

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

MISC. APPLICATION NO. 308 OF 2022

(Arising from the Labour Dispute No. CMA/PWN/KBH/5/2021)

BETWEEN

AUGUSTINO MKAMI APPLICANT

VERSUS

SHULE YA SEKONDARI SAMU RESPONDENT

RULING

S. M. MAGHIMBI, J:

The applicant herein was aggrieved by the award of the Commission for Mediation and Arbitration in Labour Dispute No. CMA/PWN/KBH/5/2021 dated 04/06/2021. He initially lodged a Revision Application in this Court which was registered as Revision No. 271/2021. On the 27/04/2022 when the application came for hearing, this court raised a concern on the defective notice of application and eventually struck out the application with a leave to refile within 7 days. For alleged reasons that will be apparent hereunder, the applicant could not lodge the Revision application within the time granted by the court hence this application on the grounds of delay that will be discussed.

On their part, the respondent opposed the application praying for its dismissal for want of sufficient reasons for the delay. The application was disposed by way of written submissions. Before this court, the applicant's submissions were drawn and filed by Mr. Abraham Mkenda, learned advocate representing the applicant while the respondent's submissions were drawn and filed by Mr. Eliamani Daniel, learned advocate.

Having considered the applicant's reason for the delay which were explained to be the change of filing system which required parties to lodge their application in both Swahili and English language, I have also considered the respondent's argument on this same reason. It was the respondent's argument that the order of this court (Hon. Mganga J), was issued on 27/04/2022 granting the applicant seven days to refile the application. However, this application was lodged on 11th August 2022, (which is more than three months from the date of order by Hon. Mganga J). The only reason advanced by the applicant for the delay was that the system rejected his application and ordered him to file application in both Swahili and English Language and that is truly the statement in the electronic register report submitted by the applicant. At this point, I have posed to ask myself if the issue of filing the application in both languages warrants the delay of more than three months to lodge an application. This

took me back to the applicant's submissions to see whether there was any justification for the delay.

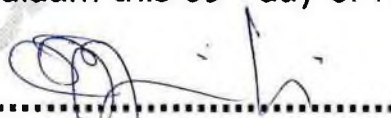
In his submissions the applicant only submitted that after his application was rejected, he had no other option but to file this application. He did not elaborate as to the lapse of time between when the application was rejected to the time of filing the present application. In the cited case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010** (unreported), the Court of Appeal sitting at Arusha, has set guidelines for the grant of extension of time, as such, the applicant must account for all the period of delay, the said delay should not be inordinate. It was further stated that the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take. I must state at this point that the applicant has not shown diligence by failure to adduce sufficient reasons for the delay.

The other guideline that was set in the cited case was for the court to consider the existence of other sufficient reasons like the existence of a point of law of sufficient importance such as the illegality of the decision

sought to be challenged. As for the case at hand, the applicant argued on the ground of illegalities on the decision sought to be revised.

On my part, I have gone through the decision of the CMA and found that the second ground of illegality that the arbitrator erred in rendering her own opinion which the parties were never given an opportunity to be heard is worth the discretion of this court to extend time. That being the case, this application is hereby allowed. Time is extended for the applicant to lodge his application for revision against the award of the CMA in the Labour Dispute No. CMA/PWN/KBH/5/2021. The intended application shall be lodged in this court within twenty one (21) days from the date of this order.

Dated at Dar-es-Salaam this 09th day of February, 2023.



S.M. MAGHIMBI
JUDGE

