

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

**MISCELLANEOUS APPLICATION NO. 340 OF 2022**

**BOARD OF DIRECTOR CENTRE FOR FOREIGN RELATIONS ..... APPLICANT**

**VERSUS**

**HASSAN ALLY HASSAN ..... RESPONDENT**

**RULING**

*Date of last Order: 15 /11/2022*  
*Date of Ruling: 22/11/2022*

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

On 08<sup>th</sup> September 2022 applicant filed this application urging this court to extend time within which to file an application for revision to set aside the ruling issued on 17<sup>th</sup> May 2022 by the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/DSM/TEM/720/2018 at Temeke. Brief facts of this application are that respondent was employed by the applicant. It happened that applicant terminated employment of the respondent. Aggrieved by termination of his employment, respondent filed Labour dispute No. CMA/DSM/TEM/720/2018 before CMA at Temeke. The said dispute was heard ex parte and on 15<sup>th</sup> March 2019, Hon. G. Simba, Mediator, issued an ex parte award ordering applicant to reinstate the respondent and pay TZS 9,600,000/= being 6 months' salaries. Being out of time, applicant

unsuccessful filed an application to set aside the said exparte award. Again, being out of time, applicant filed this application for extension of time.

In the affidavit of Adelaida Masaua, State Attorney, in support of the application, she deponed that respondent was employed by the applicant for permanent and pensionable terms. She deponed further that applicant was not served with summons to appear on the date of hearing. In the same affidavit, the deponed raised stated that there are illegalities on the CMA Ruling namely:-

- a) The Commission for Mediation and Arbitration determined Labour dispute No. CMA/DSM/TEM/720/2018 without jurisdiction.*
- b) The Applicant was not aware of the Labour dispute before the Commission for Mediation and Arbitration as the applicant was not served with summons.*
- c) The Arbitrator ordered the exparte hearing while there was no proper service of the summons and the Applicant was not notified of the date of the ex-parte award for her to take necessary steps.*
- d) The Applicant has immunity against legal proceedings. Under the Diplomatic and Consular Immunities and Privileges, [Cap. 356 R.E. 2002].*

Hassan Ally Hassan, the respondent filed his counter affidavit resisting the application. In the counter affidavit, respondent deponed that applicant was duly served but willfully opted not to enter appearance and that there is no illegality in the exparte award.

Respondent filed the counter affidavit to oppose the application.

When the matter was scheduled for hearing, applicant was represented by Gati Mseti and Georgina Kinabo, State Attorneys whereas respondent was represented by Beatrice Godfrey, Advocate.

Arguing in support of the application, Ms. Mseti submitted that, the impugned exparte award is tainted with illegality that is apparent on the face of record. She submitted further that CMA had no jurisdiction because applicant has Diplomatic Immunity under Section 13(1)(a) and item 19 to the third schedule Cap. 356 R.E. 2002(supra). She went on that item 1 of the fourth schedule to cap. 356 R.E. 2002(supra) provides that entities mentioned in the 3<sup>rd</sup> schedule to the Act are enjoying immunity from suits and legal process. She cited the case of ***Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania***, Civil Application No. 2 of 2010, CAT (unreported) to support her submissions that illegality touching jurisdiction is a sufficient ground for extension of time.

It was further submitted by Ms. Mseti, State Attorney that applicant was not served hence it was not proper for the dispute to be heard exparte. She added that even on the date of the award, applicant

was not notified. She cited the case of ***Cosmas Construction Co. Ltd V. Arrow Garment Ltd*** [1992] TLR 127 to support her argument that a party must be informed as when the ex parte judgment will be delivered so as to act on the consequences that may follow. She further cited the case of ***Chausiku Athumani v. Atuganile Mwaitege***, Civil Appeal No. 122 of 2007, HC (unreported) to bolster her arguments that in ex parte proceedings, failure to notify the respondent on the date the judgment is to be delivered amounts to denial of the right to take step to protect interest and that that denial renders proceedings a nullity. Learned State Attorney submitted further that, applicant was not aware of the dispute until on 11<sup>th</sup> March 2022 when she was served with the notice of execution.

