

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

MISC. APPLICATION NO. 20 OF 2023

BETWEEN

**ATTORNEY GENERAL 1ST APPLICANT
TANZANIA ELECTRIC SUPPLY
COMPANY LTD (TANESCO)..... 2ND APPLICANT**

VERSUS

IBRAHIM MSAFIRI SALEHE RESPONDENT

RULING

Date of last Order: 29/09/2023

Date of Ruling: 12/10/2023

MLYAMBINA, J.

The Applicant herein has applied for extension of time to file an application for extension of decree of *Labour Revision No. 485 of 2017, High Court of Tanzania, Labour Division at Dar es Salaam*. Briefly, the Respondent was employed by the second Applicant herein on various monthly fixed term contracts as a Telephone Operator. He was attached to the Emergency Maintenance Unit at Tabata, Ilala, Dar es Salaam charged with receiving calls from customers on emergence cases requiring urgent technical support. Sometimes in May 2015, the dispute between the parties arose where the Respondent was accused of mishandling a customer's call for emergence technical support. Following the charges, the Respondent was summoned to a disciplinary hearing

where he was found guilty and eventually terminated from the employment. Aggrieved by the said decision, the Respondent lodged a complaint at the Commission for Mediation and Arbitration (herein CMA). After considering the evidence of the parties, the CMA found that the Respondent was unfairly terminated both substantively and procedurally. Therefore, the CMA ordered the 2nd Applicant to reinstate the Respondent to his employment.

Being dissatisfied by the CMA's decision, the Applicants filed numerous applications pursuing the Court to revise and set aside the CMA's decision but in vain. He therefore, decided to file the present application.

There was an objection raised by the Respondent on representation of Mkumbo Elias Mkoma for the Applicants. To his wrong perception and understanding, the Respondent was of the view that Elias Mkumbo is not a State Attorney competent to represent the Applicants.

I feel sorry for the Respondent to have raised such hopeless preliminary objection. The Court has taken legislative notice that pursuant to *Article 59 (3) of the Constitution of the United Republic of Tanzania, Section 16 of the Office of the Attorney General (Discharge of*

Duties) Act, Cap 268 and such other written laws, the duties of the Attorney General may, upon authorisation by the Attorney General, be discharged by Law Officers and State Attorneys in such manner as is necessary for effective and efficient delivery of Government legal services for and on behalf of the Attorney General.

The Court has taken further legislative notice of the mandates vested in the Director of Public Prosecutions pursuant to *Article 59B of the Constitution of the United Republic of Tanzania* and other relevant laws with regard to prosecution of criminal cases and the mandates vested in the Solicitor General pursuant to the Office of the Solicitor General (Establishment) Order, 2018 with regard to litigation of all civil cases for or against the Government.

The Court has taken notice of the role of the Attorney General under *paragraph 4(f) and (g) of the Office of the Attorney General (Re-structure) Order, 2018, GN. No. 48 of 2018* to maintain link and enhance collaboration with the Office of the Solicitor General and National Prosecutions Service for better implementation of their mandates.

Further, the Court takes legislative notice that *section 24(3) of the Office of the Attorney General (Discharge of Duties) Act, Cap. 268* requires the Attorney General by instrument to formally appoint all

persons employed as Law Officers and State Attorneys as such and accordingly, direct on the nature of functions they will perform; and mindful of the need to foster effective implementation of *paragraph 7 of the Office of the Attorney General (Re-structure) Order, 2018, GN. No. 48 of 2018*, through the vesting of certain functions stipulated hereinafter of the Office of the Attorney General.

Again, the Court takes legislative notice that the Attorney General for the Government of the United Republic of Tanzania, in exercise of the powers conferred under *section 24(3) of the Office of the Attorney General (Discharge of Duties) Act, Cap. 268*, issued Notice cited as the Attorney General (Appointment of Law Officers and State Attorneys) Notice, 2020 in which Mkumbo Elias Mkoma was enrolled No. 1175 as a State Attorney.

With the afore mentioned state of affairs, it follows that the objection raised by the Respondent lacks scintilla of merits.

