

THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 302 OF 2022

SALEHE HASSAN MJINJA APPLICANT

VERSUS

VOCATIONAL EDUCATION AND

TRAINING AUTHORITY (VETA)RESPONDENT

RULING

Date of last order: 28/10/2022

Date of Ruling: 31/10/2022

B. E. K. Mganga, J.

Facts of this application briefly are that, in July 2002, respondent employed the applicant as Vocational Instructor at Laboratory Trade at Mtwara RVTSC. The two remained in employment relationship until on 29th January 2010 when respondent terminated employment of the applicant. Aggrieved with termination of his employment, applicant filed Labour complaint No. CMA/DSM/TEM/74/2010 before the Commission for Mediation and Arbitration henceforth CMA at Temeke but it was dismissed on 8th July 2020. On 9th August 2022, applicant filed this application seeking extension of time within which he can file an application to revise the ruling that dismissed the dispute he filed at CMA.

In an affidavit filed in support of the application, applicant gave reasons for the delay in paragraph 12 that it was due to (i) the fact that the workers' Trade Union Dar es salaam RVTSC branch failed to provide him support, (ii) lack of legal aid, (iii) he was prosecuting other matters, and (iv) special and exceptional circumstances.

In resisting the application, respondent filed both the Notice of Opposition and the Counter affidavit sworn by Mathias D. Kulwa , State Attorney. In his affidavit, Mr. Mathias Kulwa deponed *inter-alia* that, applicant has failed to account for each day of the delay in order to warrant the application to be granted.

By consent of the parties, the application was argued by way of written submissions.

In his written submissions, applicant submitted that he was a member of RAAWU and that he expected RAAWU Dar es Salaam RVTSC to provide him support but it did not fulfill its responsibility. Applicant submitted further that he had no money to hire an advocate hence lack of legal aid. In his submissions he gave a litany of advocates and institutions he approached with a view of assisting him to fight for his rights without giving the dates thereof. On special circumstances, applicant submitted that there was abuse of power, fabrication of

evidence and forgeries by the respondent and that his rights were violated. On similar special circumstances, applicant added that respondent condemned him as mentally ill person. He cited the case of ***Yahaya Khamis v. Hamida Haji Idd and 2 Others*** , Civil Appal No. 225 of 2018, CAT (unreported) and submit that he was denied right to be heard because the mediator dismissed the dispute he filed at CMA without affording him right to be heard. He further cited the case of ***Amour Habib Salim v. Hussein Bafagi***, Civil Application No. 52 of 2009, CAT(unreported) to bolster his point that illegality is a sufficient ground for extension of period. Applicant submitted that the aforementioned are special circumstances warranting extension of time and cited the case of ***Principal Secretary, Ministry of Defence and National Defence v. Devram Valambia***[1992]TLR 182 and ***VIP Engineering and Marketing Limited and Three Others v. Citibank Tanzania Limited***, Consolidated Reference No. 6,7 and 8 of 2006, CAT(Unreported). Based on all these, applicant prayed that the application be granted.

On the other hand, Mr. Kulwa State Attorney for the respondent in resisting the application submitted that lack of money or being a lay person has never been a ground for extension of time unless there is

special circumstances deponed in the affidavit. He cited the case of ***Yusufu Same , Hawa Dada v. Hadija Yusufu***, Civil Appeal No. 1 of 2002, CAT(unreported), ***Wambele Mtumwa Shahame v. Mohamed Hamis***, Civil Reference No. 8 of 2016, CAT(Unreported), ***Joseph Ernest Manguku & 31 others v. International School of Tanganyika***, Misc. Application No. 42 of 2019, CAT (unreported). Mr. Mathis went on that ignorance of the law is not a defence and cited the case of ***Farida F. Mbarak and Another v. Domina Kagaruki and 4 Others***, Civil Reference No. 4 of 2019, CAT(unreported), ***Vedastus Raphael v. Mwanza City Council and 2 Others***, Civil Application No. 594/08 of 2021, CAT(unreported) and ***Wambele Mtumwa Shahame v. Mohamed Hamis***, Civil Reference No. 8 of 2016, CAT(Unreported).

On submissions that applicant was prosecuting other matters, learned State Attorney submitted that, there is unexplained gap from the date applicant received CMA decision on 22nd July 2010 to the date he initiated another dispute at CMA on 28th September 2020 that is almost ten years. State Attorney submitted tha applicant has failed to account for that delay and cited the case of ***Zuber Nassor Moh'd v. Mkurugenzi Mkuu wa Shirika la Bandari Zanzibar***, Civil Application No. 93/15 of 2018, CAT (unreported). State Attoreny submitted further

that applicant filed revision application No. 54 of 2021 before this court and that the same was dismissed for want of merit.

