

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)
AT DAR ES SALAAM**

MISC. APPLICATION NO. 42 OF 2020

BETWEEN

DAR ES SALAAM CITY COUNCIL APPLICANT

VERSUS

HASSAN NGASONGWA AND OTHERS RESPONDENTS

RULING

S.M. MAGHIMBI, J:

In this application, the Applicant is seeking for an extension of time within which to file an application for revision against the decision of Commission for Mediation and Arbitration ("the CMA") in Labor Dispute No. CMA/DSM/MIS/78/15 ("the Dispute") dated 24th April, 2020. The application was lodged under the provisions of Rules 24(1), (2) (a) (b) (c) (d) (e) and (f),(3) (a) (b) (c) and (d), and Rules 55(1)&(2) and 56 (1)(2) and (3) of the Labour Court Rules [G.N. No. 106 of 2007] ("LCR") read together with Section 93 and 94 of the CPC. The application is brought by Notice of Application and a Chamber summons supported by an Affidavit sworn by Ms. Mercy Kyamba, Principal State Attorney, dated 15th February, 2021.

On the date set for hearing, the applicant was represented by Ms. Rose Kashamba, learned State Attorney while the respondent was represented by Mr. Marwa Kittigwa, learned advocate. In her submission to support the application, the learned State Attorney started her submission by citing the

case of Lyamuya Construction Company Limited Vs. Registered Board of Trustees of YWCA, Civil Application No. 2/2010, pointing out that page 6 of the decision, the Court outlines the guidelines which the court can consider in granting extension of time including the ground of illegality.

Relating to on the application at hand, Ms. Kashamba submitted that the main ground for extension of time is illegality as shown on the award whereby there were no proof of a representative suit. She argued that in the absence of proof of representative suit, the case went on without any proper representation from the complainant. On that note, she submitted that even the evidence which was given by the 4 complainants on behalf of 92 others was illegal as every complainant was employed in a different year and circumstance. She concluded that for them not to apply for leave to file representative suit, the proceeding was illegal.

She submitted further that the arbitrator awarding all 92 employees basing on the evidence given by those 4 complainants was inappropriate. She supported her argument by citing the decision of the Court of Appeal in the case of the **Attorney General Vs. Oysterbay Villas Limited & Kinondoni Municipal Council, Civil Application No 299/16 of 2016** which also cited the case of **Principal Secretary, Ministry of Defence Vs. Vhalambia** emphasizing that:

“when the point of issue is one alleging illegality of the decision being challenged, the court has duty even if it means extension of time for the purpose to ascertain the point and if the alleged illegality be established, to take appropriate measured to put the matter and the record straight.”

She argued that on the principle set in the above decision, whenever there is a plea of illegality the court has duty to grant extension of time. Further that when illegality is seen on the face of the record, it constitutes a sufficient reason for extension of time. She concluded by praying that this application is granted as it will be a forum of challenging the illegality of the CMA award. In reply, Mr. Kittingwa was brief; he submitted that this case first knocked the court doors in 1999 with 96 complainants as Misc. Civil Application No. 55/1999. Then the other complainants were added to a total of 289 and they were reduced by technicalities like the one at hand, to 92 as some are dead and some have lost hope because for 22 years they have not managed to get what is rightfully theirs.

On the point of illegality, Mr. Kittigwa's reply was that the High Court Dar-es-salaam zone issued an order allowing the respondents to represent the others in this case. He then cited the case of **Damas Assey & Others Vs. Raymond Mugonda Paula & Others, Civil Application No. 32/2017** where the Court held:

"although the court's power to extend time under Rule 10 is both broad and discretionary, the same can only be exercised if good cause for the delay is shown."

He then argued that in this application, since the decision of the CMA was issued, it has been 9 months which is equal to 270 days to when the Government comes and asks for extension of time just to delay the rights of these 92 respondents. That in the cited case of **Lyamuya Construction**, the Court emphasized that the applicant must account for each day of delay and the applicant is also supposed to show lack of negligence and apathy.

Further that the applicant must state the alleged illegality of the impugned decision, arguing that there was no illegality in this case as the applicants were allowed to represent the others. He concluded that the applicant's affidavit has not only failed to account for each day of the delay, it has untrue information or illegality. His prayer was that the application be dismissed.

On my part, I need not be detained much by this application. The applicant did not adduce any reason for the delay of nine months as pointed out by Mr. Kittigwa. The only reason to justify extension of time as deposed in the affidavit is that there is an illegality on the impugned decision that caused miscarriage of justice for awarding remedies to the respondents without justification or basis. Ms. Kashamba hence argued that on that ground, there are overwhelming chances of success. However, as correctly argued by the advocate for the respondents, there is no single reason for the delay to file this application that was adduced by the applicants.

The illegality that the applicant is relying on, is cleared by Mr. Kittigwa, that the respondents were granted leave to represent the others by the High Court, Dar-es-salaam Zone, this is one fact that Ms. Kashamba could not counter. What I have noted in this application is that the applicant has acted negligently and when it is now time to have the respondents enjoy the fruits of their decree, in total lack of direction or ground, the applicant are just trying to frustrate the process by filing superficial applications like the one at hand. They did not do any research, they just came up with a ground that there was no leave granted to file representative suit, as if such a ground would change the fact on whether or not the applicants were fairly terminated.

It is trite law that the court to extend time on the ground of illegality, that illegality must have gone to the root of the matter including a ground which touches the jurisdiction of the court. I am not seeing such a ground in this case.

In the case of **Tropical Air (TZ) Limited Vs Godson Eliona Moshi (Unreported) Civil Application No 9 of 2017**, the Court held that it is the requirement of the law that for the Court to extend time, the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action which he intends to take. In the case at hand, the applicant has not adduced any ground for the delay, they just woke up one morning and decided to lodge an application because nine months later, one person perused the file and realised that there was no leave to file a representative dispute that was granted by the court. They did not even say why it took them nine months to realise such a fact, which shows a clear negligence and apathy on their part. Litigations must come to an end, the applicants have been in the court corridor since the year 1996, and now this application just to delay them further. The court must not be moved by such acts to delay justice. In conclusion, for the reason that the applicant did not adduce sufficient reasons for the delay, this application is hereby dismissed.

Dated at Dar-es-salaam this 18th day of October, 2021.




S.M. MAGHIMBI.
JUDGE.