

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

MISCELLANEOUS LABOUR PPLICATION NO. 316 OF 2020

BETWEEN

GEOFREY M. MWALUHWAVI APPLICANT

VERSUS

BAYPORT FINANCIAL SERVICES (T) LTD..... RESPONDENT

RULING

Date of Last Order: 12/08/2021

Date of Ruling: 01/10/2021

I. ARUFANI, J.

The applicant filed in this court the instant application seeking for extension of time to file in the court an application for revision of the award delivered by the Commission for Mediation and Arbitration (henceforth, the CMA) in Labour Dispute No. CMA/DSM/KIN/1197/42 of 2020, dated 27th March, 2020. The application is made under Rules 24 (1), (2) and (3) and 56 (1) of the Labour Court Rules, GN. No. 106 of 2007 and any other enabling provision of the law and is supported by an affidavit deposed by Paschal Temba, Personal Representative for the applicant. The application is opposed by the respondent through the counter affidavit affirmed by Hassan Mussa, legal counsel for the respondent.

During hearing of the application, the applicant's representative prayed to adopt his affidavit as part of his submission and went on telling the court that, after the award being delivered on 27th March, 2020 the applicant was required to file the application for revision in this court by 8th May, 2020. He said it is unfortunate that his office mate namely Yahaya Mtete passed away because of Covid-19. He told the court that, following the demise of his partner in office he closed the office for three weeks as the situation was not good. He said when he opened the office, he found the time for filing the application for revision of the award of the CMA in the court had already elapsed.

He went on telling the court that, as the applicant had been aggrieved by the award issued by the CMA, he filed the instant application in this court on 28th July, 2020 seeking for extension of time to file the application for revision of the award of the CMA out of time. He argued that, the applicant has never been negligent in handling the matter and he has been doing due diligence in prosecuting the matter. He argued further that, the reason caused the applicant to delay to lodge the matter in the court within the time prescribed by the law was beyond his ability.

He went on arguing that, the award the applicant wants to be revised is full of irregularities and prayed the court to use the alleged irregularities to grant the order the applicant is seeking from the court. He supported his argument by referring the court to the cases of **Barclays Bank Tanzania Limited V. Tanzania Pharmaceutical Industries & Three Others**, Civil Application No. 62/16 of 2018, CAT at DSM and **Ally Ramadhani Kihyo V. The Commissioner for Customs, Tanzania Revenue Authority & Another**, Civil Application No. 29/01 of 2018 (Both unreported) where the Court of Appeal based on a ground of illegality to grant extension of time. He based on the above cited cases to urge the court to grant the applicant extension of time to apply for revision of the impugned award of the CMA.

In his reply the counsel for the respondent prayed to adopt his counter affidavit as part of the respondent's submission and told the court that, the applicant has not given sufficient reason to account for each day of the delay to lodge the application for revision in the court within the time prescribed by the law. He argued that, from 27th March, 2020 to 28th July, 2020 when the instant application was filed in the court is a period of four months. He argued further that, from

when the death of Yahaya occurred on 2nd May, 2020 to when the present application was filed in the court about eight weeks had passed.

He argued that, isolation of a person because of Covid-19 does not prohibit him or her to continue with work and the Court Registry was not closed as it continued to register different cases during the prevalence of Covid-19 pandemic. He stated that, the record of the matter shows the representative of the applicant before this court was the one who was representing the applicant before the CMA but now is using the death of his partner in the office as a ground of seeking for extension of time. He argued that, the case of **Barclays Bank Tanzania Limited** (supra) gives the factors to be established to move the court to grant extension of time a party is seeking from the court. He submitted that, the applicant has not satisfied any of the factors stated in the referred case and added that, the applicant cannot use his negligence to seek for extension of time.

It is the respondent's counsel further argument that, although the applicant's representative said there are irregularities in the award of the CMA but he has not stated which irregularities are on the face of the award of the CMA. He submitted that, as the alleged

irregularities have not been disclosed the applicant cannot base on the alleged irregularities to pray to be granted extension of time while he has not shown good cause for the delay.

He submitted further that, even the decision of the Court of Appeal cited to support the ground of illegality cannot bind this court as there is no illegality disclosed by the applicant's representative. At the end he prayed the court to refuse to grant the application as the applicant has failed to adduce good cause for delaying to file the application for revision within the time prescribed by the law and he has failed to show any illegality appearing on the face of the impugned award.

The applicant's representative stated in his rejoinder that, his partner in office died six days before the last date of filing the application for revision in the court on 8th May, 2020. He argued that, the delay started counting from 9th May, 2020 and said after returning in the office is when he started preparing the application after being required to do so by the applicant and managed to file the same in the court on 28th July, 2020. He stated that, the illegalities he has stated are not on the face of the award but on the proceedings of the CMA and said he has failed to state them as the proceedings of

the CMA have not been brought before the court. In fine he prays the court to grant the application.

Having carefully going through the affidavit and counter affidavit filed in the court by the parties and after considering the rival submissions from both sides the court has found the issue to determine in this application is whether the applicant has satisfied the court that he was delayed by good cause to lodge in the court the application for revision, he wishes to file in the court out of time. The court has framed the above issue after seeing section 56 (1) of the Labour Court Rules requires a party seeking for extension of time to show good cause for the delay.

