

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

**MISCELLANEOUS LABOUR APPLICATION NO. 490 OF 2021**

*Arising from the award of the Commission for Mediation & Arbitration of DSM at  
Temeke*

*(L. Kokusima: Arbitrator) Dated 30<sup>th</sup> December, 2019 in Labour Dispute  
No. CMA/DSM/TEM/38/2018/44/2018)*

**BETWEEN**

**MAILINE CARRIES LTD .....APPLICANT**

**VERSUS**

**SAIDI KAZI RUGEMA.....RESPONDENT**

**RULING**

**18<sup>th</sup> August 2022 & 06<sup>th</sup> September 2022**

**K. T. R. Mteule, J.**

This is an application seeking for extension of time to file an application for revision of the CMA decision in Reference **No. *CMA/DSM/TEM/38/2018/44/2018*** dated 30<sup>th</sup> December 2019. The instant application is supported by an affidavit of Moses Manko, the Human Resource Manager of the Applicant, who deponed the facts comprising what he asserts to be the reason for the delay.

According to the affidavit the delay was due to outbreak of pandemic disease (*COVID 19*). It is deponed in the affidavit that the Applicant failed to file revision application because her business was closed due

eruption of the pandemic disease since the applicant's Company deals with transportation of goods within and outside Tanzania. That due to the aforesaid pandemic disease the Applicant failed to file revision application on time. Another reason adduced by the Applicant is illegality.

In opposing the application, the counter affidavit of the respondent in which the facts in the affidavit were disputed. It is deponed in the counter affidavit that the Applicant's business continued during the time.

The application was heard by a way of oral submissions where the applicant was represented by Mr. Albert Kalasha Daniel from HR Exparts, Advocate while the Respondent was represented by Mr. Lucas Nyagawa, Advocate.

In his submissions, Mr. Kalasha having reiterated what is stated in the affidavit, proceeded to submit that after receiving the CMA award on **8 January 2020** while under preparation to lodge the revision, there occurred Corona outbreak which caused the transportation activities of the applicant to be closed. Due to the panic caused by Corona disease, the Applicant closed his business until 20/12/2020 in response to the personal communication restrictions imposed by the Ministry of health, where there was no physical meeting.

Mr. Kalasha submitted further that after the situation came to calm, the applicant was already barred by time to file revision. In supporting the application he cited the case of **Selina Michael vs. Mtanzania Newspaper, Misc. Civil Application No. 34 of 2021, High Court of Tanzania, at Dar es salaam, (unreported).**

Regarding illegalities, Mr. Kalasha argued that the CMA decision of 30<sup>th</sup> December 2020 has many illegalities which they believe to be able to be corrected only if this application is allowed.

In replying to the application, Mr. Nyagawa submitted that it is a well settled principle that in any application for extension of time, the applicant has a duty to account for each day delayed. Referring to paragraph 3.5 and 3.6 of the applicant's affidavit where the applicant stated that he was served with the award on 18<sup>th</sup> January 2022 the Respondent computed 42 days from that date, and submitted that time ended on 18/02/2022.

According to Mr. Nyagawa, the claim that during 20<sup>th</sup> February 2020 when the applicant was on preparation to prepare the revision, means the applicant was already out of time and he did not account or explain the delay of these 2 days that is 16<sup>th</sup> & 18<sup>th</sup> February 2020. Boosting up his submission Mr. Nyagawa cited the case of **Tanzania fisher's processors limited vs. Eusto k. Ntagalinda, Civil**

Application No. 41/08 of 2018 the Court of Appeal of Tanzania Mwanza at page 10 where the Court stated that a delay of a single day has to be accounted for. He is of the view that the applicant has failed to account for the two days.

On the issue of outbreak of corona, Mr. Nyagawa submitted that it is not true that corona was in Tanzania in February 2020. He recalled the 1<sup>st</sup> case of corona in Tanzania to have been reported to have occurred on 17/3/2020. He wondered how the applicant panicked for a disease which was not yet in the country.

Mr. Nyagawa submitted that during corona pandemic, Tanzania did not have lock down. According to him, the decision of the applicant to close business does not mean that it excuses the applicant from attending his legal liability. He questioned; if the applicant managed to hold two zoom meetings, why didn't they use the same way to instruct their legal counsel to take necessary action. In his view, even if there was a closure of business, the applicant could have filed the revision by using a mail, fax or email according to **Rule 8 (1)(a)(b) & (c) of the labour court Rules.**

Mr. Nyagawa further argued that the reason that corona pandemic restrained them from filing the revision in this court hold no water. He refuted the relevance of the case of **Selina Michael's case**

**(supra)** asserting it to be distinguishable from the instant case. According to him, in **Selina's** case parties failed to appear in audio teleconference. In this matter, the applicant failed to file an application timely. He added that in **Selina** Corona had already entered the country but in our case, it was not yet in.

With regards to illegality, Mr. Nyagawa submitted that the issue of illegality must be apparent on the face of record. He averred that in the affidavit nothing is pleaded as illegality. Citing the case of **Lyamuya Construction Company vs. Registered Trustees of Young Women Christina association of Tanzania**, Civil Application No. 2 of 2010, Court of Appeal at Arusha, page 9 par 1 (unreported), he stated that illegality must be apparent on face of the record, not to be argued on a long-drawn arguments. It is Mr. Nyagawa's submission that since the applicant has failed to show sufficient cause, he thus prayed for the application to be dismissed.

