

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
DAR ES SALAAM
MISC. APPLICATION NO. 485 OF 2021

BETWEEN

BACKBONE TANZANIA COMPANY LTD.....APPLICANT

AND

IDRISA KACHEPA & 48 OTHERS.....RESPONDENTS

RULING

Date of Last Order: 22/02/2022
Date of Ruling: 04/03/2022

B.E.K. Mganga, J.

This ruling emanates from the applicant's application imploring this court to extend time so as to file an application to revise the award issued on 23rd July 2021, by the Commission for Mediation and Arbitration (CMA) in labour dispute No. CMA/PWN/KBH/119/2020. The application was supported by the affidavit sworn by Denis Magnus Mdope, the applicant's Counsel. In opposition, the respondent filed a counter affidavit sworn by Abraham John Mkenda, the respondent's personal representative.

At the hearing of the application, Mr. Denis Mdope, advocate, represented the applicant whereas Mr. Abraham John, the personal representative, represented the respondent.

Mr. Mdope, counsel for the applicant, submitted that, applicant is applying for extension of time within which to file an application for revision so that the court can revise CMA's award issued on 23rd July 2021, whereby respondents were awarded to be paid TZS. 81,966,200/=. Counsel for the applicant submitted further that, applicant has filed this application because the CMA's award contains illegalities as it was not established whether the fixed contract between the parties was for one year or not. Counsel for the applicant went on that, arbitrator erred in holding that respondents' contracts were breached. Counsel for the applicant strongly submitted that the award contains some contradictions, which amounts to illegalities, hence a good ground for extension of time.

In response, Mr. John, the personal representative of the respondent, submitted that applicant has no good cause for his delay to file revision application within 42 days provided for under the law. Mr. John submitted further that, this application was filed on 2nd December 2021 being almost five months from the date of the award and that

applicant has no sufficient cause for his delay. He cited the cases of ***Karim Hassan v. National Microfinance Bank, Misc. Application No. 235 of 2017*** and ***Zanzibar Petroleum Ltd v. Hussein J. Kilango, Misc. Application No. 477 of 2016*** (both unreported) where this court insisted that, in application for extension of time, applicant has to show sufficient cause for the delay. Mr. John went on that, illegality cannot be a ground for extension of time. He was of the view that illegality can be reserved to be determined in the application for revision itself and not in this application. He thus prayed for dismissal of the application.

Counsel for the applicant had nothing in rejoinder.

After consideration of rival submission of the parties, the issue to be determined is whether; applicant adduced sufficient cause for his delay for this application to be granted.

It is a trite principle of law that the court may, for sufficient reason, extend time limited by the Rules for doing of any act authorised or required by the Rules. This power is vested to this court under Rule 56 of the Labour Court Rules, GN. No. 106 of 2007. This Rule provides that: -

*"The court may, extend or abridge any period prescribed by these rules on application and **good cause shown**, unless the court is precluded from doing so by any written law."*

In the matter at hand, the only reason advanced by the applicant is illegality. The applicant alleges that, arbitrator erred to order the respondents to be paid TZS. 81,966,200/= while it was not established whether the fixed contract between the parties was for one year or not.

It is an established principle of law that, for illegality to be a good ground for extension of time, it has to be apparent on the face of the record. This is the position of the Court of Appeal in the case of ***Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christians Association of Tanzania***, Civ. Appl. No. 02 of 2010-CAT. What amount to apparent error on the face of the record was defined in the case of ***Chandrakant Jashbhai Patel v. Republic [2004] T.L.R. 218*** that: -

"An error apparent on the face of the record must be such as can be seen by one who runs 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. A mere error of law is not a ground for review. That a decision is erroneous in law is no ground for ordering review... It can be said of an error that is apparent on the face of the record when it is obvious and self-evident and does not require an elaborate argument to be established..."

It is clear from the above Court of Appeal decision that; for illegality to stand as a good reason for extension of time, it should not call for long arguments and evidence to prove the same. In the application at hand, grounds of illegality raised by the applicant are not on the face of the record. They need long arguments and proof thereto. Further to that, in paragraph 7 of the affidavit in support of the application, applicant stated that on 23rd July 2021, she became aware of the alleged illegality on the date the award was issued. The award was collected by the applicant on the date it was issued. There are no reasons offered by the applicant as to what prevented her to file revision application within time. In other words, applicant has failed to give reasons for the cause of the delay, instead, she has relied on illegality as a ground for extension of time. Reasons for the delay for about five (5) months are wanting in this application. It is clear from CMA record that at CMA, applicant was represented by Mr. Mdope advocate, yet the affidavit in support of the application offers no explanation for the delay.

I am aware of the position that illegality is a good ground for extension of time. It is my opinion that illegality cannot be a veil for any person who, fails to act diligently in complying with the requirement of the law or for a person who decides to file an application when s/he

chooses to do so as it has happened in this application. For time to be extended, it has to be shown that applicant was diligence as it was held in the case of ***Dr. Ally Shabhay v. Tanga Bohora Jamaat [1997] T. L. R. 305.***

In fact, there is a litany of cases to the effect that in application for extension of time, applicant is required to account for each day of delay. In the present application, applicant delayed for almost five months (5) of which she has failed to account each day of delay.

On the basis of the foregone, I hold that applicant has failed to advance sufficient reasons to enable this court to grant the application for extension of time. Consequently, I hereby dismiss the application for want of merit.

Dated at Dar es Salaam this 4th day of March 2022.




B.E.K. Mganga
JUDGE