

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS LABOUR APPLICATION NO. 165 OF 2021

*(Arising from the Commission for Mediation and Arbitration of Dar es Salaam at
Ilala in Labour Dispute No. CMA/DSM/ILA/R.440/15
dated 31st day of August 2018)
(L. Chrisantus: Arbitrator)*

BETWEEN

TITUS MAEGA.....APPLICANT

VERSUS

NATIONAL INSURANCE CORPORATION (TZ) LIMITED.....RESPONDENT

RULING

9th August, 2022 & 17th August, 2022

K. T. R. MTEULE, J.

This is an application for extension of time to file revision application to challenge the decision of the Commission for Mediation and Arbitration of Dar es Salaam, Ilala (CMA). The decision was issued on 31st August 2018. In the CMA, the Applicant claimed to have been unfairly terminated from his employment and prayed for reinstatement or payment of compensation. The arbitrator found the termination was both substantively and procedurally fair, hence awarded nothing to the applicant. The Applicant wants to lodge a revision application, but he is barred by time hence this Application for extension of time.

It is deponed in the affidavit supporting this application that after receiving the CMA award, the Applicant filed in this court a revision application on 19th September 2018 as per annexure TM1 (notice of application). The affidavit states further that while making follow up for summons as per annexure TM2 (reminder letter) his Counsel was instructed by a registry officer that his application was rejected and by that time, time to file new application for revision had already lapsed. According to the affidavit, the applicant decided to file this application for extension of time which was wrongly registered as the revision application instead of Misc. application resulting its striking out on 5th March 2021 as per annexure TM3.

The Applicant further advanced a ground of illegality as a reason to justify extension of time.

By a way of counter affidavit, the Respondent vehemently disputed the reasonability of the grounds advanced by the applicant as a cause of delay.

The hearing proceeded by way of written submissions. The Applicant was represented by Mr. Godfrey Tesha, Advocate, whereas the Respondent was represented by Mr. Christopher Bulendu, Advocate.

Mr. Godfrey Tesha reiterated the contents of the affidavit. He further argued that there was procedural irregularity in disciplinary hearing which needs to be addressed by revision.

It is the submissions of Mr. Tesha that the Applicant was diligent in filing the Application for Revision within the time prescribed by the Law but due to the above circumstances which were out of the Applicant's control the matter became out of time. He considered the letter written to the Deputy Registrar as an indication of diligence in making follow-up.

Disputing the application Mr. Christopher Bulendu submitted that the applicant has failed to show good cause for the Court to grant extension of time. This is due to the fact that there is no evidence to prove the alleged application was rejected after being submitted contrary to Rule 56 of G.N No. 42 of 2007. Supporting his contention, he cited the case of **M/S Tanzania Coffee Board v. M/S Rombo Millers Limited**, Civil Application No. 35 of 2015, Court of Appeal of Tanzania, at Dar es salaam (unreported).

Mr. Christopher Burendu submitted that once documents are rejected, the Court must adduce reason for rejecting in order for the particular part to rectify the documents so that they can be admitted.

He of the view that no way the Court will reject document without reason(s) for rejecting and give back to the submitting party.

It was further submitted by Mr. Burendu that since the applicant's Counsel alleged to have been informed by a Court Clerk that applicant's application was rejected, then he ought to justify such information by attaching the affidavit of that Court Clerk. Bolstering his stand, he cited the case of **Kigoma Alli Malima v. Abbas Yusuf Mwingomno**, Civil Application No.5 of 1997, Court of Appeal of Tanzania, at Kigoma, (unreported).

Regarding diligent in prosecuting the matter Mr. Christopher Bulendu argued that the applicant did not take any further action from 29th October, 2018 when the letter was issued to the registrar requesting summons and second copy to effect service of the same. Strengthening his submission, he referred this Court to the case of **M/S Tanzania Coffee Board v. M/S Rombo Millers Limited (supra)** and **Tanga Cement Company v. Masangwa and Another**, Civil Application No. 6 of 2001.

Lastly Mr. Christopher Bulendu submitted that the applicant has failed to account for each day of delay as justified by his events as he filed revision application on 19th September, 2018 and on 29th October, 2018 he wrote a letter to the registrar requesting for summons and copies of the application but in vain and after some days his advocate

was informed that the application was rejected. He stated that since the letter for requesting the summons was written on 29th October, 2018 and this application was filed on 30th November, 2018, in absence of the date when the application was rejected, that means there was a delay of 31 days.

Further to that Mr. Christopher Bulendu submitted that, this matter was struck out on 5th March, 2021 by this Court and the applicant refiled it on 19th May, 2021 which means there was a delay of 71 days. In such circumstances he is of the view that the applicant failed to account for each day of delay. To support his assertion, Mr. Christopher Bulendu cited the case of **Bashir Hassan v. Latifa Mashayo**, Civil Application No.3 of 2007, (unreported), quoted with approval in **ROMBO MILLER's case (supra)**.

