

THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 412 OF 2020

BETWEEN

GASPAR DAMAS MASHINGIA..... APPLICANT

VERSUS

AGRICULTURE NON-STATE ACTORS' FORUM..... RESPONDENTS

RULING

Last order 13/9/2021

Date of Ruling 25/10/2021

B.E.K Mganga, J

On 6th February 2013, the respondent employed the applicant and on 22nd July 2013 she terminated employment of the applicant. Aggrieved by that termination, applicant referred the dispute to the Commission for Mediation and Arbitration henceforth CMA. On 28th May 2014, Kiwelu, L., arbitrator upheld a preliminary objection raised by the respondent that the dispute was improperly filed as the applicant had not fulfilled the requirement of section 35 of the Employment and Labour Relations Act [Cap.2019]. The arbitrator found that applicant has worked for less than six months with the respondent. Further aggrieved by the said ruling, applicant filed revision application No. 331 of 2018. The said revision was struck out on 29th July 2020 with leave to refile within 14 days. Applicant was therefore

supposed to file a proper application by 23rd August 2020 but failed to comply with that court order. On 11th September 2020, applicant filed this application seeking extension of time within which to file application for revision for the court to revise the said ruling. The Notice of application is supported by an affidavit sworn by the applicant on 9th September 2020.

The application was resisted by the respondent who filed a notice of opposition together with a counter affidavit sworn by Regina Mongi, the Administrative Coordinator of the respondent.

When the application was called for hearing, applicant enjoyed the service of Mr. Mgombozi from TAPSE, a trade union, while the respondent enjoyed the service of Erick Denga, learned counsel.

Mr. Mgombozi, a representative from TAPSE, submitted that the ruling is tainted with irregularities and that there was technical delay. He cited the decision of this court (Aboud, J) in the case of ***Mohamed Enterprises (T) vs. Mwalimu R. Wasimba & 17 others, Miscellaneous application No. 218 of 2019, Barclays bank (T) Ltd vs. Kombo Ally Singano, Misc. Application No. 9 of 2013***, and the case of ***Christopher Gasper & 5 others vs. Tanzania Port Authority (TPA), Miscellaneous application No. 126 of 2015*** by Mipawa J (as he then was) that technical delay is a good ground for extension of time. Mr. Mgombozi further cited

the case of ***Attorney General v. Mkongo Building and Civil Works and another, Civil application No, 266/16 of 2019*** that there is good cause for extension of time. He argued further that applicant was denied right to be heard and cited the case of ***Christina Makondoro v. the Inspector General of Police, Civil Appeal No. 40 of 2019***, CAT (unreported) to support his argument.

Mr. Denga, counsel for the respondent opposed the application and submitted that applicant has failed to show the alleged illegalities on the ruling and cited the case of ***Zuber Nassor Moh'd v. Mkurugenzi Mkuu Shirika la Bandari Zanzibar, Civil Application No. 93/15 of 2018, CAT*** (unreported) wherein it was held that applicant has to point out the alleged illegalities. Counsel submitted that technical delay can only be a good ground for extension of time if applicant acted promptly. He submitted that applicant acted not promptly as he was supposed to file revision by 13th August 2020 as ordered by the court on 29th July 2020, instead, he filed revision application on 11th September 2020 well out of time. Counsel submitted that applicant filed this application 29 days out of time. Counsel for the respondent went on that applicant has failed to account for each day of delay and cited the case of ***Zawadi Msemakweli v. NMB, Civil Application No. 221/18/2018, CAT*** (unreported) and ***Ludger Bernard***

Nyoni v. National Housing Corporation, Civil Application No. 372/01/2018, CAT (unreported) to support his argument.

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 and technical delay.

Applicant has raised illegality as a ground for extension of time. I agree that illegality, on some occasions may be a ground for extension of time. Not every time when illegality is alleged constitute a good ground of extension of time. It will depend on the nature of illegality pointed out especially when it is apparent on the face of record. 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, applicant was supposed to explain the nature of the illegality complained of as it was held in the case of ***Zuber Nassor*** supra, so that this court can be in a position to know whether it is an illegality that is apparent on face of record to constitute good cause for

extension of time as it was held in the case of ***Dimension Data Solutions Limited***, supra or not. I have examined the ruling that is a subject of the application and find no apparent error on face of record.

Counsel for the respondent submitted that applicant was negligent and did not act promptly. In the ***Mkongo Building case***, supra, cited on behalf of the applicant, the court of appeal formulated guidelines that may be considered in application for extension of time like the one at my hand. The Court of Appeal stated that:-

*"(a) the applicant must account for all the period of delay;
(b) the delay should 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; and
(d) if the court feels that there are other sufficient reasons, such as the existence of a point of law sufficient importance; such as the illegality of the decision sought to be challenged."*

It is my considered opinion that applicant has failed to meet these criteria. Nothing is forth coming from his affidavit as to what prevented him from filing the application in time and failed to account for each day of delay for 29 days he was out of time.

It was argued, on behalf of the applicant, by citing the case of ***Christina Makondoro, supra***, that applicant was denied right to be heard. In my view, that case is inapplicable in the facts of the applicant at hand. In ***Makondoro's case***, supra, the judge raised an issue suo moto and

proceeded to determine it without affording the parties right to make submissions thereon while in the application at hand, the respondent raised a preliminary objection and arguments for and against were made by both parties. In short, applicant was afforded right to be heard. The mere fact that a decision was made against his favour in the said preliminary objection amounted to denial of right to be heard. Mr. Mgombozi might be of the view that applicant was denied right to be heard by calling witnesses. That view is erroneous because right to be heard is not only by calling witnesses. Once the court or a quasi-judicial body, affords rights to the parties to make submissions or comments on a particular issue for pending for determination, the duty to hear the parties is discharged and parties are afforded right to be heard. This ground therefore has no merit.

For all said and done, the application is bound to fail, and I hereby dismiss it.

It is so ordered.



A handwritten signature in black ink, appearing to read 'B.E.K. Mganga'.

B.E.K. Mganga

JUDGE

25/10/2021