

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

MISCELLANEOUS APPLICATION NO. 367 OF 2022

DK. ELLY JOSEPHAT APPLICANT

VERSUS

MSPH TANZANIA LLC RESPONDENT

RULING

*Date of last Order: 17/11/2022
Date of Ruling: 28/11/2022*

B. E. K. Mganga, J.

Applicant has filed this application seeking the court to extend time within which he can file an application for revision. Brief facts of this application are that applicant was an employee of the respondent. It happened that in the course of their employee and employer relationship things did not go well as a result, respondent terminated employment of the applicant. Aggrieved with termination of his employment, on 08th January 2020, applicant filed the dispute before the Commission for Mediation and Arbitration(CMA). On 1st June 2022, Hon. Wilbard, G.M, Arbitrator, issued an award striking out the complaint by the applicant. Applicant being out time, filed this application seeking extension of time

within which he can file revision for the court to revise the ruling that struck out his complaint.

In the affidavit in support of the application, applicant deponed that, at CMA, he was being represented by Dickson Matata Advocate, who, for a long time, was informing him that the award has not been issued and that, he was making follow up. That, in September 2022, applicant engaged Hance Stephen Mrindoko, advocate, who made follow up at CMA and became aware that the award was issued on 1st June 2022 and that, it was issued to the parties on 5th June 2022. Applicant deponed further that, he was not negligent and attached to his affidavit, the affidavit of Hance Stephen Mrindoko, who made perusal of the CMA file. In the affidavit in support of the application, applicant attached a copy of the award showing that parties were served with the said award on 5th June 2022.

Opposing the application, Godfrey Hoya, Director of Finance and Administration of the respondent, deponed *inter-alia* that, the award was collected by counsel for the applicant on 5th June 2020 and that applicant was negligent.

On the date the application was called on for hearing, applicant was represented by Hance Mrindoko, Advocate, while respondent was represented by George Shayo, Advocate.

Submitting on the merit of the application, Mr. Mrindoko learned counsel argued that applicant resides in Kigoma and that he was attending at CMA while travelling from Kigoma and was being represented by Dickson Matata, Advocate. He went on that, after hearing, applicant was communicating with the said Dickson Matata, advocate so that he can be informed the outcome, but the Advocate was informing the applicant that the award was not yet. Mr. Mrindoko submitted that, negligence of Dickson Matata, Advocate should not affect the applicant meaning that Dickson Matata advocate was negligent. Counsel for the applicant cited the case of ***Ghania J. Kimambi V. Shedrack Ruben Ng'ambi***, Misc. Application No. 692 of 2018, HC (unreported) to support his argument that applicant should not be punished by negligence of his advocate. During submissions, Mrindoko conceded that there is no affidavit of Dickson Matata, advocate, in support of the application. He went on to submit that, on 02nd September 2022, he perused the CMA record and find that the award was issued on 01st June 2022, and that it was collected on 05th June 2022. Counsel for the applicant submitted that, on 16th September 2022, applicant filed this application and conceded that in the affidavit in support of the application, applicant did not account for the delay including the

days from 02nd June September 2022 that is the date perusal was made to 16th September 2022 the date of filing this application.

Mrindoko submitted further that, the Arbitrator did not make decision on some of the issues hence the award has some illegalities. He submitted further that, illegality is a good ground for extension of time and cited the case of ***Junior Achievement Tanzania V. Maria A. Ngowi***, Revision No. 793 of 2018, HC (unreported), ***ST. Joseph Kolping Secondary School V. Alvera Kashushura***, Civil Appeal No. 377 of 2021, CAT (unreported) to support his arguments.

Resisting the application, Mr. Shayo submitted that, in his affidavit, applicant deponed that the award was served to his Advocate one Dickson Matata on 05th June 2022. He submitted further that, applicant has not shown or proved negligence of Dickson Matata. He added that, applicant did not file the affidavit of Dickson Matata hence a conclusion that the said advocate was negligent is made without affording him right to be heard. He added that if Dickson Matata advocate was negligent, then, that negligence also binds applicant.

