

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

**MISCELLANEOUS APPLICATION NO. 07 OF 2023**

**ASSOCIATION OF LOCAL  
AUTHORITIES OF TANZANIA (ALAT)..... APPLICANT**

**VERSUS**

**CLEOPHAS MBISHI MANYANGU ..... RESPONDENT**

**RULING**

*Date of last Order: 28/02/2023  
Date of Ruling: 14/3/2023*

**B. E. K. Mganga, J.**

Applicant filed this application seeking extension of time within which to file an application for restoration of Revision application No. 453 of 2021 that was dismissed on 12<sup>th</sup> May 2022 for want of prosecution. In support of the application, applicant filed the affidavit sworn by Jenipher Kaaya, Principal State Attorney. In her affidavit, Ms. Kaaya stated that the said Revision was dismissed for want of prosecution because applicant failed to enter appearance on 17<sup>th</sup> March 2022, 20<sup>th</sup> April 2022 and 12<sup>th</sup> May 2022. She deposed further that at that time, applicant had no lawyer to represent her in court and that the Office of the Solicitor General was unaware of the said Revision application. Applicant filed application No. 453

of 2022 on 14<sup>th</sup> November 2022 but the said application was withdrawn to rectify names of the parties. She deposed further that, there is illegality on the CMA award because CMA has no jurisdiction to determine the dispute filed by the respondent who is a public servant.

On the other hand, respondent filed both the Notice of Opposition and the counter affidavit opposing the application. In his counter affidavit, respondent stated that Husna Kandoro and Joshua Marwa, all being State Attorneys were handling the matter and that it is not true that applicant had no lawyers. Respondent stated further that, applicant was negligent as she failed to enter appearance to prosecute the matter she filed in court. Respondent added that he was not a public servant hence CMA has jurisdiction.

When the application was called on for hearing, Ms. Jenipher Kaaya, Principal State Attorney appeared and argued for and on behalf of the applicant while Mr. Cleophas Manyangu, respondent appeared in person.

Arguing the application, Ms. Kaaya, learned Principal State Attorney repeated what was stated in her affidavit that on the date the application was dismissed, applicant had no Lawyer and Solicitor General was not aware of existence of the said revision. She submitted that, Solicitor General was notified on 25<sup>th</sup> July 2022 after respondent has filed Execution

No. 268 of 2022 and that on 14<sup>th</sup> November 2022, applicant filed Misc. Application No. 453 of 2022 but the same was withdrawn on 13<sup>th</sup> December 2022 because there was typing error on the name of the applicant. She went on that; applicant was supposed to file an application for restoration of the revision that was dismissed for want of prosecution within 60 days based on item No. 21 of Part III of the 1<sup>st</sup> schedule to the Law of Limitation Act[Cap. 89 R.E.2019] because there is no similar provision in Labour Statutes.

The learned principal State Attorney submitted that; the CMA award is tainted with two illegalities. One; CMA has no jurisdiction to hear and determine the dispute filed by the respondent who was a Public Servant. She submitted further that the dispute arose on 15<sup>th</sup> February 2018 as shown in the CMA F1 wherein respondent indicated that the dispute was against Local Government Authorities. Two, CMA issued an award on the matter it had already decided hence res judicata. Clarifying on the issue of res judicata, the Principal State Attorney submitted that, the 1<sup>st</sup> dispute was CMA/DSM/ILA/415/18 and that the same was mediated by Mollel B.L, Mediator on 29<sup>th</sup> March 2019 and marked as settled. She submitted further that, the 2<sup>nd</sup> dispute is CMA/DSM/ILA/415/18/149 whereas the award was issued on 31<sup>st</sup> December 2020 by Hon. Faraja, Arbitrator, that is the

subject matter of Revision No. 453 of 2021 that was dismissed for want of prosecution. She argued that illegality is a good ground for extension of time and cited the case of **TANESCO v. Mufungo Leonard Majura & 15 Others**, Civil Application No. 94 of 2016, CAT(unreported), **The Attorney General v. Electrics International Company Ltd & Another**, Civil Application No. 479/16 of 2022, CAT(unreported) and **Swabaha Mohamed Shosi v. Saburia Mohamed Shosi**, Civil Appeal No. 98 of 2018, CAT (unreported), to support her submissions.

On his part, Mr. Manyangu, the respondent submitted that, extension of time is a discretion of the Court but that discretion should be exercised judiciously. He submitted further that, in an application for extension of time, applicant must account for each day of delay, delay should not be inordinate, applicant must have shown seriousness in prosecuting the matter, should not be negligent and there must be illegality and cited the case of **Lyamuya Construction Company Ltd V. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT (unreported), to support his submissions. He went on that; the application was dismissed on 12<sup>th</sup> May 2021 and that applicant filed an application for restoration on 14<sup>th</sup> November 2022. He added that, applicant has failed to give sufficient reasons as to why she

failed to file the application within time. He submitted further that, absence of lawyers cannot be valid reason because the said revision application was filed by the applicant and the same was signed by Husna Kandoro, State Attorney. He however, in his submissions, conceded that in the counter affidavit, he did not attach documents showing that Husna Kandoro signed the said revision. Respondent strongly submitted that; applicant was negligent because it took more than 3 months from 25<sup>th</sup> July 2022 for the Solicitor General to file Misc. Application No. 453 of 2022. He strongly submitted that there are no reasons as to why the Office of the Solicitor General did not act diligently.