Arguing in support of the application, Mr. Rumisha submitted that the Applicants are applying for extension of time to file application for extension of decree. He stated that the Applicant had similar case like this one in the case of **Asanterabi Mkonyi v. TANESCO**, Civil Appeal No. 53 of 2019, Court of Appeal of Tanzania, Dar es Salaam. He

elaborated that, like in this case, in the referred case, the employee was also employed in a fixed term contract as a Telephone operator. That in the later case, the employee was also terminated for mishandling customer's call for emergency technical support. Following his termination, he lodged a complaint at the CMA and the Award was delivered in his favour.

The Applicants being aggrieved by the Award, they filed revision before this Court where the CMA's decision was overruled on the ground that principles of unfair termination does not apply to specific term contracts. Mr. Erligh stated that the Court relied to the case of **Mtambua Shamte & 64 Others v. Care Sanitation and Suppliers**, Revision No. 154 of 2010 (unreported) whereby the decision in that case was also confirmed by the Court of Appeal.

As to the reasons for the delay, Mr. Rumisha submitted that there is an issue of illegality which is a good ground for the grant of extension of time. To support the submission, he referred the Court to numerous decisions in which the issue of illegality was considered to grant extension of time. Among others, the cases of **VIP Engineering and Marketing Limited and 3 Others v. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 and **Lyamuya**

Construction Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010, Court of Appeal of Tanzania Arusha Sub Registry.

It was argued that existing two conflicting decisions may create undesirable situation in the administration of justice to cure the same. Hence, the Applicant prayed this application be granted.

In response to the application, the Respondent submitted that each case must be decided on its own set of facts as it was held in numerous Court decisions including the case of **Charles Chama & 2 Others v. TRA Regional Manager & 3 Others**, Civil Appeal No. 224 of 2018, Court of Appeal of Tanzania Bukoba Sub Registry. The Respondent refuted applying the case of **Asanterabi Mkonyi** (supra) to be applied to declare that the Respondent's case is illegal. He went on to argued that illegality of the proceedings must be denied from the case in land and not to invite the decision of another case which was decided basing on its own set of facts.

It was further argued that the application is overtaken by event because a certificate of payment has already been issued by this Court. Therefore, this Court becomes *functus officio*. The Respondent was of the view that the Applicant is required to appeal to Court of Appeal or

apply for revision in the Court of Appeal. He firmly submitted that this Court has no jurisdiction to determine the application. He went on to submit that; on 20/08/2020, the Applicant filed notice of appeal and requested for copies of ruling, drawn order and proceedings of this case in which they were supplied with the same for necessary action.

In response to the alleged illegality, the Respondent submitted that the Impugned decision was confirmed by this Court and a certificate of payment has already been issued. Thus, the Court is *functus officio* to change such decision. As to the grant of extension of time, he submitted that the Court's power to grant extension of time must be exercised cautiously as was held in the case of **Kalunga and company Advocates v. NBC Ltd** [2006] TLR 235 and other cases which will be considered in the decision.

The Respondent strongly submitted that the Applicant failed to disclose sufficient reason that may warrant this Court to extend the time. He stated that the decision of the High Court in respect of the Respondent's case was issued sometimes in 2017 and the Applicant filed the notice of appeal twice, in 2017 and 2020. He added that; the Applicants were supplied with necessary documents, yet they did not institute any appeal. It was further submitted that the case of **Asante**

Rabi Mkonyi (supra) was delivered since 2018 and the Applicant never took any action. In the upshot, the Respondent argued the Court to dismiss the application for the Applicant's failure to account for the delay.

Having considered the parties rival submissions, Court records as well as relevant laws, I find the Court is called upon to determine only one issue; *whether the Applicants adduced sufficient reason for the grant of extension sought.*

As pointed out herein above, the Applicants are applying for extension of time to file an application for extension of decree. The intended application for extension of decree is filed within 60 days after the decision. This is in accordance with *Rule 45 (1) of the Labour Court Rules GN. No. 106 of 2007* (herein LCR) which provides as follows:

Where any interested party other than a decree or award holder, is of the opinion that it is desirable to extend any decree passed by the Court or the Commission in respect of any dispute between any parties in a similar situation as his own, he may within sixty days after the decision submit a formal application to the Court which passed or executed the decree for such extension.

