for this Court to grant the application at hand as required by Rule 56 (1) of the Labour Court Rules.

In the result, the application has merit on the basis of the point of illegality of the award as advanced to justify the order sought and, I find no need to discuss the remaining reason. The application is hereby granted and, the applicant has to file the intended revision application on or before 24/12/2020.

It is so ordered.



I.D. Aboud

JUDGE

11/12/2020