

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

MISCELLANEOUS LABOUR APPLICATION NO. 339 OF 2020

BETWEEN

GEOFFREY ROJALA APPLICANT

VERSUS

ABRAHAM MWAMBONA RESPONDENT

EX-PARTE RULING

Date of Last Hearing: 08/11/2021

Date of Ruling: 15/12/2021

I. Arufani, J.

The applicant filed the present application in this court seeking for extension of time within which to file in the court an application for revision of the proceedings and award of the Commission for Mediation and Arbitration (hereinafter referred as the CMA) delivered in Labour Dispute No. CMA/PWN/MKG/692/16 issued on 11th December, 2016. The application is made under Rules 24 (1), 24 (2) (a), (b), (c), (d), (e) and (f), Rule 24 (3) (a), (b), (c) and (d), Rule 55 (1) and 56 (1) of the Labour Court Rules, GN. No. 106 of 2007 (hereinafter referred as the Rules) and any other enabling provision of the law.

The application is supported by the affidavit sworn by the applicant and opposed by the counter affidavit sworn by the respondent. As the respondent failed to appear in the court the applicant prayed and allowed to argued the application ex parte and by way of written submission. The applicant prays to adopt his affidavit as part of his submission. The applicant stated in his submission that, he failed to file the application for revision in the court within the time prescribed by the law as the person he was depending to prepare his application and the legal aid clinic which was representing him in the matter had already gone on leave.

He stated that, the matter was in court all the time hence the delay was not caused by him as all the time he was in the corridors of the court. He submitted that, the intended application for revision is seeking to challenge the proceedings and award of the Commission basing on illegalities and irregularities appears on the Award. He stated that, the main issue he want the court to determine in this matter is whether there is sufficient cause for granting extension of time basing on the grounds stated in the notice of application and supported by the affidavit of the applicant.

He went on arguing that, it is trite law that, in order for the court to exercise its discretionary power to grant the application of this nature the applicant is required to show there are sufficient reasons to enable the court to grant the sought extension of time. He argued that, the court can also grant extension of time where is found the impugned award or order is tainted with illegalities. He argued that, the illegalities sought to be challenged are deposed at paragraphs 4 (i), (ii), (iii), (iv) and (v) of the affidavit supporting the application. He submitted that under the mentioned paragraphs he has shown there are serious illegalities in determination of the matter before the Commission.

The applicant referred the court to the cases of the **CRDB Bank Limited V. Serengeti Road Service**, Civil Application No. 12 of 2009, CAT at DSM, **Kashinde Machibya V. Hafidhi Said**, Civil Application No. 48 of 2009 (both unreported) and the **Principal Secretary, Ministry of Defence and National Service V. Devram Valambia**, [1992] TLR 182 where it was stated that, when the point at issue is one alleging illegality of the decision being challenged, the court has a duty, to extend the time for the purpose of ascertaining the point and if the alleged illegality is established to

take appropriate measure to put the matter and the record correct. At the end he prayed the application be granted.

After considering the submission of the applicant and going through the affidavit supporting the application which the applicant prayed to be adopted as part of his submission the court has found that, as rightly argued by the applicant the issue to consider in this application is whether the applicant has managed to show there is sufficient or good cause for the court to exercise its discretionary power to grant the order the applicant is seeking from the court. The court has framed the above issue after seeing section 56 (1) of the Rules upon which the application is made gives the court power to enlarge time where good cause for enlarging the time has been shown.

The term "*good cause*" referred in the above quoted provision of the law is not defined in the cited law or any other law. However, the said term has been defined by courts in range of decisions made by this court and the Court of Appeal. One of the cases is **Bertha v. Alex Mganga**, Civil Reference No. 7 of 2016, (unreported) where the Court of Appeal stated that:-

*"Whilst it may not be possible to lay down an invariable definition of **good cause** so as to guide the exercise of the*

court discretion, the court is enjoined to consider, inter alia the reasons for the delay, length of the delay, whether the applicant was diligent and degree of prejudice to the respondent if time is extended.”[Emphasis added].

While being guided by the position of the law stated in the above cited case the court has found in relation to the application at hand that, although it was stated the impugned award was delivered by the Commission on 11th December, 2016 but it was not stated when the first application for enlargement of time was filed in the court so as to enable the court to gauge whether the delay is inordinate or not. The court has found that, as deposed at paragraph 3.7 of the affidavit of the applicant the first application to be filed in the court was Miscellaneous Application No. 44 of 2017 which was withdrawn from the court on 22nd February, 2017.

The court has also gone through the counter affidavit of the respondent and find that, although the respondent challenged the applicant evidence that the person he was expecting to assist him to prepare his application had gone on leave and the legal aid clinic which was assist him was on leave and stated there are other legal clinics which the applicant could have used to prepare his application but the respondent did not state how long the applicant was delayed

to file his application in the court so as to assist the court to determine whether the delay was inordinate or not.

That being the position of the matter the court has taken that, from when the award was issued up to when the first application was struck out from the court it was almost two months and few days which had passed and as the court was on vacation from 15th December, 2016 to February, 2017 it might be possible the delay was not inordinate but the matter was delayed to be attended as the court was on vacation. The court has found the affidavit of the applicant shows the rest of the period from when the first application was struck out the applicant was in the corridors of the court prosecuting the applications mentioned in paragraphs 3.7, 3.8, 3.9, 3.11 and 3.12. As stated in the case of **Fortunatus Masha V. William Shija and Another** [1997] TLR 154 that period of time is supposed to be treated as technical and not actual delay as the applicant was pursuing the mentioned applications in court.

The court has also found the applicant has argued in his submission that he intends to challenge the irregularities and illegalities appearing in the proceedings and award of the Commission if he will be granted extension of time in the present application. The

court has found as stated in the case of **Devram Valambia** (supra) and other cases; some of them being the cases cited in this ruling the position of the law is very clear that, where the point at issue is one alleging illegality that is a sufficient cause for granting extension of time to enable the court ascertain if it is established to put matter and the record right.

However, the court has found the position of the law laid in the case of **Devram Valambia** was restated in the case of **Lyamuya Construction Community Ltd V. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) where it was stated that:-

*"Since every party intending to appeal seeks to challenge a decision either on point of law or facts, it cannot in my view, be said that in Valambia's case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. **The court there emphasized that such point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process.**"*

[Emphasis added].

Under the guidance of the position of the law stated in the above quoted case the court has gone through the illegalities the applicant argued are stated at paragraph 4 of the affidavit supporting the application and find that, one of the points of illegality raised in the mentioned paragraph of the affidavit is the point relating to jurisdiction of the Commission in issuing the impugned award. That being the point of illegality alleged is in the impugned award the court has found that is sufficient cause for granting the applicant extension of time to enable the court to see whether there is such a point of law for the purpose of putting the matter and the record of the court right.

In the upshot the court has found the applicant has managed to satisfy the court there is a good cause for granting him extension of time to file in the court the application for revision of the proceedings and award of the Commission out of time. The applicant is granted fourteen (14) days from today to file in the court the intended revision. It is so ordered.

Dated at Dar es Salaam this 15th day of December, 2021.


I. Arufani
JUDGE
15/12/2021

Court: Ruling delivered today 15th day of December, 2021 in the presence of the applicant in person and in the absence of the respondent. Right of appeal to the Court of Appeal is fully explained.



I. Arufani

JUDGE

15/12/2021

Labour Court TZ.