

IN THE HIGH COURT OF TANZANIA

(LABOUR DIVISION)

AT SUMBAWANGA

MISC. LABOUR APPLICATION No. 11 OF 2019

**(Original from consolidated Labour Dispute No. CMA/RK/70/2016 and
CMA/RK/71/2016)**

MAYUNGA JACKSON MAGIGI APPLICANT

Versus

JV OF 15G NEW CENTURY COMPANY LTD RESPONDENT

RULING

W.R. MASHAURI, J.

23/07/ 2020 & 13/08/2020

Applicant Mayunga Jackson Magigi on the 30th September, 2019 lodged his application (chamber summons supported with affidavit) under citation of Rule 24 (1), (2) and (3) read together with Rule 44(1-3)(a) and (b) and Rule 56(1) and (3) of the Labour Court Rules GN No. 106/2007 and section 14 of the Law of Limitation Act, Cap 89 R.E. 2019, the applicant prays as follows:-

1. That this honourable court be pleased to grant an extension of time to one MAYUNGA JACKSON MAGIGI to file leave to represent other applicants in the intended application for revision of the Commission for Mediation and Arbitration ruling

in Labour Dispute No. CMK/RK/70/2016 dated 18th February, 2019 by hon. Ngaruka, O. Arbitration.

2. That upon extension of time, this honourable court be pleased to grant leave to one MAYUNGA JACKSON MAGIGI to file representative suit on behalf of himself and other applicants against the respondent in the intended application for revision of the Commission for Mediation and Arbitration Ruling in Labour Dispute No. CMA/RK/70/2016 dated 18th day of February, 2019 by hon. Ngaruka, O. Arbitrator
3. Any other relief(s) that this honourable court deem fit and just to grant.

Upon filing and service of summons on 15th October, 2019 officially by notice of representation learned counsel Mr. Bryson Ngulo (advocate) become representative of respondent and lodged notice of opposition under Rule 24(4)(a) and (b) of the Labour Court Rules that respondent intends to oppose the application in the following terms:-

1. That, the whole application is incompetent for non-citation of mandatory enabling provisions of the Law.
2. That, the applicant's application is bad in law for being an omnibus application.

3. That, the application is bad in law for suing a wrong person.

That, on 29th March, 2020 Learned counsel Mussa Lwila (Advocate) appeared for applicant meanwhile holding brief of Mr Ngalo (he is sick) for respondent, Advocate Lwila submit that, "we have agreed to dispose of this application by way of filing written submission, we pray leave of this court" the prayers granted by the court. Orders for filing schedule were as hereunder: applicant to file his submission by 12th May, 2020, reply by respondent by 26th May, 2020. Rejoinder if any by 2nd June, 2020 and mention on 3rd June 2020 with a view of setting a date of ruling. Both parties filed their written submission accordingly.

In submissions, applicant represented by learned Counsel Mathias Budodo (Advocate) while respondent represented by learned Counsel Iman Mbwiga (advocate). Applicant in the submission to support application submitted that, in support of the combined application for extension of time to file application for leave to represent others and leave for representative suit, essentially for avoiding multiplicity of applications and both of these applications are almost related (one follows the other) and that no any law which bar this kind of application, this will save the precious time and resources of the court and parties.

Applicant cited the case of **MIC TANZANIA LIMITED vs MINISTER**

FOR LABOUR AND YOUTH DEVELOPMENT Civil Appeal No. 103/2004 CAT at Dsm page 9 &10. Applicant prays to adopt the contents of the affidavit which contain ground for both extension of time and leave for representative suit.

Learned counsel further submit that, applicant relies on two ground for extension of time: - firstly; its technical delay which is excusable in law, that applicant initially filed on time the application for representative suit and was withdrawn for clerical mistakes, cited two authorities **S. 59 (1) (a) and (d) of Cap 6 R.E 2002** and the case of **Fortunatus Masha vs William Shija (1997)154** that technical delay is excusable. Secondly, that impugned decision is tainted with illegality on the powers of arbitrator, allegation of illegality on the decision is a sufficient reason for extension of time, henceforth cited the case of **The Principle Secretary Ministry of Defence and National Service Vs Duram Valambhia (1992)** TLR 387. Applicant added that, the allegation of illegality is on point of law on the issue of jurisdiction, intends to move the court answer the questions.

Applicant submit with respect to **Rule 44(2) of the GN 106/2007**, he cited the case of this court **Nisakwisa Mwakyoma & Others vs General Manager G.T.V Tanzania Ltd, Labour Dispute No.**

08/2009 HC Sumbawanga at page 6 (unreported) paraphrased three basic factors which must be demonstrated for grant of application for representative suit. After that applicant close his submissions.