The good cause which a party seeking for extension of time is required to show to move the court to grant extension of time is not defined in the Labour Court Rules or any other labour law. Our courts have tried to define it in number of cases and one of those cases is **Bertha V. Alex Maganga**, Civil Reference No. 7 of 2016 where the Court of Appeal stated as follows:-

*"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].

Another case where guidelines to be used by the court when considering what amount to good cause for granting or refusing to grant extension of time were formulated by the Court of Appeal of Tanzania is the case of **Lyamuya Construction Company Limited V. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) cited in the case of **Barclays Bank Tanzania Limited** (supra) to be as follows:-

- (a) The applicant must account for all days of the delay.*
- (b) The delay must not be inordinate.*
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- (d) If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

That being the factors or guidelines the court is required to consider in determining the present application, the court has found that, as provided under section 91 (1) (a) of the ELRA the applicant

was required to lodge in the court the application he wishes to lodge in the court within six weeks from when he was served with the award. As deposed at paragraph 5 of the affidavit supporting the application and argued by both sides the impugned award was delivered on 27th March, 2020 and the present application was filed in the court on 28th July, 2020 which is after the elapse of more than seventeen weeks.

The question is whether the applicant has managed to satisfy the court he was delayed by good cause to file in the court the application he intends to file in the court if he will be granted extension of time is seeking from the court. The court has found it is deposed at paragraph six and seven of the affidavit supporting the application and argued by the applicant's representative that, after delivery of the impugned award the applicant instructed Mr. Yahaya Mtete to apply for revision of the award but Mr. Yahaya Mtete died on 2nd May, 2020 before lodging the application in the court.

The applicant's representative deposed at paragraph 8 of the affidavit supporting the application and argued before this court that, after the death of Mr. Yahaya Mtete who was his partner in office he isolated himself for three weeks and their office was closed for all the

period he was in isolation. After the elapse of the isolation period, he returned to the office and prepared the present application which was filed in the court on 28th July, 2020.

The court has found that, if the three weeks the current representative for the applicant said he isolated himself after the death of his partner in the office will be counted from 5th May, 2020 when the deceased was buried you will find the current representative was required to resume into his office on 26th May, 2020. If you count from when he resumed into the office to when the present application was filed in the court on 28th July, 2020 you will find about 62 days elapsed before the current application being filed in the court.

To the view of this court, it cannot be said all those days were used to receive instruction from the applicant and preparing the present application while the current representative is the one represented the applicant before the CMA. To the contrary the court has found that, the applicant has not account for the said days of the delay as required by the guidelines formulated in the case of **Lyamuya Construction Company Limited** (supra). (See also the

case of **Longido District Council V. Gabriel Mkonyi & Another**, [2015 LCCD 194).

The court has found the applicant's representative has also urged the court to grant the order the applicant is seeking from this court by basing on the ground that, there are irregularities in the award intended to be challenged. The court has found it is true that the Court of Appeal granted extension of time in the cases of **Barclays Bank Tanzania Limited** and **Ally Ramadhani Kihyo** cited to the court by the respondent by basing on ground of illegality found in the decisions intended to be challenged. That position of the law of using illegality of the impugned decision as a ground for granting extension of time was laid in the case of **Principal Secretary, Minister of Defence and National service V. Devram Valambia** [1992] TLR 185 where it was stated by the Court of Appeal that:-

"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 measure to put the matter and the record right."

However, it has been stated in numerous cases that, what was stated in the above cited case did not lay a general rule that every applicant who has alleged there is illegality in an impugned decision he must be granted extension of time is seeking from the court. The court has found that, as stated in the case of **Lyamuya Construction Company Limited** (supra) the alleged illegality must be of sufficient importance and must be apparent on the face of the record. The Court of Appeal stated in the above cited case that:-

*"Since every party intending to appeal seeks to challenge a decision either on point of law or facts, it cannot 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].

That being the position of the law the court has carefully considered the ground of irregularities deposed at paragraph 9 of the affidavit supporting the application and used by the applicant's

representative to urge the court to use it to grant the applicant extension of time is seeking from this court. The court has found that, it is true as argued by the counsel for the respondent that the alleged irregularities has not been disclosed anywhere being in the affidavit supporting the application or in the submission made to the court by the applicant's representative.

However, the court has taken into consideration that, this is a labour matter and the applicant is a lay person who is represented in the matter by a Personal Representative who is also not a lawyer. The court has found that, as provided under Rule 3 (1) of the Rules this is a court of equity. By taking into consideration those views, the court has found proper for the interest of justice to grant the applicant the order is seeking from this court for the purpose of enabling the court to hear and determine the irregularities alleged are in the award of the CMA so that, if they will be established the court can correct the award and put the record right.

The court has come to the above view after seeing it has not been stated the respondent will be prejudiced if the order the applicant is seeking from this court will be granted. It is because of the above stated reasons the court has found there is justifiable

reason to exercise its discretionary powers to grant the applicant the order is seeking from this court. In the upshot the application is hereby granted and the applicant is given fourteen (14) days from today to file his intended revision in the court. It is so ordered.

Dated at Dar es Salaam this 01st day of October, 2021



I. Arufani

I. Arufani

JUDGE

01/10/2021

Court: Ruling delivered today 01st October, 2021 in the presence of the applicant in person and in the absence of the respondent's representative. Right of appeal is fully explained.



I. Arufani

I. Arufani

JUDGE

01/10/2021