

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**MISCELLANEOUS APPLICATION NO. 726 OF 2019**

**BETWEEN**

**EZEKIEL Y. IRUNGU.....APPLICANT**

**AND**

**GOVERNING BODY OF  
THE COLLEGE OF BUSINESS EDUCATION.....RESPONDENT**

**RULING**

Date of Last Order: 18/09/2020

Date of Ruling: 30/10/2020

**A. E. MWIPOPO, J**

This is an application for extension of time to file Revision in this Court against the decision of the Commission for Mediation and Arbitration in Labour Dispute No. CMA/DSM/ILALA/R.834/13/1248, delivered by Hon. Alfred Massay, Arbitrator, on 3<sup>rd</sup> February, 2017. The Applicant namely Ezekiel Y. Irungu prays for the order of the Court in the following terms:-

1. That this Court be pleased to extend time within which the Applicant may apply for revision of the decision of the CMA at Dar Es Salaam Zone on dispute no. CMA/DSM/ILALA/R.834/13/1248.

2. Any other relief(s) this Court may deem it fit and just to grant.
3. The cost of this application.

The application was accompanied by Chamber Summons supported by Applicant's affidavit which contains in paragraph 10 four legal issues to be determined by this Court. The legal issues are as follows:-

- i. Whether the Arbitrator properly evaluated the evidence on record before reaching the decision that the allegation against the Applicant was proved.
- ii. Whether the charges of attempted rape can be proved on balance of probability.
- iii. Whether it is right and fair to enter judgment without giving the accused right to be heard on all the charges against him.
- iv. Whether the Respondent was vested with power, authority and jurisdiction to hear and determine matters concerning charges of attempted rape.

The background of the dispute in brief is that Applicant was employed by the Respondent namely Governing Body of the College of Business Education (CBE) as Lecturer. He was terminated from employment for misconduct on 4<sup>th</sup> November, 2013, for misconduct. Aggrieved by the

Respondent decision, the Applicant referred the dispute to Commission for Mediation and Arbitration which ruled in favour of the Respondent on 3<sup>rd</sup> February, 2017. The Applicant was not satisfied with the Commission decision and he filed Revision No. 114 of 2017 which was struck out for incompetence on 16<sup>th</sup> October, 2018, with 14 days leave to file a proper application. The Applicant filed Revision No. 740 of 2018 on 26<sup>th</sup> October, 2018, which was also struck out for incompetence on 11<sup>th</sup> November, 2019. Then, the Applicant filed the present application for extension of time to file revision application on 11<sup>th</sup> December, 2019.

When the matter came for hearing, both parties were represented. The Applicant was represented by Mr. Methusellah Mafwele, Advocate, whereas the Respondent was represented by Mr. Ambokile Mwakaje, Principal State Attorney. The hearing of the application proceeded orally.

Mr. Methusellah Mafwele submitted that the Applicant has been in this Court for a long time seeking justice but the applications have been struck out for technicalities. The Applicant have been in Court since 14<sup>th</sup> March, 2017 when he filed Revision No. 114 of 2017 onward fighting for the right to be heard but the same was delayed due to the applications being struck out for technicalities. The Applicant further submitted that there is illegality



in the Commission award which need to be heard and determined by the Court.

In reply, Mr Ambokile Mwakaje submitted that the applications filed by the Applicant have been struck out twice by this Court. As a result the Respondent have been in Court for three good year attending incompetent applications filed by the Applicant. The question of technicalities is not a shield in every case as it was held in the case of **Puma Energy Tanzania Ltd v. Ruby Roadways (T) Ltd**, Civil Appeal No. 3 of 2018, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported). The current application is using a backdoor which this Court decided not to grant. Paragraph 6 and 10 of the Applicant's affidavit does not show the reasons for the delay. The facts in the affidavit shows that the Applicant was negligent in pursuing the matter. In the case of **Walter Kiwoli vs. International Commercial Bank (T) Ltd**, Misc. Application No. 267 of 2019, High Court Labour Division, at Dar Es Salaam, (Unreported), the Court was of the view that negligence on the part of the Applicant demonstrate lack of seriousness.

The Respondent submitted further that the Applicant need to account for each day delayed. The Applicant submission have left some gaps without explaining the delay as a result the Applicant has offended the principle. This was the position of the Court of Appeal in the case of **Stephen B.K.**

**Mhauka v. The District Executive Director Morogoro District Council and two Others**, Civil Application No. 68 of 2019, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported). The Applicant was served with drawn order on 15<sup>th</sup> November, 2019, and filed the present application on 11<sup>th</sup> December, 2019. The affidavit and the Applicant have said nothing on the 26 days delayed to file the Application.

Regarding the issue of illegality, the Respondent submitted that there is no criminal issue in the respective misconduct. The employer has discretion to treat the misconduct as a criminal case or disciplinary matter. This would have been an issue if the Applicant was charged of theft offence. The employer decided to treat the offence as misconduct and proceeded with disciplinary charges hence there is no issue of illegality at all. The **Stephen Mhauka's case**, (Supra), requires the illegalities to be sufficient in content and apparent on the face of record. Also in the case of **Ngao Godwin Losero vs. Julius Mwarabu**, Civil Application No. 10 of 2015, Court of Appeal of Tanzania, at Arusha, (Unreported), it was held that the question of illegality does not need to be discovered by a wrong drawn argument or process. The present case does not surpass the test. The Respondent prayed for application to be dismissed.