In reply, Respondent submit on opposing the application by virtual of **Rule 24(4)(a) and (b) of the Labour Court Rules Gn. No. 106/2007**, respondent abandoned ground No. (iii) Above, and proceed with the ground No. (i) and (ii) as follows:- in ground (i) of the notice of opposition the applicant in the application has not cited enabling provision for extension of time he ought to cite **Rule 56 of GN No. 106/2007** (supra), which is mandatory in labour cases when one seek extension of time. **S. 14 of the Law of Limitation Act R.E 2019, Cap 89** and **Rule 55(1) and (2)** of the Rules as cited are inapplicable and irrelevant in extension of time in labour matter. On ground No. (ii) Omnibus application, the law allow such applications, only if are closely related and are found in the same provisions of law. In the instant application, applicant prays for two distinct reliefs, which are; application for extension of time and application for representative suit are two distinct application as well as distinct reliefs. Those come from distinct laws, one from the Law of Limitation and the other from **Rule 44 of GN. No. 106 of the Rules** (supra) he cited the case of **Rutagatina**

C.L Vs The Advocate Committee & Another Civil Application No.

98/2010 (unreported) page 4, 5 & 8.

Respondent went on to submit on main application as to delay technic, which it's inordinate delay caused by applicant's own fraud or deceit and applicant lack of diligence and the instant application is a third application, respondent cited the case of **Said Ramadhani Vs Geita Gold Mining Misc. Labour Rev No. 29 of 2013** (unreported) at page 6 and prayed to be dismissed. With regard to the ground of illegalities, respondent contended that extension of time on ground of illegality is not automatic; it is a trite law that purported illegality must be of sufficient importance and must be on the face of records, respondent cited the case of **Lyamuya Construction Company Ltd Vs Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) at page 10, **Kalunga and Company Advocate Vs National Bank of Commerce Ltd** Civil Application No. 124 of 2005, **Aruwaben Chagan Ministry Vs Naushad Mohamed Hussein & 3 others** Civil Application No 6 of 2016 and **Jehangir Aziz Abubakar vs Balozi Ibrahim Abubakar & another** Civil Application No. 79 of 2016.

Respondent went to submit that, no even an iota of illegality in the decision of the CMA to warrant extension of time, the arbitrator did not usurp powers of the high court and did not order the applicant to remit the money paid by the respondent (Tsh 45,000,000/=) prior to commencement of the suit afresh. There is no point of law in the decision of CMA, respondent cited the case of **Osward Mruma Vs Mbeya City Civil Application No. 100/06 of 2018** (unreported). Also the applicant have not even accounted for each day of delay and what prevented them to come timely, in that, respondent cited the case of **Osward Mruma** (Supra). Respondent ending his submission by prayed that application is unmerited and be dismissed.

In rejoinder Applicant submitted that, counsel for respondent and the arbitrator misconceived the ruling and order of the court dated 19th November, 2018 in holding that arbitrator was handcuffed to determine the matter afresh; decision has three (3) distinct orders, is third order which have decretal sum effects, failure to repayment in time attracts execution to enforce the order for remittance. Also added that, the court didn't order that the CMA case should not proceed until all the money paid to respondents are remitted.

Applicant continue to submit that, concerning non citation of enabling provision of the law; the provision which respondent thinks is proper (Rule 56(1) of the Labour Court Rules, 2007) is actually not, the Rule is applicable where time limit is prescribed by the Rules. In lacuna the court can adopt any procedure to fill the gap, he cited **Rule 55 of the Rules** as well as the case of **Tanzania Breweries Limited Vs Edson Muganyizo Barongo & 7 Others Misc. Labour Application No. 79 of 2014** HC Dsm (unreported). Applicant closed his rejoinder submissions.

Upon taking the submissions of both parties, the only question before this court is; whether the application had the merit?. however before entertain the merit of this application, respondent disposed two grounds in notice of opposition as herein above; the first was that, the whole application is incompetent for non-citation of the mandatory enabling provision of the law. Respondent opposed by submitted that Application missed **Rule 56 (1) of the Labour Court Rules** which is mandatory for seeking extension of time in Labour Cases. Let it be true! But Upon close look to the chamber summons, this court found the alleged **Rule 56(1) of the Rules** (Supra) cited in the application.

