

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

MISCELLANEOUS APPLICATION NO. 125 OF 2022

BETWEEN

AK TRANSPORT CO. LIMITED APPLICANT

AND

AMINI JUMA SHABANI & OTHERS RESPONDENTS

EXPARTE RULING

*Date of last order: 04/07/2022
Date of Ruling: 19/7/2022*

B. E. K. Mganga, J.

The respondents were employees of the applicant as drivers. It happened that their employment relationship did not go well, as a result, they filed Labour Complaint No. CMA/DSM/ILA/R.184/15/933 complaining that they were unfairly terminated. Having heard evidence of both sides, on 28th May 2021, Hon. J.R. Katto, Arbitrator, issued an award that termination of employment of the respondents was unfair and awarded each respondent to be paid TZS 5,253,846/= . On 6th April 2022, applicant

filed this application seeking extension of time within which to file an application for revision for the court to revise the said award. In support of the Notice of Application, applicant filed the affidavit affirmed by Haruna Idd Katema, her principal officer.

On the other hand, though respondents were served with the application, did not file the counter affidavit. It is on record that on 15th June 2022, Mr. Pascal Temba, the personal representative of the respondents informed the court that respondents were served with the application on 14th June 2022 and promised to file the counter affidavit within seven days but did not do so. Thereafter Mr. Temba the personal representative of the respondents did not enter appearance until when the court ordered the application to proceed exparte.

Arguing the application, Mr. Gilbert Mushi, learned counsel for the applicant submitted that the CMA award was issued on 28th May 2021 and that applicant filed this application on 06th April 2022 seeking extension of time within which to file revision to revise the said award. In his submissions, Mr. Mushi submitted that the only reason for the delay is illegality of CMA award. He went on that the CMA award shows that Hausi Mohamed Kawina testified on behalf of the rest respondents without

consent or authorization from others, hence, the evidence available is for the said Hausi Mohamed Kawina alone. Counsel for the applicant argued that this vitiated the whole evidence given on behalf of the other respondents and that the whole award becomes illegal. He however conceded that there is no paragraph in the affidavit in support of the application on which these submissions are backed up.

Mr. Mushi learned counsel for the applicant submitted further that, illegality is a good ground for extension of time and cited the case of ***Metro Petroleum Tanzania Limited & 3 Others V. United Bank of Africa***, Civil Appeal No. 147 of 2019 CAT (unreported) to implore the court to allow the application. Counsel submitted further that; there are chances of the intended revision to succeed and that respondents will not be prejudiced because the application is uncontested.

I have considered submissions made on behalf of the applicant and the affidavit in support of this application and find that before I decide on the merit or otherwise of the application, I should point out the well settled position of the law. It is settled principle of law that (i) in an application for extension of time, courts are called to exercise its discretion and that discretion must be exercised judiciously - see the case of ***MZA RTC***

Trading Company Limited v. Export Trading Company limited, Civil Application No. 12 of 2015 CAT(unreported); (ii) applicant must adduce sufficient cause or reasons for delay - see the case of ***Salum Sururu Nabhani v. Zahor Abdulla Zahor***, [1988] T.L.R. 41; (iii) the delay even of a single day, must be accounted for. See the case of ***Bushiri Hassan v. Latifa Lukio Mashayo***, Civil Application No. 3 of 2007, CAT (unreported) and (iv) for illegality to be a good ground for extension of time, it must be apparent on the face of the record.