On illegality that there was abuse of power, fabrication of evidence, violation of applicant's rights and condemnation of being mental ill, Mr. Kulwa submitted that, for illegality to be a ground for extension of time, it must be apparent on the face of the record and cited the case of ***Ngao Godwin Losero v. Julius Mwarabu***, Civil Application No. 10 of 2015, CAT(unreported) to support his arguments. He further cited the case of ***Magnet Construction Limited v. Bruce Wallace Jones***, Civil Appeal No. 459 of 2020, CAT (unreported) and ***Tanzania Harbours Authority v. Mohamed R. Mohamed*** [2003]TLR. 76 to support his submissions that time will not be extended in every situation illegality is alleged as an issue by the applicant and it depends on circumstances of each case before the court.

I have considered submissions of the parties in this application and find it prudent to point out at this juncture that in application of extension of time, the court is called to exercise discretionary powers judiciously as it was held by the Court of Appeal in the case of ***Mza RTC Trading Company Limited vs Export Trading Company Limited***, Civil Application No. 12 of 2015 [2016] TZCA 12. It is also a cardinal

principle that in an application for extension of time, applicant is required to show sufficient reason for the delay as it was held in the case of ***Salum Sururu Nabhani v. Zahor Abdulla Zahor***, [1988] T.L.R. 41. In the application at hand, no sufficient or reason that was advanced by the applicant for all that delay, which in my view, inordinate. It has also been held several times that applicant must account for each day of the delay as it was held in the case of ***Said Nassor Zahor and Others vs. Nassor Zahor Abdallah El Nabahany and Another***, Civil Application No. 278/15 of 2016, CAT, (unreported), ***Finca T. Limited & Another vs Boniface Mwalukisa***, Civil Application No. 589 of 2018) [2019] TZCA 56, ***Zawadi Msemakweli vs. NMB PLC***, Civil Application No. 221/18/2018 CAT (unreported), ***Elias Kahimba Tibendalana vs. Inspector General of Police & Attorney General***, Civil Application No. 388/01 of 2020 CAT (unreported) and ***Bushiri Hassan vs. Latifa Lukio Mashayo***, Civil Application No. 3 of 2007, CAT (unreported). In ***Mashayo's case*** (supra), the Court of Appeal held inter-alia that: -

"...the delay of even a single day, has to be accounted for otherwise there would be no proof of having rules prescribing periods within which certain steps have to be taken."

In the application at hand, applicant has not met these criteria. It was submitted by the applicant that there is illegality because he was condemned unheard by the mediator, was condemned mentally ill and that there was abuse of powers. The case of *Magnet Construction Limited vs Bruce Wallace Jones*, Civil Appeal No. 459 of 2020 [2021] TZCA 654, *Franconia Investment Ltd vs Tib Development Bank Ltd*, Civil Application No. 270 of 2020 [2021] TZCA 563 and *Tanzania Harbours Authority v. Mohamed R. Mohamed* [2003]TLR. 76 cited by the respondent are clear that not every illegality raised by an applicant can warrant extension of time. Applicant was supposed to give sufficient reason or cause for the delay. Unfortunately, that reason is wanting in his affidavit in support of this application

I further agree with counsel for the respondent that applicant filed Revision No. 54 of 2021 that was dismissed by this court on 6th April 2022. In my view, recourse to the applicant was not to file a new application before this court but to file an appeal before the court of appeal if he was aggrieved by the judgment of this court. The judgment in Revision No. 54 of 2021 was pronounced in the presence of the applicant. Instead of taking a proper action, applicant filed Miscellaneous application No. 171 of 2022 that was struck out by this court on 22nd

July 2022. Both in Revision Application No. 54 of 2021 that was dismissed on 6th April 2022 and in Miscellaneous Application No. 171 of 2022 that was struck out on 22nd July 2022, applicant was trying to challenge the decision that was made on 8th July 2010 in labour dispute No. CMA/DSM/TEM/74/2010 by CMA. Now, in the application at hand, applicant filed this application so that time can be enlarged to allow him to file revision before this court against the said CMA. With all fairness, my hands are tied up.

For the for going, I hereby dismiss this applicant for want of merit.

Dated in Dar es Salaam on this 31st October 2022.



B. E. K. Mganga

JUDGE

Ruling delivered on this 31st October 2022 in chambers in the presence of Salehe Hassan Mjinja, the applicant and Mathias Kulwa, State Attorney for the respondent.



B. E. K. Mganga

JUDGE