

**THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**MISCELLANEOUS APPLICATION NO. 495 OF 2020**

**BHARYA ENGINEERING AND CONSTRUCTING (T) LTD ..... APPLICANT**

**VERSUS**

**BALTAZAR RUTUKU..... RESPONDENT**

**RULLING**

Last order 05/9/2021

Date of ruling 15/9/2021

**B.E.K. Mganga, J.**

On 28<sup>th</sup> August 2017 respondent secured a fixed term contract of one year but on 28<sup>th</sup> February 2018 his employment was terminated. Following that termination, the respondent filed Labour Dispute No. CMA/DSM/ILA/R.383/18/117 for unfair termination against the applicant. On 29<sup>th</sup> May 2020, Chacha, B, Arbitrator, delivered his award in favour of the respondent and ordered the applicant to pay the respondent TZS 2,100,000/= as salary for three (3) months of the contract as he found that there were valid reasons for termination, but that termination was unfair procedurally. Applicant was aggrieved by the said award and has filed this application seeking extension of time within which to file an application for this court to revise the said award. The application by the

applicant is supported by an affidavit of Manraj Singh Bharya, the Managing Director of the applicant. The respondent has filed a counter affidavit opposing the application.

The application was argued by way of written submission whereas the applicant enjoyed the service of Juliana Swai, Advocate while the respondent enjoyed the service of Rose Charles Nyatega, advocate from the Legal and Human Rights Centre -Legal Clinic Kinondoni. Both counsels adopted the affidavit and counter affidavit in their written submissions.

It was argued on behalf of the applicant that, she lodged application for revision within time online but there were problems in the network as a result she became time barred. counsel went on that the delay was not due to negligence of the applicant but the electronic filing system. It was further argued that COVID 19 pandemic prevented applicant to file the application manually in court. It was further submitted that there are illegalities in the award as prior to filing the dispute, the respondent signed an agreement before the District Commissioner's Office relinquishing all of his claims hence the intended revision has a chance of success.

Counsel for the respondent argued that applicant has failed to state the days out of 42 days, how long the alleged online problem persisted. In short, it was submitted that applicant has failed to account for each day of delay. Further to that, counsel for the respondent cited Rule 56(1) of the Labour Court Rules, GN. No. 106 of 2007 that applicant is required to show that there was good cause of delay.

I have examined the Notice of Application and find that the applicant has cited among other provisions, Rule 56(1) of the Labour Court Rules, GN. No. 106 of 2007 to move the court to extend time within which to file an application for revision. This Rule requires the applicant to show good cause for the delay. In my considered opinion, that good cause of delay has to be shown in the affidavit in support of the application.

In paragraph 8 of the affidavit in support of the application, applicant averred that she lodged application for revision within time online but there were problems in the network as a result she became time barred. In paragraph 9 the deponent averred that the delay was not due to applicant's negligent but due to the electronic filing system. As correctly submitted by counsel for the respondent, the deponent has failed to show as to when applicant filed the revision application she

alleges was filed in time. In the affidavit, it is also not shown as to whether for all 42 days within which she was supposed to file the application, the online problem was persisting or not.

Applicant has raised the issue of COVID 19 pandemic in a written submission as an afterthought as the same is not reflected in the affidavit. In my view, she was supposed to indicate so in the affidavit in support of the application as it was held by the Court of Appeal in the case of ***Benjamin Amon v. the Republic, Criminal Application No. 106/11 of 2018*** (unreported). That being the position, the issue of COVID 19 raised in submissions from the bar is of no value as it is not evidence. That argument also fails.

The Court of Appeal has given guidance on several occasions that in extension of times, courts has to consider material presented before it. For example in the case of ***Laureno Mseya v. the Republic, Criminal application No. 4 of 2016*** (unreported), the court of Appeal held that:-

*"The rules of court must, prima facie, be obeyed, and, in order to justify a court in extending the time during which some step in procedure requires to be taken, there must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would*



*defeat the purpose of the rules which is to provide a time-table for the conduct of litigation."*

In the application at hand, save for paragraph 8 and 9, that also is inadequate, there is no more material for me to exercise discretion to grant extension of time.

Applicant advanced the issue of illegality arguing that respondent was awarded to be paid while prior to filing the dispute, he signed an agreement at the District Commissioner's Office relinquishing all of his claims. This claim was resisted by the respondent who, in paragraph 4 of the counter affidavit, stated that he was paid TZS 175,000/= only and was advised to seek further compensation through other means.

In order to resolve the issue of illegality raised by the applicant, one needs to do a nitty-gritty exercise. In short, this is not an illegality that is apparent on the face of the record. In the case of ***Hamis Mohamed v. Mtumwa Moshi, Civil Application No. 407 of 2019*** (unreported) the Court of Appeal quoted the cases of ***Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No.2 of 2010*** (Unreported) and held that:-

*"It follows then that an allegation of illegality by itself suffices for an extension of time. However, such an allegation of illegality **"must be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by long drawn argument or process"**.*

Guided by the above Court of Appeal decision, the alleged illegality in the application at hand has failed as there is nothing apparent on the face of record.

It should be pointed out here that the alleged agreement between the parties was also not annexed to the affidavit as such, the court cannot at this juncture assume its existence and or its content. It was open to the applicant to annex it to his affidavit for scrutiny by the court.

In the upshot, I hereby dismiss the application for lack of merit.

It is so ordered



B.E.K. Mganga  
**JUDGE**  
15/09/2021