Ms. Mseti submitted further that respondent was Public Servant and that he was terminated on 20<sup>th</sup> March 2018. She went on that applicant was established in 1978 under agreement between Tanzania and Mozambique as a result, in 1986, applicant was clothed with Diplomatic immunity under the Diplomatic Immunities and Privileges Act No. 5 of 1986. She added that, respondent being a public servant, supposed to exhaust all remedies available in the Public Service Act hence CMA had no jurisdiction. She cited the case of ***Tanzania Posts***

**Corporation V. Dominic A. Kalangi**, Civil Appeal No. 12 of 2022, CAT (unreported) to support her submissions that CMA had no jurisdiction over public servants and the case of **Board of Directors, Centre for Foreign Relations v. Shariff Asham Tarimo**, Misc. Application No. 154 of 2022, HC (unreported), to implore the court to extend time based on diplomatic immunity of the applicant.

Resisting the application, Ms. Godfrey, learned Advocate for the respondent submitted that in an application for extension of time, applicant is required to give sufficient reason for the delay. She submitted further that applicant was served but did not enter appearance. When probed by the court as whether there is evidence proving that applicant was served, she readily conceded that in the counter affidavit there is no summon or proof showing that applicant was served. She further submitted that applicant has not account for the delay and cited the case of **Omary Ally Nyamalege & 2 Others V. Mwanza Engineering Works**, Civil Application No. 94/08 of 2017, CAT (unreported) to support her submissions that in an application for extension of time, applicant must account for each day of the delay. In same submissions, learned counsel for the respondent submitted that

applicant has accounted for the delay but there is no reasonable ground for the delay.

On illegality based on submissions that respondent was a Public Servant, counsel for the respondent conceded that respondent was a public servant and that the dispute was filed at CMA in 2018.

On issue of immunity of the applicant, Ms. Godfrey submitted that the same has been raised for the first time before this Court because it was not raised at CMA. She was quick to add that applicant had no diplomatic immunity.

In rejoinder, Ms. Mseti, submitted that jurisdictional issue can be raised at any time and reiterated that applicant was not afforded audience at CMA.

This being an application for extension of time, I am called upon to determine whether there are sufficient reasons or grounds to grant the application. It is a settled law that to grant or refuse an application for extension of time is entirely the discretion of the court but that discretion must be used judiciously. It is settled that, upon being satisfied that applicant's delay was with sufficient cause or that there are good reasons, the court may extend time for the applicant to do an act

out of time as provided for under Rule 56 of the Labour Court Rules GN. No. 106 R.E. 2019.

Having read the affidavit in support of the application, counter affidavit opposing the application and heard submissions of the parties, I hold without delay that in the application at hand there are arguable issues that need to be decided by this court in the intended revision. I am of that view because it was submitted on behalf of the applicant that there is illegality in the impugned *ex parte* award touching the jurisdiction of CMA. The said jurisdictional issue is based on (i) public Service Act and (ii) the Diplomatic Immunities and Privileges Act. Those jurisdictional issues can only be decided by the court after allowing this application. I find that there are good reasons for extension of time. I refrain myself from discussing the cases cited by the parties otherwise I might be discussing the merit of the intended revision. It suffices to say that there are jurisdictional issues and guided by the decision of the Court of Appeal in the case of *Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania*, Civil Application No. 2 of 2010 [2011] TZCA 4, illegality based on jurisdiction is a good for extension of time. That said, I hereby

grant allow the application and grant 14 days to the applicant within which to file the intended revision application.

Dated in Dar es Salaam on this 22<sup>nd</sup> November 2022.



B. E. K. Mganga  
**JUDGE**

Ruling delivered on this 22<sup>nd</sup> November 2022 in chambers in the presence of Adelaida Ernest and Georgina Kinabo, State Attorneys for the Applicant and Hassan Ally Hassan, the respondent.



B. E. K. Mganga  
**JUDGE**