

THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 162 OF 2021

BETWEEN

KINONDONI MUNICIPAL COUNCIL..... APPLICANT

VERSUS

YUSUPH MOHAMED NANDILE & 66 OTHERS..... RESPONDENTS

RULING

Last order 26/8/2021

Date of Ruling 17/9/2021

B.E.K Mganga, J

On divers' dates between 1997 and 2013, the applicant employed the respondents as security guards. In 2015 the applicant restructured her security guard system that led to the discussion with the respondents on termination. On 22nd May 2015 respondents filed Labour Dispute No. CMA/DSM/KIN/R. 324/15 against the applicant claiming overtime pay, leave pay and salary arrears from 2012 to may, 2015 the time of filing the dispute at the Commission for Mediation and Arbitration. On 3rd November 2015, the applicant terminated the respondents. On 29th August 2017, Alfred Massay, Arbitrator delivered an award in favour of the respondent and ordered the applicant to pay them a total of TZS 2, 725,986,222/. The applicant being aggrieved by the said award, while in time, made an

application for revision before this court but the same was struck out. The applicant has made this application seeking extension of time within which to file an application for the court to revise the said award.

The application is supported by an affidavit of Hussein Ugulum, the solicitor working with the applicant. The application was opposed by the respondents who filed the counter affidavit of Yusuf Mohamed Nandile, one of the respondents. When the application was called for hearing, Mr. Masunga Kamihanda, State Attorney appeared and argued for and on behalf of the applicant while Mr. Shafii Mafita, the Personal Representative, appeared and argued for and on behalf of the respondents.

In his submissions, State Attorney adopted the affidavit and went on that on 29th August 2017 applicant filed application for revision in time but the same was struck out on 3rd May 2021 as a result the court ordered a proper application be filed. State Attorney submitted that there is illegalities in the CMA Award as the dispute was time barred. In short, state Attorney submitted that at the time of hearing the dispute, the Arbitrator had no jurisdiction as the dispute was time barred. He insisted that, this is illegal, and that illegality is one of the grounds for extension of time. He concluded that in the counter affidavit, the deponent averred that they were granted condonation but the same was not annexed. He was of the

firm view that no condonation was granted to the respondents as such the dispute was heard while time barred.

On the other hand, Mr. Mafita, the Personal Representative of the respondent opposed the application and adopted the counter affidavit. In his submission, he argued that applicant has failed to adduce good cause for the delay. He submitted that applicant was supposed to raise the issue of absence of condonation at the time of hearing the dispute at CMA. That as the applicant failed to do so, this application is intended to delay rights of the applicants. He concluded by praying that the application be dismissed.

In rejoinder, State Attorney submitted briefly that condonation goes to the jurisdiction of the tribunal and that the same can be raised at any stage that is why applicant has raised it.

In this application for extension of time, I have been asked by the applicant to exercise judiciously my discretion. The only ground that has been advanced by the applicant is an issue of illegality going to the jurisdiction of the tribunal in hearing and determining the dispute between the parties. The respondent seems to concede but he was of the view that the issue of limitation of time was supposed to be raised at CMA and not at this stage. It was argued on behalf of the respondent that the application

is intended to delay rights of the respondents. With due respect, the issue of limitation of time can be raised at any stage because it goes to the jurisdiction of the court or Tribunal. There is a litany of authorities by the Court of appeal that jurisdiction of a court can be raised at any stage even on appeal. Among these cases are ***Shahida Abdul Hassanal Kassam v Mahedi Mohamed Gulamali Kanji, Civil Application No. 42 Of 1999*** (Unreported) and ***R.S.A Limited v. Hanspaul Automechs Limited and another, Civil Appeal No. 179 of 2016***. In the ***R.S.A Limited*** case the Court of Appeal held:-

"It is settled law that, an objection on a point of law challenging the jurisdiction of the court can be raised at any stage, it cannot be gainsaid that it has to be determined first before proceeding to determine the substantive matter... Thus, since the jurisdiction to adjudicate any matter is a creature of statute, an objection in that regard is a point of law and it can be raised at any stage. In our considered opinion, it was not offensive on the part of the respondents to raise it in the final submissions which was after the close of the hearing."

Guided by the above court of appeal decisions, I am of strong view that the jurisdictional issue was properly raised, and I am duty bound to decide on it.

The applicant has raised illegality as a ground for extension of time. Illegality is a ground for extension of time. In the case of ***Dimension Data***

Solutions Limited v. Wia Group Limited and 2 others, Civil Application No. 218 of 2015 (unreported) held:-

"...claim of illegality of the challenged decision constitutes good reason for extension of time regardless of whether or not a reasonable explanation has been given by the applicant to account for the delay. However, the threshold is that, a point of law on illegality must be apparent on the face of record in order to constitute good cause to grant the extension of time sought..."

In the application at hand, the issue of jurisdiction is apparent on record requiring this court on application for revision to decide, whether at the time of hearing and determining the Labour dispute that was filed by the respondent, the same was in time or not. As this goes to the jurisdiction of the tribunal, I hereby allow the application. Applicant is hereby granted Fifteen days (15) from the date of this ruling within which to file application for revision.

It is so ordered.



B.E.K. Mganga
JUDGE
17/09/2021