

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM
MISCELLANEOUS LABOUR APPLICATION NO. 383 OF 2021

BETWEEN

UTT AMIS.....APPLICANT

AND

MWITA NYAGISWA..... RESPONDENT

RULING

Date of Last Order: 16/02/2022
Date of Judgement: 25/02/2022

B.E.K. Mganga, J.

On 27th December 2017, respondent signed a three-years fixed term contract with UTT Projects and Infrastructure Development PLC hereinafter referred to UTT-PID. The said three years fixed term contract commenced on 1st February 2018 and was expected to expire on 31st January 2021. Job title of the respondent in the said three years fixed contract was Head of Finance. In 2019, the government ordered closure of UTT-PID and merge with UTT Asset Management and Investor Service PLC hereinafter referred to as UTT AMIS established under the Companies Act. UTT AMIS is whole owned by the Government of the United Republic of Tanzania. Due to that merge, on 23rd

December 2019, respondent was retrenched. Aggrieved by the said retrenchment, respondent filed labour dispute No. CMA/DSM/ILA/2020/15/233 before the Commission for Mediation and Arbitration (CMA) claiming to be paid TZS 240,023,520/= as compensation for 36 months, TZS 124,246,434/= as salary for the unexpired period of the contract, TZS 48,338,070/= as 25% gratuity for 29 months and TZS 6,667,320/= as leave pay due to unfairly retrenched. On 11th August 2021, Hon. Msina. H.H, arbitrator, issued an award in favour of the respondent and ordered that respondent should be paid TZS 93,342,480/= as salary for the unexpired 14 months of the said fixed term contract and TZS 48,338,070/= as gratuity all amounting to TZS 141,680,550/=.

Applicant was aggrieved by the said award. Being out of time, applicant filed this application seeking extension of time within which to file an application. The application was supported by the affidavit sworn by Tuzo Mpiluka, the applicant's head of Legal services. In her affidavit, Tuzo Mpiluka, deponed that applicant collected the said award on 23rd September 2021 while already out of time. In paragraph 2.3 of her affidavit, Ms. Mpiluka, stated in that on 23rd December 2019 respondent was issued with a letter for payment of entitlements together with a

letter of termination of employment. She deponed further in paragraph 2.9(ii) that the award contains illegalities as the respondent was awarded to be paid TZS 141,689,550/= while he was already paid all his terminal benefits by the applicant.

Respondent filed both the notice of opposition and a counter affidavit. The counter affidavit in support of the notice of opposition was sworn by Yona Joseph Mwasongwe Satto, respondent's counsel. In paragraph 5 of the counter affidavit, Mr. Satto, learned counsel for the respondent deponed that the contents of paragraph 2.3 of the Applicant's affidavit is noted to the extent that the respondent was issued with the letter for payment and termination, the rest are strongly denied and the Applicant is put to strictly proof thereof.

In paragraph 11 of the counter affidavit, the deponent deponed that the arbitrator fairly awarded the respondent to be paid TZS 141,689,550/=. In paragraph 12 of the counter affidavit, the deponent opposed the application by deponing that applicant had ample time within which to file revision before this court.

By consent of the parties, the application was disposed by way of written submission.

Applicant through Ms. Lightness Godwin Msuya, State attorney, contended that, the award was issued on 11th August 2021 and that it was collected on 23rd August 2021. Having collected the award, applicant realized that it was tainted with illegalities which need to be corrected by this court. However, time for filing application for revision had already lapsed hence this application.

She further submitted that the identified illegalities are to the effect that, the arbitrator in the award held that respondent's termination was procedurally unfair, while termination was due to closure of the UTT-PID per Government directives. State Attorney Submitted further that arbitrator ordered respondent to be paid TZS. 141,689,550/= as compensation while respondent had already paid all his terminal benefits by the applicant. She insisted that, the illegality is on face of record thus applicant has good reason for the application to be granted. To support her submission, Ms. Msuya referred to the cases of ***Lyamuya Construction Limited v. Board of Registered Trustees Womens's Christian Association of Tanzania***, Civil Application No. 2 of 2010, CAT (unreported), ***Kalunga and Company Advocates v. National Bank of Commerce Ltd***, Civil Application No.124 of 200, CAT (unreported) and ***Principal Secretary Ministry of Defense and***

National Service v. Dervan Valambhia (1992) TLR 182 that illegality is a good ground for extension of time.

In response, Mr. Satto, counsel for the respondent submitted that, it is a trite law that an application for extension of time is entirely in the discretion of the court whether to grant or not. He argued that, extension of time may only be granted when applicant has established that she had sufficient cause for the delay. He referred to the case of **Lyamuya case**, (supra), to that position. Counsel further submitted that for illegality to be a good ground for extension of time, it should be apparent on the face of the record and cited **valambhia's case** (supra). Counsel submitted further that, that is not the case in the application at hand. Counsel for the respondent argued that, it is undisputed that the award was issued on 11th August 2021 and the applicant collected it on 23rd September 2021 being 42 days from the date of the award and that this application was filed on 11th October 2021 out of time prescribed by the law. Counsel for the respondent concluded by praying for the dismissal order.

In rejoinder, Ms. Msuya reiterated her submission in chief.

It is a well settled law that, in order for the court to exercise its discretionary power of extending time, sufficient reasons for the delay

has to be shown. In Labour statutes, this position is provided under Rule 56(1) of the Labour Court Rules, GN. No. 106 of 2007, It provides:

"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 application at hand, applicant has alleged that there is illegality that is apparent on the face of the record. On the other hand, respondent argued that there is no illegality and that if it is there, it is not apparent on the record. The illegality complained of by the applicant is that, respondent was awarded to be paid TZS TZS. 141,689,550/= as compensation while he was paid all his terminal benefits by the applicant prior to filing the dispute to CMA. I have examined carefully both the affidavit in support of the application and the counter affidavit opposing the application and find that the issue of payment of terminal benefits to the respondent is not highly contested. As pointed above, in paragraph 2.3 of the affidavit of Mpiluka in support of the application, she stated that on 23rd December 2019 respondent was issued with a letter for payment of entitlements together with a letter of termination of employment. On the other hand, Mr. Satto, counsel for the respondent, deponed in paragraph 5 of the counter affidavit that, the contents of paragraph 2.3 of the Applicant's affidavit is noted to the extent that the

respondent was issued with the letter for payment and termination, the rest are strongly denied and the Applicant is put to strictly proof thereof. It is clear in my mind that, there is no serious contention on the issue of payment. In fact, annexure OSG-3 to the affidavit in support of the application speaks louder on the amount that respondent was paid by the applicant. This being an application for extension of time, I refrain to go in detail. Looking from the evidence of the parties, I am convinced that there is illegality that is apparent on the face of the record, which in my view, is a sufficient ground for extension of time.

That said and done, I hereby allow the application and order that applicant should file the intended revision within 14 days from the date of this ruling.

Dated at Dar es Salaam this 25th day of February 2022.




B.E.K. Mganga
JUDGE