

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM
MISCELLANEOUS APPLICATION NO. 207 OF 2022

BETWEEN

TANZANIA ZAMBIA RAILWAY AUTHORITY APPLICANT

AND

ENG. GISBERT SAMBALA1ST RESPONDENT

MARY MESSO2ND RESPONDENT

ADAM MONGI3RD RESPONDENT

FADHILI MWINDADI4TH RESPONDENT

NASHON KASERA5TH RESPONDENT

RULING

Date of last Order: 28/06/2022
Date of Ruling: 14/07/2022

B. E. K. Mganga, J

Applicant filed this application beseeching the court to extend time within which she can file an application for revision to revise the award of the Commission of Mediation and Arbitration (CMA) issued on 29th April 2019 in Labour dispute No. CMA/DSM/TEM/664/17/38/18 at Temeke. The application is supported by the affidavit sworn by Marco

Mabala, Applicant's Principal officer. On the other hand, respondents filed the joint counter affidavit opposing the application.

At the hearing, applicant was represented by Ms. Kause Kilonzo, State Attorney while Mr. Paschal Temba, Personal Representative represented the respondents.

Arguing in support of the application, Ms. Kilonzo submitted that applicant filed this application on 07th June 2022. The learned State Attorney submitted that initially, applicant filed Revision No. 534 of 2019 but it was struck out on 14th April 2021 on the date of judgment on ground that the affidavit in support of the application was defective. Learned State Attorney elaborated that the court found that the jurat in the affidavit supporting the application, lacked the date of attestation. She submitted further that, after the said revision was struck out, applicant filed Revision application No. 160 of 2021 but the same was also struck out on 25th April 2022 because the court found that the same was omnibus as it combined both prayer for extension of time and revision. Ms. Kilonzo State Attorney submitted further that, from 25th April 2022 to 07th June 2022 applicant was making follow up of the Court ruling which she has not been served with to date. Learned State Attorney submitted further that, there is illegality in the CMA award

because the arbitrator used inapplicable circular to award the respondents. She concluded that illegality is a good ground for extension of time.

In rebuttal, Mr. Temba, the personal representative of the respondents, submitted that, after Revision No. 534 of 2019 was struck out on 14th April 2021, without leave of the court, applicant filed Revision No. 160 of 2021 that was also struck out on 25th April 2022. Responding on submissions relating to illegality, Mr. Temba submitted that for illegality to be a good ground for extension of time, it must be apparent on the face of record. He argued that applicant has failed to show illegality that is apparent on the face of record. Mr. Temba also submitted that applicant has failed to account for the delay from 25th April 2022 when Revision No. 160 of 2021 was struck out to 07th June 2022 when she filed this application.

In rejoinder, Ms. Kilonzo reiterated that there is illegality on face of record because the arbitrator awarded the respondents using a circular that was not in force.

Having carefully considered the rival submissions in line with the affidavit and the annexures, I find that, applicant has advanced technical delay and illegality as grounds for extension of time. This being an

application for extension of time, applicant, in terms of Rule 56 (1) of the Labour Court Rules, GN. No. 106 of 2007, is required to show that there was good cause for the delay for the application to be granted. As pointed above, applicant has advanced two reasons (i) technical delay and (ii) illegality. On technical delay, it is undisputed fact that applicant filed Revision No. 534 of 2019 but it was struck out on 14th April 2021 on ground that the affidavit in support of the application was defective because the jurat of attestation did not have a date. It is further undisputed that applicant filed Revision Application No. 160 of 2021 which was also struck out to 07th June 2022 for being omnibus. In my view, and from the record, applicant filed Revision No. 534 of 2019 in time. This fact is undisputed by the respondents. It is clear therefore that what happened in this application is technical delay. There is a litany of case laws that technical delay is a ground for extension of time. One of those cases is the case of ***Fortunatus Masha v William Shija & Another, [1997] TLR 154*** wherein it was held *inter-alia* that: -

*"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved **technical delays in the sense that the original appeal was lodged in time** but has been found to be incompetent for one or another reason and a fresh appeal had to be instituted. "*

Guided by the above cited Court of Appeal decision, I hold that in the application at hand, there was technical delay which is a sufficient

ground for extension of time. I therefore allow the application and grant applicant seven (7) days within which to file revision application before this court.

Dated at Dar es Salaam this 14th July 2022.


B. E. K. Mganga
JUDGE

Ruling delivered on this 14th July 2022 in the presence of Mercy Chintawi, State Attorney for the applicant and Paschal Temba, Personal representative of the respondents.


B. E. K. Mganga
JUDGE