Mr. Shayo submitted further that, there is no illegality on the face of the award because all issues were covered in the award and cited the case of ***James Renatus V. CATA Mining Company Ltd***, Labour Revision No.

1 of 2021 HC (unreported). Counsel for the respondent went on that, the dispute was struck out giving room to the applicant to file a proper dispute upon filing application for condonation because the dispute was not decided to its finality. He concluded that applicant failed to account for the delay from 05th June 2022 to 16th June September 2022 and that there is no good reason for the delay.

In rejoinder, Mrindoko conceded that applicant was served with the award on 05th June 2022 and that the dispute was struck out and not dismissed hence applicant had an option of refiling it at CMA.

Having heard submissions by the parties and considered evidence in the affidavit and counter affidavit, I am called to decide whether, applicant adduced good grounds for the delay for this application to be granted. In his affidavit in support of the application, applicant deposed that matter was handled by Dickson Matata advocate who continued to inform him that the award was not ready, only to find after engaging another advocate, that it was issued on 1st June 2022. It was submitted on behalf of the applicant that Dickson Matata advocate was negligent and that applicant should not be punished for that negligence. With due respect to counsel for the applicant, I afraid to conclude that Dickon Matata advocate who represented applicant at CMA was negligent without affording him right to

be heard. As correctly submitted by counsel for the respondent, there is no affidavit of the said Dickson Matata to support the conclusion that he was negligent. Even if for sake of argument, I agree that Dickson Matata, advocate was negligent, yet that cannot help the applicant because negligence of the advocate is equal to negligence of the applicant. In fact the Court of Appeal held in the case of [Lim Han Yung & Another vs Lucy Treseas Kristensen](#), Civil Appeal No. 219 of 2019 [2022] TZCA 400 discussing whether negligence of an advocate is a good ground to benefit the client it held as follows:-

"It is also our considered view that even if the appellants were truthful in their allegations against their erstwhile advocates' inaction, negligence or omission, which generally, does not amount to good cause, they themselves share the blame. The appellants cannot throw the whole blame on their advocates. We think that a party to a case who engages the services of an advocate, has a duty to closely follow up the progress and status of his case. A party who dumps his case to an advocate and does not make any follow ups of his case, cannot be heard complaining that he did not know and was not informed by his advocate the progress and status of his case. Such a party cannot raise such complaints as a ground for setting aside an exparte judgment passed against him."

I have examined a copy of the award that was annexed by the applicant to his affidavit in support of the application and find that it was collected on 5th June 2020 by Joel Edward Mazula, the legal officer, on

behalf of the applicant and George Ambrose Shayo, Advocate. There is no affidavit of the said Joel Edward Mazula disputing that he did not collect the said award on the said date. Since the award was collected on 5th June 2020, that is to say, four days after being issued, I find no good reasons advanced by the applicant for the application to be granted.

Arguments that some issues were not determined by the arbitrator, hence illegality, in my view, is not sufficient to grant this application because the alleged illegality is not apparent on the face of record. It was held in the case of *African Marble Company Limited (AMC) vs Tanzania Saruji Corporation (TSC)*, Civil Application No. 8 of 2005 [2005] TZCA 87 and ***Chandrakant Joshubhai Patel v. Republic***, [2004] TLR 218 that illegality that is apparent on the face of record is an error that can be seen by one who reads and reads, that is, an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may conceivably be two opinions. The alleged illegality in the application at hand does not qualify.

It was submitted on behalf of the respondent that the dispute was struck out and that applicant had an option of refiling it at CMA. On the other hand, counsel for the applicant conceded that the dispute was struck

out as it was not decided on merit. I don't think that applicant took a proper route in filing this application. That is all what I can say.

For the foregoing, I hold that there is no good reason for the delay and dismiss this application for want of merit.

Dated in Dar es Salaam on this 28th November 2022.



B. E. K. Mganga

JUDGE

Ruling delivered on this 28th November 2022 in chambers in the presence of Gilbert Mushi, Advocate holding brief of George Shayo, advocate for the for the respondent but in the absence of the Applicant.



B. E. K. Mganga

JUDGE