

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM
MISCELLANEOUS LABOUR APPLICATION NO. 87 OF 2023**

BETWEEN

**OMARY BAKARI LIYANGA1ST APPLICANT
SAID KASIMU KILUKE 2ND APPLICANT
EPIPHANIA NGONYANI 3RD APPLICANT**

AND

**MSAJILI WA VYAMA VYA WAFANYAKAZI NA WAAJIRI.....1ST RESPONDENT
MWANASHERIA MKUU WA SERIKALI 2ND RESPONDENT
CHAMA CHA WAFANYAKAZI WA HUDUMA ZA
JAMII TANZANIA (TASIWU) 3RD RESPONDENT**

RULING

Date of last Order: 02/06/2023

Date of Ruling: 15/06/2023

MLYAMBINA, J.

Briefly, the Applicants were winners of the election conducted by the third Respondent on 25th May 2021 and declared as Deputy Secretary, Chairman and Treasurer respectively. It happened that on 14th December 2021, the 1st and 2nd Applicant were summoned by the first Respondent for discussion on complaints on the said election, as a result, on 11th February, 2022, the third Respondent issued a decision which nullified the election results relating to the Applicants' leadership position and barred them to perform their duties. Aggrieved with the said decision of the first Respondent, the Applicants filed an application for *certiorari* and

mandamus before this Court *vide Misc. Application No. 291 of 2022* which was heard *ex parte* and the same was struck out for being incompetent (Hon. Mganga, J).

The Applicants being dissatisfied with the decision of this Court in *Misc. Application No. 291 of 2022*, preferred an appeal to the Court of appeal *vide Misc. Civil Notice No. 92 of 2022* which was later withdrawn by the Applicants. Thereafter, the Applicants filed this application seeking extension of time within which to file an application for setting aside the decision issued by the first Respondent on 11th February, 2022.

In support of the Notice of Application, the Applicants filed their joint affidavit stating that there is illegality in the impugned decision of the first Respondent to be challenged in this Court as the first Respondent had no jurisdiction to set aside election conducted by a registered trade union.

Resisting the application, the first and second Respondent filed joint counter affidavit, sworn by Pendo Berege, Registrar of the first Respondent, and the third Respondent filed counter affidavit affirmed by Zuberi Said Madunda, her General Secretary. Both Respondents denied the allegations.

By consent of the parties, the application was disposed by way of written submissions. The Applicant enjoyed the service of Joseph Basheka, Personal Representative.

It was submitted on behalf of the Applicants that the first Respondent had no jurisdiction of nullifying election results which declared the Applicants as the winners. In support of the contention, it was submitted that the Labour Court is the one vested with the authority of setting aside election as per *Section 53 (1) (a) of the Employment and Labour Relations Act [Cap 366 Revised Edition 2019] [herein ELRA]*. He cited the cases of **Total Tanzania Limited v. Seet Peng Swee**, Misc. Application No. 323 of 2019, High Court Labour Division at Dar es Salaam (unreported), **Mwanasheria Mkuu wa Serikali v. Alice Celestine Ndyali (Msimamizi wa Mirathi wa Mali za Marehemu Celestine Mathew Ndyali) & Another**, Misc. Application No. 466 of 2022, High Court Labour Division (unreported) and **Hb Worldwide Limited vs Godrej Consumer Products Limited**, Civil Application No. 2/16 of 2021, Court of Appeal of Tanzania at Dar es Salaam (unreported) to support submissions that claim of illegality of the challenged decision constitutes sufficient reason for extension of time to the affected party.

It was therefore argued on behalf of the Applicants that, the issue of illegality is apparent to warrant this Court to grant extension of time and prayed for the application be granted.

Resisting the application, Ms. Joyce Senkondo Yonazi, State Attorney submitted on behalf of the first and second Respondent while Mr. Evans R. Nzowa Advocate, submitted on behalf of the third Respondent. It was submitted that the issue of illegality does not hold water as the first Respondent was legally authorized to regulate trade unions, employers' organizations and federations under *Part IV of ELRA*.

It was argued by the 1st and 2nd Respondents that the provisions of *Section 53 of ELRA*, are silent on whose decision is to be set aside by the Court. It was further submitted that the first and second Respondent as overseer of trade unions can make decisions which are meant at protecting the rights provided in the trade union's constitution as the case at hand where the first Respondent intervention was inevitable.

It was further submitted by the 1st and 2nd Respondents that the provisions of section 53 of ELRA above are not meant to be mandatory that whenever there is a dispute the aggrieved party should file an application in the Labour Court. It was submitted further that the allegation whether the Registrar had no jurisdiction to make a decision or not is a point of law which requires a long chain of readings and authorities in order to establish, hence making it not illegality appearing on the face of the record. The case of **Omary Ally Nyamalege & 2 Others v. Mwanza Engineering Works**, Civil Application No. 94/08 of 2017 page

12 (unreported), was cited in supporting the contention. It was concluded on behalf of the Respondents that the Applicants have no sufficient cause to warrant this Court to extend time. Hence, the Respondents prayed for the application to be struck out.

In rejoinder, it was submitted on behalf of the Applicants that the third Respondent misdirected himself by citing cases which were distinguishable. It was submitted that in the case at hand, it is clear that jurisdiction to set aside election conducted by any registered organization where there are allegations of noncompliance of its constitution is vested in the High Court of Tanzania Labour division as per the provisions of *Section 53(1) (a) of ELRA*. The Applicants insisted by praying for this application be granted so that they can file application to set aside the first Respondent's decision out of time.