Concerning the second point of opposition, that, application is omnibus, in my opinion, the extension of time to file leave to represent other applicant and extension of time to file representative suit are closely related and are found in the same provisions of law (**see – Rule 44 (1) & (2)**) of the Rules (supra) and extension of time boned from **Cap 89 S. 14**. Ordinarily, extension of time is subjective (I will explain it later), in instant application, the subject is leave to represent others and leave to file representative suit, and this is two prayers but closely related (is concerned with representative matter). It is not bad in law to combined more than one application in chamber summons. (**see – MIC Tanzania Limited Vs Minister for Labour and Youth Development**, Civil Appeal No. 103/2004 CAT (Unreported)). Without wasting much court's time, I hasten to say that, the opposition notice grounds are devoid of merit, I hereby dismissed it.

Steeping into main application, the applicant prays for extension of time to file leave and representative suit. Applicant submit illegality and delay technic as reason for extension of time, Let me start with the cause of illegality as shown by applicant; as I said before, extension of time is subjective, I agree with learned counsel for applicant that illegality when proved by the court is the sufficient reason for extension of time, it is

subjective to the extent that, the only question here is extension of time to do what? In our instant application, it is extension of time to file leave to represent other applicants. Well and Good! But, my question is, is illegality a sufficient reason to grant leave to represent other applicants? The filed leave to represent other applicants does it going to challenge the said illegality or irregularity in the decision? I think, Intention of the illegality being a supreme cause of extension of time is for applicant to challenge decision and its illegality or irregularity in the intended Appeals and/or Revisions, purposely not to permit decision which in law might not exist, to stand.

The case of **Omary Ally Nyamalenge & Others Vs Mwanza Engineering Works** Civil Application No 94/08 of 2017 CAT at Mwanza October, 2018 demonstrate where a point of law is involved thus;

*"I wish to remark, at this point, that it is settled jurisprudence of the Court **that where a point of law involved in the intended appeal is a claim of the illegality of the impugned decision, that in and of itself constitutes a good cause for the Court to extend the limitation period involved"***

The Principle Secretary Ministry of Defence and National service

Vs Duram Valambhia (1992) TLR 185 has this to say:-

*"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.**"*

From above, point of illegality is for challenging decision for the court to take appropriate measure to put matter and the record right, it is my standing that, the point of illegality is not a sufficient reason in applying for extension of time to file leave to represents other applicants as prayed by applicant, but its sufficient reason for extension of time to challenge decision contains illegality or irregularities.

With respect to technical delay, the cited **S. 59(1)(a)** of the Evidence Act, this application has nothing to do with it, with regard to court order dated 17/09/2019 mentioned in applicant submission, it is not founded in court record. Its normal principle of the law in civil litigation than one who allege must prove, counsel for the applicant should prove to the court to the extent on what and how technical delay occurred and on

what circumstance amount cause the said application to be strike out, to mention only that, there was technical delay is not sufficient, it must be apparent in the face of record for being excusable. In the balance of probabilities, nothing applicant proved technical delays.

However the applicant failed to account for each day of delay as required in our jurisprudence as a reason for extension of time (**see – Finca (T) Limited & another Vs Boniface Mwalukisa Civil Application No, 589/12 of 2019 CAT Iringa, May 2019 (unreported)**)

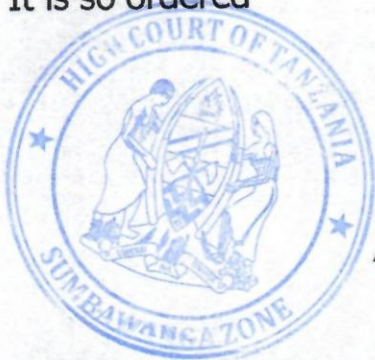
As far as the order of this court dated 19/11/2018 at page 18 court orders as follows:

"I order any money paid by the respondent to be remitted pending the determination of the matter"

The CMA arbitrator held that, the CMA has no jurisdiction to determine the matter, from that order what is rational behind for applicant to pray to file representative suit, nowhere CMA arbitrator rose illegality, he makes literal meaning of the order. Its order of this court demand so, nothing usurped.

As to those above, no sufficient reason adduce for extension of time to file leave to represent others. This application has no merit. Second prayer breathes last breath. No any remedy appropriate except dismiss it. After saying so, I hereby dismiss this application. As far as it is a labour matter no orders as to costs.

It is so ordered




W.R. MASHAURI

13/08/2020

Ruling delivered in Court through video conference with Mr. Kipesha Adv. on screen holding brief of Mr. Mathias Budodi counsel for the applicant and in absence of the Respondent this 13/08/2020.

Right of appeal explained




W.R. MASHAURI

JUDGE

13/08/2020