On behalf of the Applicant, Mr. Tesha filed a rejoinder. He countered the Respondents argument that the court clerk who informed the Applicant about the rejection of their revision application was to swear an affidavit to that effect. According to Mr. Tesha, nothing more could have been done to force the court to make response to their application other than the letter of 29 October 2018 which was never responded officially. In his view, since the Respondent has not specifically disputed that the application was rejected, the affidavit of the court clerk was not necessary.

In this application, the issue for determination is **whether the applicant has adduced sufficient reasons to warrant granting of extension of time.**

The Law governing timing for filing a Revision Application is Section 91 (1) of the Employment and Labour Relations Act, Cap. 366 of 2019 R.E. It provides:-

"91. -(1) Any party to an arbitration award made under section 88 (10) who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for a decision to set aside the arbitration award: -

(a) within six weeks of the date that the award was served on the applicant unless the alleged defect involves improper procurement;"

From the above provision, the counting of the time needs to commence from the date when the Applicant was served with the impugned award. In this matter service of the award was not contentious. That means anyone who intends to file a revision application must do it within 42 days as per the above provision.

It is an established practice that granting of extension of time is a court discretion. It is further established that this discretion must be exercised judiciously which means, a good cause must be assigned

by a party applying for the exercise of such discretion. **(See Lyamuya Construction Company Ltd. V. Board of Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010)**. In this case, several grounds have been given to form among the good causes the court must consider before granting extension of time. Among these grounds are:-

- (a) The applicant must account for all the period of delay*
- (b) The delay should not be inordinate*
- (c) The applicant must show diligence, and not apathy, negligence, or sloppiness in the prosecution of the action that he intends to take.*
- (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

In this matter the applicant has tried to explain several actions he took including filing of several applications which were rejected and another one improperly admitted.

I have noted an unfortunate scenario which the applicant encountered to overcome bureaucratic challenge within the court registry. It is not disputed that the Applicant did file his first revision within time. Copies of the said Applications were attached to the

affidavit with court endorsement of having been received in court registry on 19 September, 2018. It appears that until 29 October 2018, the Applicant received no response from the registry and this can be justified by the unusual act of the letter he wrote to remind the Registrar about the application. According to his sworn statement, neither the letter was replied nor the copies of Application were returned to him apart from the phone call of the court clerk who informed him informally that the Application was rejected. I cannot agree with the Respondent that in these circumstances, the missing of the affidavit of the court clerks renders the entire scenario questionable. In my view, reasonably, nothing could have been done by the Applicant other than what he did to file an application for extension of time.

Again, another unfortunate situation arising from the registry when the application for extension of time was registered as a revision. This is apparent from the order of Hon. Mwipopo, J who struck out the application and ordered the registry to properly register the Application, the order which was implemented after more than one month. Again, I differ with Mr. Christopher Bulendu that the Applicant should be punished for the order which was directly given to the registry officers.

From the foregoing, it is my view that the Applicant has been diligently dealing with the Court registry in trying to have his revision in place but hindered by situations which were out of his control. He deserves extension of time. I therefore find this to constitute no negligence, and, in my view, it is a good ground for extension of time.

Apart from the above ground, it is in the Applicant's submissions that, the extension of time is sought to challenge the illegality of the CMA award. According to the cases of **Principal Secretary Ministry of Defence and Notional Service Vs. Devram Valambia [1991] TLR 387, VIP Engineering and Marketing Limited and 2 Others versus Citibank Tanzania Limited Consolidated Civil References No. 6, 7 and 8 of 2006, (CA)**. The Applicant quoted the following words from **VIP Engineering**: -

"It is therefore settled law that a claim of illegality of the challenged decision constitute sufficient reasons for extension of time under rule of regardless of whether or not a reasonable explanation has been given by the Applicant under the rule to account for the delay."

From the above authority and its catchword, I am bound by the position of our Court of Appeal that illegality, if established, constitute

a good cause to grant extension of time as per the **Valambia's case** and the **VIP Engineering case**, both cited supra.

Nevertheless, the Applicant has not indicated which illegality has not been well explained in the Applicant's submissions. I could not find the Applicant's explanation on what exactly constitutes illegality. In this regard, this ground is not well established.

Nevertheless, since the Applicant has managed to explain the hassles he went through in the Court Registry, it sufficiently shows why the matter could not be filed within the time. This is sufficient to answer the issue raised in this application affirmatively that the applicant has managed to establish sufficient grounds to grant extension of time to file the intended revision application.

From the foregoing, I allow the extension of time to file revision application against the decision of the CMA in Labour Dispute No. CMA/DSM/ILA/R.440/15. The said revision to be filed within seven working days from the date of this decision.

Dated at Dar es Salaam this 17th day of August, 2022.



KATARINA REVOCATI MTEULE
JUDGE
17/08/2022