Having gone through the submissions for and against the application and in consideration of the notice of application together with the affidavits filed in support of the application and in its resistance, the only issue before the Court is; *whether or not the application is meritorious and grantable*.

As I start the analysis, I should point out on the settled principle of law that; in an application for extension of time, the Court is called to exercise its discretion judiciously. Further, such discretion must be based

on what is fair in the circumstances of the case. In exercising discretion, the Court must be guided by the rules and principles of the law. See **Mza RTC Trading Company Limited v. Export Trading Company Limited**, Civil Application No.12 of 2015 [2016] TZCA 12 and **Cash sales Stores Ltd v. Damas Njowi & Another** (Rev. Appl. 197 of 2022) [2022] TZHCLD 970. *Rule 56 (1) of the Labour Court Rules, GN. 106 of 2007* provides that:

The Court may extend or abridge any period prescribed by these Rules on application and on good cause shown, unless the Court is precluded from doing so by any written law.

It was submitted by Personal Representative for the Applicants that this application for extension of time of filing application for setting aside the decision of the Registrar is based on the illegality as a ground because the impugned decision was made without jurisdiction.

On the other hand, it was argued by the Respondents that there is no illegality as the law is silent on whose decision is to be set aside by the Court and further that the Registrar had mandate to make the impugned decision as part of her duties. It should also be noted that the decision which the Applicants are requesting extension of time to set aside was delivered by the Registrar after conducting a meeting with the Applicants

concerning election results as shown in the minutes forming part of the pleadings.

It is a trite law that illegality to be ground for extension of time must be apparent on the face of record. This position has been expounded in various Court of Appeal decisions including the case of **Magnet Construction Limited v. Bruce Wallace Jones**, Civil Appeal No. 459 of 2020, Court of Appeal of Tanzania (unreported), **Jubilee Insurance Company (T) Limited v. Mohamed Sameer Khan**, Civil Application No. 439/01 of 2020, Court of Appeal of Tanzania (unreported), **Hamis Mohamed v. Mtumwa Moshi**, Civil Application No. 407 of 2009, Court of Appeal of Tanzania (unreported), **Kabula Azaria Ng'ondi & 2 Others v. Maria Francis Zumba & Another**, Civil Appeal No. 174 of 2020, Court of Appeal of Tanzania (unreported) to mention but a few. In **Magnet's case** (supra) was held that:

With regard to the third ground of appeal, we are mindful of the settled law that where the point of law at issue is illegality or otherwise of the decision being challenged, that by itself constitutes sufficient cause. For this position see for instance the decision of the Court in **VIP Engineering and Marketing Limited and Three Others v. Citibank Tanzania Limited**, Consolidated Civil References No.6, 7 and 8 of 2006 (unreported).

Again, in the case of **Jubilee Insurance** (*supra*), the Court of Appeal full subscribed to the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 02 of 2010 (unreported) and held that:

...the illegality in question must be that which raises a point of law of sufficient importance and the same must be apparent on the face of record not one that would be discovered by a long-drawn argument or process.

In the application at hand, I am of the considered view that the alleged illegality on jurisdiction qualify to raise a legal issue to be determined upon grant of extension of time by this Court because it is apparent on the face of the record. The reason behind is that the alleged illegality is in the root. The provisions of *Section 53 of the ELRA (supra)*, stipulates the procedures to be adhered in the circumstances of non-compliance with constitution. *Section 53 (supra)* provides:

(1) Where a federation or registered organisation fails to comply with its constitution, the Registrar or member of the federation or registered organisation may apply to the Labour Court for any appropriate order including-

(a) setting aside any decision, agreement or

- election;
 - (b) requiring the organisation or federation or any official thereof to-
 - (i) comply with the constitution;
 - (ii) take steps to rectify the failure to comply;
 - (c) restraining any person from any action not in compliance with the constitution.
- (2) Before the Labour Court hears an application prescribed in subsection (1), it shall satisfy itself that-
- (a) the organizations or federation's internal procedures have been exhausted; or
 - (b) it is in the best interests of the organisation or federation that the application be heard notwithstanding that any internal procedures have not been exhausted.

I have read the affidavit in support and against this application. Without hesitation, it is the findings of this Court that matters on failure to comply with the Constitution goes to the root of the case, as clearly averred in the affidavit. It is alleged from the record that the impugned decision made by the Registrar contravened the provisions of the law, henceforth requires intervention by this Court. As such, it is my considered view that, based on the alleged illegality, the Applicants have managed to adduce sufficient cause for the delay to warrant this Court grant the extension of time sought.

In the upshot, the application is granted. The Applicants should file their intended application within 14 days of this Order. I make no order as to costs.



Y.J. MLYAMBINA

JUDGE

15/06/2023

Ruling delivered and dated 15th day of June, 2023 in the presence of Joseph Basheka, Personal Representative of the Applicants, learned State Attorney Joyce Yonaz for the 1st and 2nd Respondents and Zuberi Saidi, Secretary for the 3rd Respondent. Right of Appeal fully explained.



Y.J. MLYAMBINA

JUDGE

15/06/2023