

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)
AT DAR ES SALAAM**

MISC. APPLICATION NO. 244 OF 2021

BETWEEN

GODFREY G. MPUMLO AND 11 OTHERS APPLICANTS

VERSUS

LAMBO MOTEL RESPONDENT

RULING

S.M. MAGHIMBI, J:

The Applicants herein were the complainants at the Commission for Mediation and Arbitration for Kinondoni ("the CMA") where they had lodged a Labor Dispute No. CMA/DSM/KIN/R.921/16, which ended in favour of Respondent. The applicants were aggrieved by the Award and intended to file a Revision against the said award before this Court. However, the application is before me because the time to lodge a revision application had lapsed and the applicants are seeking the discretion of this court to extend time within which they may file the intended Revision. This application was therefore lodged under the provisions of Rules 24 (1), 24(2) a, b, c, d, e, f,

g & 24(3) a, b, c, d and 55 (1), 56(1) or 2 of 3 of the Labour Court Rules, GN No. 106 of 2007. The applicants are moving the court for the following orders:

1. That this Honourable Court be pleased to extend time for the applicant to lodge a Revision Application out of time
2. The cost for this application be provided for

Reasons for the delay have been elaborated in both the affidavit in support of the application which was deponed by the first applicant on 25th June, 2021; and the written submissions in support of the application. The respondent opposed the application on the ground that no sufficient grounds for the delay have been adduced, praying that the application is dismissed. The application was disposed by way of written submissions whereby the applicant's submissions were drawn and filed by Mr. Kashindye Thabit, learned Advocate while the respondent's submissions were drawn and filed by Mr. Adam Mwambene, learned advocate.

Having gone through the records of the application and the submissions therein, I agree with Mr. Mwambene's argument that that Applicants have completely failed to account for each of delay, that the

amount of two years two months and 20 days since the award of the commission was delivered was not explained. Further that at paragraphs 5 and 6 of the Applicant's affidavit, the Applicants have failed to disclose the dates on which the CMA award was delivered and the date on which they applied for a representative suit that was granted, hence Applicant have failed to account for twenty eight months (28) period of the delay. This is because what this court (Hon. Mwipopo, J) did on the 23rd April, 2021, is to allow the 1st applicant to represent 11 others in the intended Revision. This did not stop the hands of time and the period of limitation started to count when the CMA award was delivered. On a usual day, this would have been the conclusion of my ruling and proceeded to dismiss the application. However, there is an issue of illegality pleaded by the applicant which I find worth to have the attention of this court.

On paragraph 10 of the applicant's affidavit, the applicant deponed hence raised an issue of procedural irregularities and illegality. They argued that Commission reached its decision on an issue which was not framed before hearing of the case on dispute. This means that the trial arbitrator raised her issue *Suo Motto*, a situation that left the Applicants unheard because they were not aware of the issue as it was not amongst the issues

framed before hearing at the Commission. In his submission to support the application, Mr. Thabit submitted that illegality is a wide term which in its broad sense includes issues of jurisdiction, exercise of such jurisdiction, interpretation and contravention of the provision of the law, abrogation of procedures and right to be heard.

As stated earlier, I did not dismiss the application for failure to adduce sufficient reasons because I am in agreement with one aspect of this application, the point of illegality. At this stage I am in no position to determine whether or not there was an actual illegality to the details of it, but I am convinced with the applicant's arguments that the arbitrator dismissed the application on the ground of time, an issue which was not raised during hearing, holds water. The determination of the Commission is apparent on the face of its award and it was an issue of time that the Arbitrator used to determine the application although that issue was not framed for determination. Whether the issue raised in evidence during hearing is not for me to determine at this point, I am only here to see whether the said act constitute sufficient reason which I find that it does. This in itself calls for the attention of this court to see whether or not the applicants were condemned unheard on an issue which finally disposed their

rights. I am guided by the case of **Principal Secretary, Ministry of Defence; National Service Vs Devram Valambhia [1992] TLR 185**, where the Court of Appeal held that if the point of law at issue is illegality that is sufficient importance to extend time for the applicants.

It is on this ground of illegality that I allow this application by extending time to applicant to file their intended revision. The intended revision shall be lodged in this court within fourteen days (14) of the date of this ruling.

Dated at Dar-es-salaam this 21st day of February, 2022.




S.M. MAGHIMBI
JUDGE