In the application at hand, the award was delivered on 28th May 2021. The copy of the said award annexed to the affidavit of Haruna Idd Katenda in support of this application shows that the same was collected on 2nd July 2021 by Willison Ezekiel on behalf of the applicant. As pointed out hereinabove, this application was filed on 6th April 2022 that is, 278 days after collection of the award. In the affidavit in support of the application, the deponent did not adduce any reason or cause for the delay and did not account for the delay. The deponent only deponed in paragraph 4 of his affidavit as follows: -

"4. The following are the grounds of this application

4.1 Illegality of the Award

4.2 Chances of success in the intended revision application is high

4.3 It will not prejudice the respondents

4.4 The delay is not caused by negligence on the part of the applicant

4.5 The applicant stands to suffer more if the application is denied than the respondents if the application is granted.

In his submission, counsel for the applicant submitted that, cause of the delay is illegality. Comical as it is, he did not explain how illegality caused the delay. In my view, illegality cannot be a cause for the delay, but can be a ground for extension of time, if it meets criteria already set by our courts. Maybe, counsel for the applicant meant that, there is illegality on the award and not that delay was caused by illegality. I have considered submissions relating to illegality in order, whether to grant or dismiss this application and find that it has far failed to meet the test for illegality to be a good ground for extension of time. This is because, the alleged illegality that one respondent testified on behalf of others without consent or authorization is not backed with evidence and there is no paragraph in the affidavit in support of the application to that effect as was conceded by Mr. Mushi in his submissions. More so, no CMA proceedings were attached to the application for the court to verify that allegation. Even if applicant could have included that allegation in the affidavit and annexed CMA proceedings, that alone could have not made the application to pass the

test. I am of that view because Rule 45 of the Labour Court Rules, GN. No. 107 of 2007 allows any interested party other than the decree or award holder to apply for extension of the decree or an award for him to be covered by the decree or award as if he was party to the dispute. It is my view that, one respondent testifying at CMA and not others, cannot be an illegality sufficient to nullify proceedings. Whatever the case, the argument by counsel for the applicant is not illegality that is apparent on the face of the record for it to be a good ground for extension of time. It has been held several times that for illegality to be a ground, it must be apparent on the face of the record. This position was held by the Court of Appeal in the case of ***Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christians Association of Tanzania***, Civil Application. No. 02 of 2010 CAT (unreported). As to what amounts to an apparent error on the face of the record, was defined by the Court of Appeal in the case of ***Chandrakant Joshubhai Patel v. Republic*** [2004] TLR 218 that: -

"An error apparent on the face of the record must be such as can be seen by one who runs and reads, that is, an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may conceivably be two opinions..."

From what I have discussed hereinabove, the ground of illegality fails.

In the affidavit in support of the application it was deponed that there is a chance of the intended revision application to succeed and that if the application will be granted, respondents will not be prejudiced. It is my view that the mere fact that there is a chance of success alone, cannot be a ground for extension of time. I am of that view because granting extension of time to person who knew that the case was decided against him but took no steps, and later approaches the court arguing that there is a chance of success, will be defeating the whole purpose and intent of the Law of Limitation Act and the well-established principle that there must be an end for every litigation. It is my firm view further that, the claim that applicant will suffer has no merit because he knew from the beginning that the matter was decided against her. Failure to act in time means she consented to the outcome. She cannot be heard complaining now. In fact, the law helps those who are watchful and not those who are asleep.

It was deponed in the affidavit in support of the application that the delay was not due to negligence of the applicant. But, in both the affidavit and submissions it was not disclosed as who caused the delay for the court to find that it was not due to negligence of the applicant. As pointed

hereinabove, the award was delivered on 28th May 2021 and the copy was collected on 2nd July 2021 by Willison Ezekiel on behalf of the applicant, but the application was filed on 6th April 2022 that is 278 days after collection of the award. In my view, whatever happened, I find that applicant was negligent and the delay itself is inordinate. The application was filed as an afterthought because applicant has failed to show sufficient cause for the delay. More so, she has failed to account for each day of the delay.

For all pointed out hereinabove, I find that it will be unfair to the respondents in the circumstances of this application if time is extended. That said and done, I hereby dismiss this application for want of merit.

Dated at Dar es Salaam this 19th July 2022.



B. E. K. Mganga
JUDGE

Ruling delivered on this 19th July 2022 in the presence of Gilbert Mushi, Advocate for the applicant but in the absence of the respondents.



B. E. K. Mganga
JUDGE

