

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

MISCELLANEOUS APPLICATION NO. 75 OF 2022

BETWEEN

**BANK OF TANZANIA 1ST APPLICANT
ATTORNEY GENERAL 2ND APPLICANT**

AND

AGATHA AMANI MSHOTE RESPONDENT

RULING

Date of last order: 05/05/2022

Date of Ruling: 9/5/2022

B. E. K. Mganga, J.

Brief facts of this application are that, on 16th September 1998, Agatha Amani Mshote, the respondent secured employment with the Bank of Tanzania, the 1st applicant as senior typist. It happened that on 24th May 2019, the 1st applicant terminated employment of the respondent allegedly that, at the time of securing employment, she submitted false certificates with intention of obtaining employment. Aggrieved with termination,

respondent filed Labour dispute No. CMA/DSM/ILA/484/19/237 before the Commission for Mediation and Arbitration henceforth CMA at Ilala claiming to be reinstated without loss of remuneration. On 22nd September 2021, Hon. Wilbard G. M, Arbitrator issued the award in favour of the respondent as she found that there were valid reasons for termination but that procedures for termination were not followed hence unfair termination procedurally. Due to procedural unfair termination, arbitrator awarded respondent to be paid TZS 33,000,000/= being 12 months' salary compensation.

Aggrieved by the said award and being out of time, applicants have filed this application seeking the court to extend time within which to file Revision application. In the affidavit of Deodath Mushi, Senior State Attorney, in support of the application, he stated that the dispute was heard and scheduled for the award on 22nd September 2021. That, on 22nd September 2021 he went at CMA, but the award was not delivered because Hon. Wilbard G. M was not present as she was on maternity leave and the file was not found. Mr. Mushi stated further that, the 1st applicant made efforts to get the award without success as a result, on 21st December

2021 wrote a letter to CMA in charge at Ilala requesting to be supplied with the award. That, 1st applicant was called to collect the award on 17th January 2022 and collected it on the same date and found that it was delivered on 22nd September 2021 and that it is tainted with material irregularity.

Respondent filed a counter affidavit opposing the application. In her counter affidavit, respondent disputed what was stated by the 1st applicant and put the deponent to strict proof thereof.

When the application was called for hearing, Ms. Lightness Msuya, State Attorney, appeared and argued for and on behalf of the applicants while Mr. Mashaka Ngole, advocate, appeared and argued for and on behalf of the respondent.

Arguing the application, Ms. Msuya reiterated the facts that are contained in the affidavit in support of the application and submitted that, there are illegalities in the award because CMA had no jurisdiction to determine the dispute as the respondent was a public servant. She cited the case of ***Tanzania Posts Corporation V. Dominic A. Kalangi, Civil Appeal No. 12 of 2022***, CAT (unreported) to support her argument. She

went on that; the respondent was a Public Servant and was supposed to exhaust remedies provided for under the Public Service Act prior filing the dispute to CMA. Ms. Msuya submitted further that, illegality is a good ground for extension of time and 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) and prayed that the application be allowed.

On the other hand, Mr. Ngole, counsel for the respondent, resisted the application submitting that the affidavit in support of the application have not disclosed the cause for the delay and cited ***Lyamuya's case*** (supra) to support his argument that the affidavit in support of the application should disclose cause for the delay. Counsel for the respondent submitted further that, the only reason assigned for the delay is that applicant was making follow up at CMA. He went on that, applicants deponed that there are material irregularities and not illegalities and that there are no supporting documents proving that the award was served late to the applicant. Mr. Ngole submitted further that, the argument that CMA

had no jurisdiction is not supported by averment in the affidavit in support of the application. He however, during submissions he conceded that the respondent was a Public Servant and that the issue whether CMA had jurisdiction or not can be determined in revision application. Counsel for the respondent insisted that Applicants have failed to account for each day of the delay from January 2022 to the date of filing this application.

Ms. Msuya, State Attorney had nothing to add in rejoinder.

I have examined both the affidavit and the counter affidavit filed by the parties in this application and find that, it is undisputed that, the respondent was a public servant and that her employment was terminated on 24th May 2019. It is undisputed also that, the reason for termination of employment of the respondent was based on allegation that she submitted false certificates at the time of securing employment with the 1st applicant.

It was correctly submitted by counsel for the respondent that, in the affidavit in support of the application, applicants stated that the award is tainted with irregularity, and nothing was mentioned relating to illegality including CMA lacking jurisdiction of the dispute. It was further submitted by counsel for the respondent that, the only reason assigned for delay is

that 1st applicant was making follow up at CMA. With due respect to counsel for the applicant, I have read the affidavit in support of the application and find that the deponent deponed that on the date the award was scheduled to be delivered, counsel for the 1st applicant was at CMA and that the same was not delivered on ground that the arbitrator was on maternity leave and that, thereafter efforts were made to be supplied with the award. This evidence was not countered by the respondent in her counter affidavit. To the surprise of the applicants, the award was dated 22nd September 2021 the date it was scheduled namely, the date counsel for the 1st applicant was informed that the arbitrator was on maternity leave. The award was delivered on the date 1st applicant was told that the arbitrator was on maternity leave. The issue that the arbitrator was on maternity leave was not challenged by the respondent in her counter affidavit. Therefore, in the application before me there is no any other evidence to prove to the contrary.

As pointed out hereinabove, in the affidavit in support of the application, as correctly submitted by counsel for the respondent, the deponent stated that there are irregularities in the award but said nothing

on illegalities. In short, the issue of illegalities does not feature in the affidavit in support of the application. It is my considered opinion that illegalities and irregularities are two different terms. The term "**illegality**" is defined by Garner, B. A in the Black's Law Dictionary, Eighth Edition as "**an act that is not authorized by the law or the state of not being legally authorized**". On the other hand, the term, "**irregularity**" is defined in the same diction as "**something irregular; esp., an act or practice that varies from the normal conduct of an action**". From where I am standing, the two terms mean different meaning and are treated differently in our courts. I am confident that there is a litany of cases to the effect that illegality is a good ground for extension of time.

Though in the affidavit in support of the application, applicants pleaded that the award have irregularities, during hearing, counsel submitted that there are illegalities and went ahead that CMA had no jurisdiction. During submission, counsel for the respondent also conceded that the issue whether CMA had jurisdiction or not can only be determined at revision stage. In my view, there is a jurisdictional issue that need to be determined by this court during revision stage and not in this application.

In ***Lyamuya's case*** (supra), it was held that illegality is a good ground for extension of time. In the application at hand, the illegality goes to the jurisdiction of CMA in determining the dispute between the parties. I find that this is a good ground for extension of time.

For the foregoing, I hereby allow this application and grant the applicants 10 days leave from the date of this Ruling within which to file an application for revision before this court.

Dated at Dar es Salaam this 9th May 2022.



B. E. K. Mganga
JUDGE

Ruling delivered on this 9th May 2022 in the presence of Lightness Msuya and Deodath Mushi, State Attorneys for the applicants and Agatha Amani Mshote, the respondent.



B. E. K. Mganga
JUDGE

