

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISC. APPLICATION NO. 139 OF 2022

(ARISING FROM LABOUR DISPUTE NO. CMA/PWN/KBH/187/2020)

BACKBONE TANZANIA COMPANY LIMITEDAPPLICANT

VERSUS

FADHIL RAMADHANI JUMARESPONDENT

RULING

K. T. R. MTEULE, J

3RD November 2022 & 7th November 2022

This ruling is in respect of an application for extension of time to file revision application against the CMA award in **Labour Dispute No. CMA/PWN/KBH/187/2020.**

The Application is supported by an affidavit sworn by the applicant Dennis Magnus Mdope who is the counsel for the applicant. The reasons advanced in the affidavit to justify extension of time is the illegality asserted to be contained in the CMA award. He mentioned the illegalities to be the arbitrator's determination of a dispute of unfair termination for a probationary employee who worked for less than six months and secondly, the arbitrator's consideration of own opinion which was not addressed by the parties.

Opposing the application, the respondent filed a counter affidavit sworn by the applicant Fadhili Ramadhani Juma. He disputed all the material facts deponed in the affidavit. According to the counter affidavit, the applicant has not shown sufficient cause to warrant extension of time.

The Application was argued by written submissions where the applicant was represented by Mr. Dennis Magnus Mdope from Future Mark Attorneys while the Respondent was represented by Mr. Abraham John Mkenda the personal representative. Both parties managed to adhere to the Court schedule for filing their respective submissions.

Arguing in support of the application in the **first** ground Mr. Mdope explained in detail the facts to establish that the respondent was a probationer but in the CMA the arbitrator considered a dispute of unfair termination. In his view, this is an illegality because a probationer is not covered by termination procedures.

Regarding the **second** ground Mr. Mdope blamed the trial arbitrator on how he treated the employment contract which was tendered as exhibit without hearing the parties. He complained that, without hearing the parties, the arbitrator ignored the words written by hands in the exhibit which was the employment contract appearing as "Fadhili is in probation until 31/5/2020". According to Mr. Mdope, failure to take into

consideration all the entire employment contract rendered the entire award to be tainted with illegalities.

In response, Mr. Mkenda submitted that the applicant has not adduced any reason for the delay. Arguing against the asserted illegality, Mr. Mkenda contended that for illegality to stand as a good cause for extension of time, it should not call for long arguments and evidence to prove it. In his view, illegality must be apparent on the face of the record, but the points raised by the Applicant do not appear on the face of the record. To support his contention, he cited the case of **Dr. Ally Shabay versus Tanga Bohari Jamaat (1997) TLR**. According to him, the applicant is required to account for every day of delay.

With regard to the **second** ground that the arbitrator manufactured her own opinion by disregarding some contents of the contract tendered as exhibits without hearing the parties, Mr. Mkenda submitted that the arbitrator considered the evidence by both parties. He refuted the assertion that the arbitrator manufactured his own opinion.

I have considered the submissions of the parties. The only reason advanced by the applicant for the delay in filing the envisaged revision application is illegality. Illegality has been a subject of numerous discussions in the Court of Appeal of Tanzania. It may constitute a

ground to justify extension of time, but all the qualities of illegality must be met. **(See Dr. Ally Shabay supra).**

It is established that illegality must be apparent on the face of the record. I agree with Mr. Mkenda that the allegation that the applicant was a probationer cannot be determined without long arguments and evidence. It is not an error apparent on the face of the record.

Equally, the allegation that the arbitrator did not properly consider the evidence is something which cannot be ascertained without a long debate and analysis of evidence. This cannot be termed as an error on the face of record which constitutes an illegality. In this reason, no illegality which possesses the qualities sufficient to allow extension of time.

Since illegality is the only reason advanced by the applicant to justify extension of time, and such illegality is not confirmed in this application, I find the application short of merit. Consequently, this application is dismissed. It is so ordered.

Dated at Dar es salaam this 7th Day of November 2022



KATARINA REVOCATI MTEULE

JUDGE

7/11/2022