As rightly submitted by both parties, extension of time is purely within the discretion of the Court. It is granted upon good cause being shown. This is the legal position under *Rule 56(1) of the LCR*. For easy of reference, *Rule 56(1) of the LCR (supra)* is hereunder reproduced:

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.

What amounts to sufficient cause has been defined in numerous decisions including the case of **Arisony Gilman v. A to Textile Mills Ltd**, High Court Labour Division Arusha Sub Registry, Revision No. 06/2013 (unreported) to the following effect:

What amounts to sufficient cause has been defined from decided cases, a number of factors has to be taken into account including whether or not the application has been brought promptly, the absence of any valid explanation for the delay, lack of diligence on part of the Applicant.

In the instant matter, the Applicant alleges that there is an issue of illegality in the challenged decision. Admittedly, the point of illegality in the challenged decision has been considered as a good ground for extension of time. The ground has been explained in range of decisions including the case of **VIP Engineering** (supra) where it was held that:

It is therefore, settled law that a claim of illegality of the challenged decision constitutes sufficient reason for extension of time under Rule 8 regardless of whether or not a reasonable explanation has been given by the Applicant under the rule to account for the delay.

Again, in the case of **Lyamuya Construction Limited** (supra) the Court added that:

Since every party intending to appeal seeks to challenge a decision either on point of law or fact, it cannot in my view, be said that in VALAMBHIA's case, the Court meant to draw a general rule that every Applicant who demonstrates that his intended appeal raises points of law should as of right be granted extension of time if he applies for one. The Court there emphasized that such point of law must be that of sufficient importance and, I would add that it must be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by long drawn argument or process.

Guided by the above position of the law, I have examined the impugned decision. The alleged illegality is not apparent on the face of record as claimed. The Applicants' intents to plead the Court to extend decree passed to the case of **Asanterabi Mkonyi** (supra) to the Respondent because the circumstances of the referred case and this case are similar. The referred case was decided on the ground that

principles of unfair termination do not apply to specific task contracts. However, the Court of Appeal's position in the referred decision has been expanded in numerous decisions including the case of **St. Joseph Kolping Secondary School vs Alvera Kashushura** (Civil Appeal 377 of 2021) [2022] TZCA 445 (18 July 2022) where it was held that:

We also do not agree with him that, under our laws a fixed term contract of service can be prematurely terminated without assigning reasons. This is because the conditions under *section 37 of the ELRA* are mandatory and therefore implicit in all employment contracts. It is only inapplicable to those contracts whose terms are shorter than 6 months. (*See Section 35 of the ELRA*).

Therefore, without prejudice to the intended application, it is my finding that the alleged illegality is not apparent on the face of record as required by the law. Furthermore, the decision of **Asanterabi Mkonyi** (*supra*) was delivered on 07/03/2022, whereas the Applicants filed the present application on January, 2023. Almost one year after the delivery of the relied decision and no any reason has been adduced for the delay apart from the alleged illegality which is not apparent on the face of record.

As quoted under the provision of *Rule 45(1) of LCR (supra)*, an application for extension of decree has to be filed within 60 days from the date of the decision. As analysed above, in the instant matter, the Applicants delayed for almost a year and no reasons for the delay have been adduced.

Under such circumstance, it is my view that the allegation of illegality cannot stand. This was also the Court's decision in the case of **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No.10 of 2015, where it was held:

I am not persuaded that the alleged illegality is clearly apparent on the face of the impugned decision. Certainly, it will take a long-drawn process to decipher from the impugned decision the alleged misdirection or non directions on points of law.

In the result, I find the Applicants failed to adduce good cause for the delay pursuant to *Rule 56(1) of the LCR (supra)*. consequently, the application is hereby dismissed for being devoid of merits.

It is so ordered.



Y.J. MLYAMBINA

JUDGE

12/10/2023

Ruling delivered and dated 12th October, 2023 in the presence of learned State Attorney Mkumbo Elias for the Applicants and the Respondent in person.



Y.J. MLYAMBINA

JUDGE

12/10/2023