In rejoinder, the Applicant retaliated his submission in chief. The Applicant emphasized that after the ruling was served to him on 15<sup>th</sup> November, 2019, he filed the present application on 11<sup>th</sup> December, 2019, which is reasonable time. The Applicant further stated that the days delayed have been accounted for.

From parties submissions, the issue for determination is whether the applicant have provided sufficient reasons for the Court to grant him extension of time to file the revision application out of the time prescribed by the law.

The general principle is that, it is a discretion of the Court to grant an application for extension of time upon a good cause shown. In the case of **Tanga Cement Company vs. Jumanne D. Masangwa and Another**, Civil Application no. 6 of 2001, Court of Appeal of Tanzania, (Unreported) the Court of Appeal held that:

*".....an application for extension of time is entirely in the discretion of the Court to grant or refuse it. This unfettered discretion of the Court however has to be exercised judicially, and overriding consideration is that there must be sufficient cause for doing so. What amount to sufficient cause has not been defined. From decided cases a number of factors has been taken into account, including whether or not the application was brought promptly; the absence of any valid explanation for the delay; lack of diligence on the part of the applicant."*

Also, the Court of Appeal held in the case of **General Manager Tanroads Kagera vs. Ruaha Concrete Company Ltd**, Civil Application No. 96 of 2002, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported), that, I quote:-

*"What constitutes "sufficient reason" cannot be laid down by any hard and fast rule. This must be determined by reference to all the circumstances of each particular case."*

From the above decision, what amount to a good cause depends on the circumstances of each case.

In the present application the Applicant submitted that the delay in filing the application was for a main reason that the applications filed by the Applicant were struck out on technicalities and the Applicant has never been idle on fighting for his rights in the Court corridors all the time. The respondent is of the view that filing of incompetent applications in this Court does not amount to be a good cause for extension of time as it amount to negligence on the part of the Applicant. I agree with the Respondent that filing of incompetent application more than once shows negligence on the part of the Applicant. This demonstrate lack of seriousness on the part of the Applicant.



The evidence available in the record shows that the application before the Court is for the extension of time to file revision application against the Commission award. The Court did find the Revision No. 114 of 2017 filed by the Applicant was incompetent and did strike it out on 16<sup>th</sup> October, 2018, with 14 days leave to file a proper application. The Applicant filed Revision No. 740 of 2018 on 26<sup>th</sup> October, 2018, which was also struck out for incompetence on 11<sup>th</sup> November, 2019. Thereafter, Applicant filed the present application for extension of time to file revision application on 11<sup>th</sup> December, 2019. This means that the parties have been in Court corridors attending incompetent applications for two years.

The Respondent submitted that the Applicant has failed to account for each day of delay for the entire period of 26 days from the date the drawn order of Misc. Application No. 740 of 2018 was served to the Applicant on 15<sup>th</sup> November, 2019, to the date of filing the present application on 11<sup>th</sup> December, 2019. Reading the Affidavit in support of the application and the Applicant submission it is clear that the Applicant did not at all account for the 26 days delayed. It was during the rejoinder when the Counsel for the Applicant submitted that 26 days delayed was reasonable. I'm of the opinion that 26 days delay is not reasonable and the Applicant was supposed to explain each day delayed.



Further, the legal issues contained in the affidavits were not on the relevant material facts as they did not at all raise reasons grounds for the Court to extend time but rather provides grounds for revision against the impugned CMA Award.

It is a trite law that in the application for extension of time the applicant is supposed to account for each and every day of the delay. The Court of Appeal in the case of in the case of **Said Nassor Zahor and Others vs. Nassor Zahor Abdallah El Nabahany and Another**, Civil Application No. 278/15 of 2016 (unreported), held that, I quote;

*"...any applicant seeking extension of time is required to account for each day of delay."*

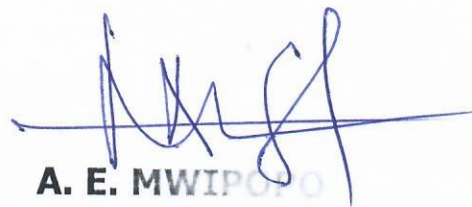
In the present application I find that the applicant did not account for the delay as submitted by the respondent.

Regarding the issue of illegality, the Applicant submitted that there is issue of illegality in the impugned CMA award but the alleged illegality was not mentioned. Illegality is sufficient ground for extension of time as it was held in the case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT (Unreported). However, the illegality has to be sufficient in content and apparent on the face of record

as it was held in case of **Stephen B.K. Mhauka v. The District Executive Director Morogoro District Council and two others**, (Supra). The question of illegality does not need to be discovered by a wrong drawn argument or process as it was held in the case of **Ngao Godwin Losero vs. Julius Mwarabu**, (Supra).

In the present application, the applicant never explained the alleged illegality in the impugned commission award. Therefore, it was difficulty for the Court to guess what exactly is the alleged illegality stated by the Applicant. The Counsel for the Applicant appears make plain allegation on illegality waiting for the Court help him to find it. Therefore, I'm of the opinion that there is no illegality which was mentioned by the Applicant for the court to determine it.

Therefore, I find the Applicant have failed to provided sufficient cause for the Court to extend time to file the intended revision application out of time. Consequently, I hereby dismiss the application. Each party to the application to take care of its own cost of the suit.



**A. E. MWIIPPO**  
**JUDGE**

**30/10/2020**