

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

**MISCELLANEOUS APPLICATION NO. 154 OF 2022**

*(Originating from Labour Dispute No. CMA/DSM/TEM/716/2018)*

**BETWEEN**

**BOARD OF DIRECTORS, CENTRE  
FOR FOREIGN RELATIONS ..... APPLICANT**

**VERSUS**

**SHARIFF ASHAM TARIMO ..... RESPONDENT**

**RULING**

**S.M. MAGHIMBI, J:**

The respondent herein was employed by the applicant from the 01<sup>st</sup> September, 2012 to 30<sup>th</sup> October, 2018 when his contract was terminated for reasons of misconduct. Aggrieved by the termination, the respondent lodged a dispute at the CMA registered as Labor Dispute No. CMA/DSM/TEM/716/2018. The dispute proceeded ex-parte after what the arbitrator found to be non-appearance of the applicant despite being dully served. In its ex-parte award dated 12<sup>th</sup> July, 2019, the CMA ordered the applicant to reinstate the respondent without loss of remuneration pursuant to Section 40(1)(a) of the Employment and Labor Relations Act,

Cap. 366 R.E 2019 (ELRA). Subsequently on the 15/05/2020, the applicant approached the CMA applying for orders for extension of time within which she could file an application to set aside the ex-parte award. The CMA was not amused by the grounds of delay advanced by the applicant and proceeded to dismiss the application for want of merits.

On what is surprising to be another delay, though aggrieved by the ruling of the CMA, the applicant is again late to file revision in this court and for reasons that will be discussed hereunder, the applicant has lodged this application under the provisions of Rule 24(1), (2)(a),(b),(c),(d),€ and (f), 24(3)(a),(b),(c)(d) and 55(1),56(1),(2) and (3) of the Labour Court Rules, 2007, GN. No. 106/2007). She is again seeking orders extending time within which he could lodge a revision against the decision of the CMA. The application was supported by an affidavit of Mr. Athumani Njamasi Mashaka, principle officer of the applicant, dated 11<sup>th</sup> April, 2022. The respondent opposed the application through a counter affidavit affirmed by the respondent in person on the 19<sup>th</sup> May, 2022.

The application was disposed by way of written submissions. The applicant's submissions were drawn and filed by Mr. Stanley Mahenge,

learned State Attorney, while the respondent's submissions were drawn and filed by Mr. Constantine Makala, learned advocate.

In his submissions to support the application in which Mr. Mahenge prayed that the contents of the applicant's affidavit be read together with, the reasons for delay were mainly based on grounds of illegality of the decision of the CMA for lack of jurisdiction, the Arbitrator's act to order ex parte hearing while there was no proper service of the summons; that the Applicant was not notified of the date of the ex-parte award for her to take necessary steps and that the CMA proceed with the hearing ex parte while the Applicant was not aware of the case and service was not effected to the Applicant. The outlined grounds for extension were listed as such:

- a) the Commission for Mediation and Arbitration determined Labour Dispute No. CMA/DSM/TEM/716/2018 without having jurisdiction;
- b) the Applicant was not aware of the Labour dispute before for the Commission for the Mediation and Commission as the Applicant was not served with summons of the case;
- c) the Arbitrator ordered the ex parte hearing while there was no proper service of the summons and the Applicant was not

notified of the date of the ex-parte award for her to take necessary steps;

- d) The Applicant has immunity against legal proceeding under the Diplomatic and Consular Immunities and Privileges, Cap. 356 RE 2002."

Starting with the reason of illegality, I will not consider all the applicant's lengthy submissions on the immunity of the applicant that strips the jurisdiction of the CMA, because by doing so, I will jump into the merits of what would be (if this application is allowed) the substance of the dispute. In brief, Mr. Mahenge's argument were based on what he argued to be the fact that the Applicant enjoy the immunities and privilege from suit and legal process under Section 13, Third Schedule to the Act and Item 1 of Part I of the Fourth Schedule to the Diplomatic and Consular Immunities and Privileges, Cap. 356 RE 2002. This is pursuant to Act. That under the Section 13, the list of international organization to which Tanzania accepted immunities and privileges has been set out in Third Schedule to The Diplomatic and Consular Immunities and Privileges Act(supra) and that the Tanzania-Mozambique Centre for Foreign Relations

is one among the International Organization which are listed under item 29 of the Third Schedule to the Act.

On the ground of non-notification, that Arbitrator ordered the ex parte hearing while there was no proper service of the summons and the Applicant was not notified of the date of the ex-parte award for her to take necessary steps; Mr. Mahenge submitted that it is trite law that, the party against whom an ex parte proceeding has been issued to be notified on the date of ex parte judgment or Award. He supported his argument by citing the case of **Cosmas Construction Co. LTD Vs. Arrow Garments LTD [1992] TLR127**. In this case the Court of Appeal held as follows;

*"A party who fails to enter appearance disables himself from participating when the proceedings are consequently ex parte, but has to be told when the judgment is delivered so that, he may, if he wishes, attend to take it as certain consequences may follows"*

Again on this ground, I find that Mr. Mahenge is putting the cart in front of the horse. What is before me is an application for extension of time whereby he can challenge the decision of the CMA that dismissed his application for extension of time to set aside ex-parte decree.

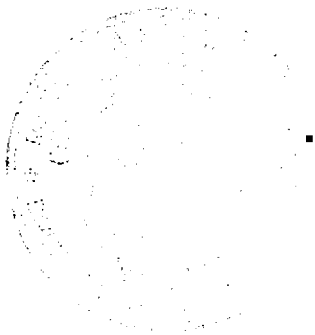
At this point I agree with the respondent that what the applicant is required to do in a case like this as per the cited case of **Lyamuya Construction**, is to adduce reasons for the delay to file application for revision. Instead the applicant is arguing the substance of the intended revision by faulting the reasoning of the arbitrator by establishing facts which would have moved the arbitrator to extend time and eventually set aside the ex-parte decree. The applicant was under obligation to explain to the court her delay in challenging the ruling of the CMA from the 26<sup>th</sup> February, 2021 when the said ruling was delivered, to April 2022 when this application was filed. It must be noted that the application is filed after more than a year had passed since the decision of the CMA and the applicant has not accounted for a single reason for the delay, his only argument being is point of illegality.

The question remains whether the established question of illegality is sufficient to warrant discretion of this court to extend time. I have taken keen consideration of the ground of illegality raised by Mr. Mahenge. Without going into the details of the alleged illegality, consideration is mainly attributed to the argued issue of diplomatic immunity that the applicant is allegedly enjoying under Section 13, Third Schedule to the Act

and Item 1 of Part I of the Fourth Schedule to the Diplomatic and Consular Immunities and Privileges Act, Cap. 356 R.E 2002. I am not in conclusion that as such the applicant so enjoys the alleged immunity because this is a food for another day when the merits of the dispute at the CMA will be considered if this court so allows. My only concern is that the ground raised is worth the discretion of this court to extend time.

It is only for the alleged ground of illegality of the decision due to the applicant's diplomatic immunity that I find the need to exercise my discretionary powers to extend time. This application is therefore granted. Time is extended for the applicant to lodge her intended Revision against the decision of the CMA. The intended revision shall be lodged in this court within twenty one (21) days from the date of this ruling.

Dated at Dar es Salaam this 18<sup>th</sup> day of August, 2022.



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**S.M. MAGHIMBI**  
**JUDGE**