

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

MISC. APPLICATION NO. 489 OF 2021

BETWEEN

ISSAKA MNENTA APPLICANT

VERSUS

CHINA RAILWAY SEVENTH GROUP COMPANY LIMITED RESPONDENT

RULING

S.M. MAGHIMBI, J.

The applicant has moved this court under the provisions of Section 94(1) of the Employment and Labour Relations Act, Cap. 366 R.E. 2019, ("The Act"), and Rule 24(1), 24(2)(a),(b),(c),(d),(e),(f) and 24(3)(a),(b),(c), (d) and 56 56(1) & (3) of the Labour Court Rules, G.N No. 106 ("the Rules"). He is seeking for the following orders

1. That the Honourable Court be pleased to extend and enlarge time within which the Applicant can file his Revision application against the award of the Commission (Hon. Kayugwa H-Arbitrator), in labour dispute number CMA/DSM/TEM/162/19/102/2019 issued on the 10th day of February 2021.

2. That Honourable Court be pleased to issue and other order(s) and/or reliefs as it will think just and proper to issue.

The application was supported by an affidavit of the applicant dated 29th November, 2021. The respondent opposed the application by a counter affidavit deponed on 25th March, 2022 by Mr. Albert Nkuhi, learned advocate representing the respondent.

Brief background of the application is that the Applicant was an employee of the Respondent since the 03rd day of September 2018 as a laborer on permanent basis. He earned a monthly salary of Tanzania Shillings three hundred and fifty thousand only [TZS. 350,000/=). Following some alleged misconducts, on the 20th of January 2019 the Applicant was given first written warning for abscondment. On the 22nd day of March 2021 the Applicant was given another Warning for drawing on the safety helmet and on the 24th day of March, 2019 the Applicant was informed that his contract was terminated on 22nd March 2019. Aggrieved by the termination, on the 05th day of April 2019, the Applicant successfully referred a dispute at the Commission for Mediation and Arbitration challenging termination of his employment. On the 10th day of February 2021 the CMA issued its Award finding that the termination of the Applicant

was substantively and procedurally unfair. Subsequently, the arbitrator awarded the Applicant TZS. 700,000/= being one month salary in lieu of notice and leave payment for one year.

The applicant was aggrieved by the award and is seeking extension of time to lodge revision on the ground that the Award issued by the CMA is erroneous and illegal hence needs attention of this Honourable Court through Revision. His reason for the delay is that being a layman, the Applicant was not aware of the existence of illegality on the face of the Award until he approached Trade Union Officials.

In the affidavit in support of the application, the raised legal issues were that:

1. After reasoning and finding that termination of the employment service of the Applicant was substantively and procedurally unfair; whether the award of one year leave and Notice payment to the Applicant was legal and in accordance with the requirements of Labour Laws.


2. Whether the Applicant has indicated sufficient reasons for the Court to allow their Application and extend time for them to file Revision application out of time.

The application was disposed by written submissions. The applicant's submissions were drawn and filed by Mr. Ambakisye Kipamila, applicant's personal representative while the respondent's submissions were drawn and filed by Mr. Albert Nkuhi, learned advocate representing the respondent.

Having considered the parties submissions, I have noted that in his affidavit to support the application as well as the written submissions, the applicant's ground for moving the court to extend time was illegality of the decision of the CMA regarding the award of compensation under Section 40(1)(c) of the Act. I have noted that in his reply submissions, Mr. Nkuhi has gone into lengthy submissions on how the compensation is awarded on discretionary powers of the arbitrator. However, that issue is not to be argued at this point because right now, all that am required to determine is whether there is illegality of the award by only at the face of it and not going into lengthy arguments and evidence.

On my part, having considered the submissions of the parties particularly the point of illegality raised by the applicant, I am satisfied that the alleged illegality on the issue of compensation under Section 40(1)(c) of the Act is worth moving this court to use its discretionary powers to extend time. The court will have to see whether the CMA abided by the requirements of the law. On that basis, I allow this application. Time is extended to the applicant to lodge his intended revision against the decision of the CMA in Labor Dispute No. CMA/DSM/TEM/162/19/102/2019 dated 10th February, 2022. The intended Revisions shall be filed in this court within thirty (30) days of the date of this ruling.

Dated at Dar es Salaam this 11th July, 2022.


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S.M. MAGHIMBI
JUDGE

