

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

**MISCELLANEOUS APPLICATION NO. 500 OF 2018**

**BETWEEN**

**KINONDONI MUNICIPAL COUNCIL ..... APPLICANT**

**VERSUS**

**YUSUPH MOHAMED NANDILE & 28 OTHERS ..... RESPONDENTS**

**RULING**

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

*Date of Ruling: 22/05/2020*

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

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

- (i). This Honourable Court be pleased to extend time for filing an application to file competent application for extension of time to file Revision as per order of the Court dated 14<sup>th</sup> August, 2018, delivered by Hon. L.L. Mashaka, Judge.*

*(ii). That the Honourable Court be pleased to make such any other orders as it may deem fit.*

The application is supported by a sworn affidavit of Leah N. Mnzava the applicants Solicitor.

Mr. **YUSUPH MOHAMED NANDILE** filed an affirmed counter affidavit on his own behalf and on behalf of 28 Other respondents as stated in paragraph 2 of his affidavit.

Let me point out that since there is no leave of representation which has been filed to that effect in this matter, then the counter affidavit will be for his own behalf. It is inferred that the other 28 respondents have no objection to the grant of the application.

Now 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.

It is undisputed that this Court can grant an application of this nature where it is satisfied that good cause has been adduced as provided for under Rule 56 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 sometime in September, 2016.

It has been alleged by the applicant that Misc. Appl. No. 120/2017 filed earlier was struck out with leave to refile the same on or by 14/08/2018 but the applicants failed to do so.

They also submitted that when the Court issued the said Order the applicants Solicitor was attending a meeting of Government Lawyers held in Dodoma as per Annexure KMC5.

The applicants also alleged that there were a number of irregularities in the award which needed the Courts intervention as it was held in the

case of **Kinondoni Municipal Council Vs. Pius Chuwa**, Misc. Civil Application No. 780 of 2017.

The respondent challenged the application stating that the non-appearance on the date the matter was struck out was due to their own negligence. That Annexure KMC5 reveals that the meeting was to take place on 29-30/08/2018. So the applicant had ample time to file the same before travelling to Dodoma. They cited the case of **Tanga Cement Co. Ltd Vs. Jumanne Masangwa & Another**, Civil Appl. No. 6 of 2001 to that effect.

It was further submitted that the applicant has also not accounted for the delay of each day as held in the case of **Nicholaus Hamisi & 1013 Others Vs. The Consolidated Holding Corporation, Receiver of Tanzania Shoe Company and Tanzania Leather Associated Industries**, Civil Reference No. 5 of 2016.

It is worth noting that the respondent said nothing in respect of the illegality of the award and prayed for the application to be dismissed for want of merit.

In rejoinder the applicant retaliated their submissions by arguing that they had to attend a meeting in Dodoma and that the former Solicitor one XAVEL NDALAHWA who earlier handled this matter had been transferred. I will not consider this reason as it was not in the submissions in chief nor in the affidavit in support of this application.

I join hands with the respondent that the meeting in Dodoma was scheduled to take place after the seven (7) days Order issued by the Court to file a proper application. The order was issued on 14/08/2018 and according to Annexure KMC5 the meeting was scheduled to take place on 29-30/08/2018. So it was negligence on the part of the applicants who did not make a follow up on the Order issued in their absence after the ruling was delivered.

Now the unchallenged reason is on the illegality of the award. This has been said to be a good cause in granting applications of this nature as it was held in the case of **VIP Engineering and Marketing Limited & 3 Others V. Citibank Tanzania Limited**, Consolidated Civil References No. 6, 7 and 8 of 2006.

It has been stated that where illegality has been raised, then even the issue of accounting for the delay of each day does not arise. This was so held in the case of **JHPIEGO Vs. Emmanuel Mmbaga**, Misc. Labour Application No. 238/2019. In the case of **Hezron Magessa Mariogo Vs. Kassim Mohamed Said**, Civil Application No. 227/2015 (unreported) it was held that:-

***"A claim of illegality of the challenged decision constitute sufficient reason for extension of time regardless of whether or not a reasonable explanation has been given by the applicant to account for the delay."***

*[Emphasis is mine].*

In the circumstances, I grant the application as prayed for. Applicants to file the said application within fourteen (14) days from the date of this ruling. Names of the respective respondents to be clearly spelt out. It is so ruled.

S.A.N. Wambura

**JUDGE**

22/05/2020

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**YUSUPH MOHAMED NANDILE & 28 OTHERS ..... RESPONDENTS**

**Date: 22/05/2020**

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

Applicant:

For Applicant: Ms. Leah Mnzava Solicitor

Respondents:

For Respondents: Mr. Shafii Mafita Personal Representative

CC: Lwiza

**COURT:** Ruling delivered this 22<sup>nd</sup> day of May, 2020.

  
S.R. Ding'ohi  
**DEPUTY REGISTRAR**  
22/05/2020