On illegality, respondent submitted that, CMA had jurisdiction over the matter because the dispute was not against Local Government Authority but Association of Local Authorities of Tanzania. He submitted further that, Local Government Authorities are entities established under Article 145 of the United Republic of Tanzania Constitution, 1977 but Associations of Local Authorities is established by Society Act [Cap. 337 RE. 2019]. He went on that; functions of Associations of Local Authorities are advocacy and lobbying on behalf of the Local Government Authority and represent Local Government Authority at local and international level. He submitted further that; he was not a Public Servant because he was not

governed by the Public Service Act. Mr. Manyangu submitted that, in the CMA F1, he filled that the employer is Association of Local Authorities Tanzania (ALAT) that is composed by Local Government Authorities that are established under Article 145 of the United Republic of Tanzania Constitution, 1977. On res judicata, respondent submitted that he filed only one dispute which was partly settled by Mollel, B.L, Mediator on 29<sup>th</sup> March 2019.

In rejoinder, Ms. Kaaya, submitted that applicant have accounted for each day of the delay and that applicant was not negligent. She added that Revision No. 453 of 2021 was dismissed on 12<sup>th</sup> May 2022 and not in 2021 and that Applicant was not negligent. She argued that submissions relating to compassion of ALAT should be disregarded because there is not paragraph in the affidavit to that effect. She maintained that there were two disputes that were filed at CMA by the respondent.

I have carefully examined evidence of the parties in both the affidavit and counter affidavit and considered their respective submissions in this application. It was correctly submitted by the respondent that in the application for extension of time like the application at hand, the court is called to exercise its discretion and that discretion must be exercised

judiciously. In fact, it has been held several times by this court and the Court of Appeal that judicial discretion is the exercise of judgment by a judge or court based on what is fair, under the circumstances and guided by the rules and principles of law. See the case of [Mza RTC Trading Company Limited vs Export Trading Company Limited](#), Civil Application No.12 of 2015 [2016] TZCA 12. In the application at hand, I will therefore, be guided by circumstances of the application, fairness, and principles of law.

It was submitted by counsel for the applicant that nonappearance was due to the fact that applicant had no lawyers. That submission was highly contested by the respondent. That argument cannot detain me because, the revision application that was dismissed was filed by the applicant and it was upon her to make sure that the same is prosecuted. It was not a duty of this court to find a lawyer for the applicant. At any rate, any principal officer of the applicant was supposed to enter appearance. I, therefore, agree with submissions by the respondent that applicant was negligent.

Again, the argument that Solicitor General was notified after dismissal of the applicant, in my view, shows lack of seriousness and or coordination between Solicitor General and the applicant. More so, time

spent by the deponent handling other issues in Dodoma, in my view, cannot be valid reason for extension of time. This court will not halt its activities waiting Solicitor General to appoint someone from Dodoma or elsewhere to appear in court. The least I can say is that; internal arrangements in the office of the Solicitor General, cannot be a reason for the court stop its duties or extend time. Solicitor General should align himself and abide by court schedules, otherwise, there will not be preferential treatment. He is a party like any other parties appearing before the court and should put his house in order.

Notwithstanding the foregoing, it was submitted that CMA had no jurisdiction because respondent was a public servant. It was further submitted on behalf of the applicant that the matter was res judicata because, initially, respondent filed the dispute at CMA and the same was settled at mediation stage, but later, filed another dispute that was arbitrated hence the subject of the revision application that was dismissed for want of prosecution. On his part, respondent argued that he was not a public servant hence CMA had jurisdiction and that he filed only one dispute that was arbitrated. I have considered these submissions and I am of settled view that there are jurisdictional issues to be determined by this court. It was held by the Court of Appeal in the case of [\*Lyamuya\*](#)

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**Women's Christian Association of Tanzania**, Civil Application No. 2 of

2010 [2011] TZCA 4 that the question of jurisdiction can be a ground for extension of time. The issues raised by the applicant relating to jurisdiction of CMA and res judicata, can only be resolved after hearing the parties and after examining the CMA record. Those issues, in my view, are sufficient ground for this application to be granted.

For the foregoing, I hereby allow this application and grant applicant seven(7) days within which to file an application for restoration of the dismissed revision.

Dated at Dar es Salaam on this 14<sup>th</sup> March 2023.



B. E. K. Mganga  
**JUDGE**

Ruling delivered on this 14<sup>th</sup> March 2023 in chambers in the presence of Cleophas Manyangu, the Respondent but in absence of the Applicant.



B. E. K. Mganga  
**JUDGE**