

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**MISCELLANEOUS APPLICATION NO. 87 OF 2021**

**MFI DOCUMENT SOLUTIONS LTD ..... APPLICANT**

**VERSUS**

**BINU BHARATHAN LEELAMA ..... RESPONDENT**

**RULING**

10<sup>th</sup> March & 22<sup>nd</sup> April 2022

**Rwizile J.**

The applicant has filed this application for extension of time, within which to file an application for revision of the certificate of settlement resulting from the registration of deed of settlement in Labour Dispute No. CMA/ILA/R.1173/17 by the Commission for Mediation and Arbitration (CMA).

Brief facts of this application are that, Robert Anyangu Makale is the principal officer of the applicant. Most of the applicant's directors have other business outside the country so his responsibility is giving updates to them. In early June, 2018, he became aware that there was a labour dispute at CMA lodged by the respondent who claimed for unfair termination. One of the directors by the name Shamshuddin Hirani purported to be the managing director and entered a settlement to pay the respondent an amount of USD 200,000.00 without any authority, intervention or consent of the company.

The applicant became aware after being served with an execution proceeding. This application is therefore for extension of time to file an application challenging the legality of the deed of settlement entered before the Commission.

The application was filed by way of chamber summons supported by an affidavit of Robert Anyangu Makale. When opposing the same the counter affidavit was also filed. Grounds for this application are: -

- i. Whether the deed of settlement and the certificate for settlement contain illegal claims that are sufficient reason to extend time to revise the said matter.*
- ii. Whether this matter contains sufficient cause to warrant extension of time for the review of the decision of Commission for Mediation and Arbitration.*

The hearing of the same proceeded by way of oral submissions. The applicant enjoyed the service of Mr. Mbuga Emmanuel, learned Advocate from MA Attorneys, while the respondent enjoyed service of Thomas Joseph Massawe, learned Advocate from TJM Law Office Advocates.

Mr. Mbuga submitted that; the applicant wasted too much time in Court for the cases which were unsuccessful. He stated that after she became aware of the deed of settlement, the applicant decided to challenge the execution proceedings which were pending. He continued to argue that it was by filing of revision No. 463 of 2020. The application was struck out for an omnibus as she asked for review and extension of time. He submitted that this application was filed three days later after.

He stated that time wasted in court is excusable as stated in the case of **Fornatus Masha v William Shija** [1997] TLR 154.

He continued to submit that there is illegality on the deed of settlement. He stated that the copies of BRELA reports and annual returns show who were directors and shareholders of the applicant. He further submitted that settlement deed was signed by **Shamshuddin Herani** and he is not named as the director or managing director. He continued to argue that the deed was signed by one director. To him, it is contrary to the Section 39(2) of the Companies Act, which require two directors to sign the deed of settlement. To support this finding, he cited the case of **Ali Abdallah Abdi v Selemani Said Marshed**, Miscellaneous Land case Application No. 159 of 2018, High Court at Dar es Salaam, at page 4, where it was held that if fraud is pleaded it is a ground for extension of time.

Mr. Mbuga stated that the applicant was not aware of the deed of settlement. She came across the same due to execution proceedings and so prayed for the applicant to be excused. He further submitted that the level of prejudice has to be shown as held in the case of **Daniel Mwabe v Tanzania Electric Supply Company Ltd**, Miscellaneous Civil Application No. 284 of 2020, High Court. He therefore prayed for extension of time.

Opposing the application Mr. Thomas submitted that section 91(1) of the Employment and Labour Relations Act [CAP 366 R.E 2019] provides for six weeks to file a revision. He stated that this application was filed on 15<sup>th</sup> December 2021, while a settlement was entered on 19<sup>th</sup> December 2017, which is 4 years, or 208 weeks. He stated that the applicant ought to account

for each day of delay. He stated that the applicant attempted 8 times to file application to challenge the same.

Mr. Thomas submitted on the issue of illegality that the deed of settlement was legal and signed by the applicant's representative. The applicant did not end there, he went as far as paying party the sum of 20,000 USD, to the respondent.

On the issue of prejudice, he submitted that the Court of Appeal directs that the applicant has to show the amount of prejudice for extension of time to be considered as in the case of **Zawadi Msemakweli v NMB PLC**, Civil Application No. 221/18 of 2018, Court of Appeal of Tanzania. He prayed; the application be dismissed.

In rejoining, Mr. Mbuga submitted that the application of this nature has not been discussed by the court. He further said, case No. 830 of 2018 did not deal with fraud. He prayed that this court has to discuss grounds raised for extension of time but not the merits of the intended application.

Having gone through the submissions of both parties, this Court finds the issue for determination is *whether the applicant adduced sufficient reasons for the delay.*

In addressing the disputed issue, the proper provision is Rule 56(1) of the Labour Court Rules, G.N No. 106 of 2007 which provides that: -,

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

In the case of **Benedict Mumello v Bank of Tanzania**, Civil Application No. 12 of 2012, it was held that: -

*"...It is trite law that an application for extension of time is entirely in the discretion of the Court, to grant or refuse, extension of time, may only be granted where it has been sufficiently established that the delay was with sufficient cause..."*

Further, the case of **Lyamuya Construction Co. Ltd v Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, the Court of Appeal stated three points to take note of: -

- i. The delay should not be inordinate*
- ii. The applicant should show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take;*
- iii. If the court feels that there are other sufficient reasons such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

However, in this application the applicant stated that the delay to file the application was caused by time lost in Court when filing cases which were unsuccessful. It was said, that it was done when the applicant became aware of the deed of settlement. The delayed to file the case for 4 years in my view is shockingly inordinate. The applicant is enjoined to account for each day of delay. The applicant has not done so.

On the question of illegality pleaded as fraud, it cannot assist the applicant because, it needs not only to be pleaded but also must be glaring on the

face of the record. The applicant has dealt at length with this question. He has cited provisions of the law in particular section 39(2) of Companies Act and procured evidence from BRELA. This is not in my view correct. In the case of **Wambura N.J. Wayruba v The Principal Secretary Ministry of Finance and Another**, Civil Application No. 320/01 of 2020 it was held: -

*"...It is essential to reiterate here that the court's power for extending time...is both wide – ranging and discretionary but it is exercisable judiciously upon good cause being shown."*

It should clearly be placed that not in all cases where illegality is pleaded, then the rest of the principles enunciated in cases referred are to be disregarded. After all, this court is not by the law enjoin to review the certificate of settlement filed before the CMA. It has the duty to revise the award of the CMA and orders resulting from it. The applicant has failed to account for this inordinate delay. This application is therefore dismissed. No order as to costs.



  
**A. K. Rwizile**  
**JUDGE**  
**22.04.2022**