Mr. Kalasha made a rejoinder. Rejoining on accounting of each day of delay, he by listed paragraphs 3.5, 3.6, 3.7 and 3.8 of affidavit which he asserts to have accounted each day of delay.

Regarding the time corona entered the country, Kalasha explained that it started since January 2020.

Arguing on the issue of illegality, Kalasha responded that it was not pleaded in his affidavit, but it will be discussed in the revision once this application is granted.

Having considered parties submissions, this Court finds one main issue for determination which is **whether the applicants adduced good reason for this Court to grant extension of time to file revision application.**

The Law guiding the timing for filing of Revision Applications is **Section 91 (1) of the Employment and Labour Relations Act, Cap. 366 of 2019 R.E.** The section 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;"*

The above provision provides time limit of 42 days in filing revision application against the decision of CMA. It is an established general principle that, it is the discretion of the Court to grant an extension of time upon a good cause shown, [See. **Tanga Cement Company vs. Jumanne D. Masangwa and Another**, Civil Application no. 6 of

2001, Court of Appeal of Tanzania, (Unreported); and **Praygod Mbaga V. Government of Kenya Criminal Investigation 5 Department and Another**, Civil Reference No. 4 of 2019, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported)]. Again, the word reasonable cause or good cause has to be adduced by a party seeking extension of time in order to move the court to exercise its discretion. The good cause must be determined by reference to all the circumstances of each particular case. In the case of **Lyamuya Construction Company Ltd. vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, the Court of Appeal of Tanzania, at Dar es Salaam, (Unreported), the Court developed five principles to guide determination of what amounts to good cause for the application for extension of time. These grounds according to Lyamuya's case are as follows: -

1. That the applicant must account for all the period of delay,
2. The delay should not be inordinate,
3. The applicant must show diligence,
4. Other reasons, such as the existence of a point of law of sufficient importance not apathy negligence or sloppiness in the prosecution of the action that he intends to take and lastly,

5. If the court feels that there are other sufficient grounds such as the illegality of the decision sought to be challenged.

From the above authority for the applicant to enjoy Court's discretionary power the Court will be guided by the above-mentioned criteria in granting extension of time.

As to how long is the delay, it is not in dispute that the CMA award was issued on 30<sup>th</sup> December 2019 and on 08<sup>th</sup> January 2020 the applicant was served with the CMA award. Therefore, according to Section 91 (1) (a) (b), of Cap 366, the applicant ought to have filed her application on 20<sup>th</sup> February 2020 when 42 days lapsed but instead, it was filed on 07<sup>th</sup> December 2021 that means there was a delay of more than ten months. In my view, this delay is apparently inordinate.

Among the reasons given by the applicant in this delay is outbreak of pandemic disease which hindered the filing of the application on time. The Respondent's contention on this reason is based on firstly, the facts that corona virus was not in Tanzania on the date the application ought to have filed the Application; secondly, Tanzania did not have lock down and thirdly the Applicant could have used online systems to lodge the application.



As to when Covid firstly landed in Tanzania, this is an obvious facts in the news. Since the Respondent disputed the date, I had to consult news. I have visited all the news papers which circulated in Tanzania from 16<sup>th</sup> March 2020 the first Covid outbreak was covered all over. Specifically, the information can be found on In BBC Swahili news of 16<sup>th</sup> March 2020.

It is apparent that in January 2020, there was no Covid 19 cases in Tanzania. Even after the first case, there has never been business closures in Tanzania due to Covid 19. All public services continued to be rendered without any halt.

I agree with the Respondent's counsel that the Applicant could have used the online services currently available in courts to ensure timely filing of the application such as ***E-Wakili***, E-Filing, virtual conference and use of mask and the likes.

From the above legal reasoning I am of the view that the delay was inordinate as per ***LYAMUYA's*** case (supra) and that the Applicant failed to act within a reasonable time which indicates negligence.

Regarding illegality, it is well known that the illegality of the impugned matter is sufficient ground for extension of time. However, the respective illegality has to be sufficient in content and apparent

on the face of record. (See **Stephen B.K. Mhauka vs. The District Executive Director Morogoro District Council and two Others**, Civil Application No. 68 of 2019, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported)). Things differ in this application. The Applicant has not even specified the type of illegality envisaged to be challenged in the intended revision nor is it stated how the said illegality is apparent on the face of the award or record. On this basis I am of the view no illegality is sufficiently demonstrated to the extent required.

From the foregoing, I cannot see any sufficient reasons established to satisfy the court to grant extension of time to lodge the revision application against the CMA award in **Labour Dispute No. CMA/DSM/TEM/38/2018/44/2018**.

In this regard, this Application is dismissed for want of merit. No order as to costs.

It is so ordered.

Dated at Dar es Salaam this 06<sup>th</sup> day of September 2022.



**KATARINA REVOCATI MTEULE**

**JUDGE**

**06/09/2022**