IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 773/17 OF 2022

ALLY FORODHA And 1673 OTHERS.....APPLICANT

VERSUS

THE PERMANENT SECRETARY MINISTRY OF FINANCE..... 1ST RESPONDENT

THE ATTORNEY GENERAL ..... 2ND RESPONDENT

(Application for Extension of time to file Notice of Appeal and apply for leave to appeal against the decision of the High Court Labour Division), at Dar es Salaam)

(Wambura, J.)

dated the 27th day of February, 2019
in
Revision No. 507 of 2017

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RULING

12th March & 2nd April, 2024

RUMANYIKA, JA.:

On 27th February, 2019, the High Court of Tanzania (Labour Division) at Dar es Salaam made a decision in Labor Revision Application No. 507 of 2017. That decision aggrieved Ally Forodha And 1673 Others ("the applicants"). However, they could not take some essential steps towards appealing within the time line. Thus, they have preferred the present two-fold application, for extension of time to file a notice of appeal and to apply

for leave to appeal. Initially, the applicants had filed a similar application in the High court vide Misc. Application No. 421 of 2022 which was dismissed.

This is a second bite application which is predicated on rule 45A (1) (a) and (b) of the Tanzania Court of Appeal Rules, 2009 ("the Rules"). It is supported by an affidavit sworn by Ally Forodha, on behalf of the applicants.

Briefly, the factual background to the matter goes as follows; the applicants are ex- employees of the then Friendship Textile Mill Limited. Upon being retrenched, they successfully claimed terminal benefits before the Commission for Mediation and Arbitration at Dar es Salaam ("the CMA") vide CMA/DSM/MIS/67/15/16/385. That decision aggrieved the respondents who preferred an application for revision before the High court. However, in the course of hearing of the application, the High Court questioned the *locus standi* of Ally Forodha and nine others who represented the applicants before the CMA. It found that the applied procedure was flawed and irregular for want of leave to file such a representative dispute, contrary to Rule 44(2) of the Labour Court Rules,

GN No. 106 of 2007. consequently, the High Court quashed the CMA's proceedings and set aside the resultant award. The matter was remitted to the CMA to be persued according to law.

However, the subsequently instituted complaint CMA/DSM/ILA/245/2019 was struck out on 24th June, 2022, again for not abiding some procedural rules. Further, it is alleged that it transpired to them later that in fact there was a document dully signed by the applicants to appoint Ally Forodha and nine others to represent them. The applicants view the High Court's holding otherwise to be an illegality. On that account therefore, they lodged the futile Misc. Land Application No. 421 of 2022 seeking an extension of time to file a Notice of Appeal and leave to appeal. They lost that application on 12th December, 2022, and here they are for a second bite, as pointed out earlier on.

At the hearing of the application on 12th March, 2024, Mr. Godwin Muganyizi learned counsel appeared for the applicant. He began by adopting the notice of motion and the supporting affidavit. Then he contended that, by itself the document signed by the applicants ("Annexure AF-5") to the affidavit constituted leave to file a representative

labour dispute. He asserted that there was no need for them to give a public notice. Mr. Muganyizi further stated that, for the High Court to hold otherwise, it is an illegality which alone constitutes a sufficient cause for the granting of an extension of time. He cited our unreported decision in **Security Group Tanzania Ltd v. Samson Yacob And 10 Others**, Civil Appeal No. 76 of 2016 to reinforce his proposition.

Probed by the Court on the requirement to account for each day of the delay, Mr. Muganyizi asserted that the applicants were refused an extension of time on 12th December, 2022 but they lodged the present application about fifteen days later, on 27th December, 2022. However, he urged me to consider that lapse of time negligible.

The respondents had the service of Mses. Kause Kilonzo Izina and Neema Sarakikya learned State Attorneys. Ms. Izina adopted the contents of an affidavit in reply sworn by Jesca Shengena which was filed on 6th March, 2024. Then she contended that, the material presented by the applicants in the notice of motion and affidavit combined is not sufficient for the Court to exercise its discretionary powers to grant extension of time. The reasons, she argued are; **One**, that the applicants had not

accounted for each day of the delay of about two years and nine months reckoned from 27th February, 2019 when the impugned decision was delivered up to 27th December, 2022 when they lodged the futile application. And **two,** that the alleged illegality is not apparent on the face of the record as the Court proposed in **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported). For, the alleged illegality to be established, she argued, it needed long drawn arguments.

Further, Ms. Izina contended that the High Court Judge had analyzed the document signed by the applicants as shown at pages 7-9 of the judgment. However, she asserted, that document is substitute of leave to file a representative labour dispute. If were not satisfied by the decision, Ms. Izina further argued, the applicants should have appealed against it. Additionally, she stated that the applicants had filed the said futile application about three years and ten months later, on 27th October, 2022 for a decision of 27th February, 2019. Also, Ms. Izina, argued that, such unexplained lapse of time shows that the applicants were not diligent, and therefore, the present application is unmerited. To cement her point, the

learned State Attorney cited the Court's decision in **Ludge Bernard Nyoni v. National Housing Corporation**, Civil Application No. 372/01 of 2018 (unreported). She therefore urged me to distinguish this application with the **Security Group** case (supra). Since, the latter case did not remove the requirement of leave to file a representative labour dispute.

Rejoining, Mr. Mganyizi reiterated his earlier submission. Further, he contended that should the Court find no illegality in the impugned decision, then the application is bound to crumble, as the applicants did not account for each day of the delay.

I have heard the parties' submissions and arguments through their learned counsel sufficiently. The central issue is now whether the High Court's decision is tainted with illegality.

From the very outset, the second limb of application which is for leave to appeal against the impugned decision does not need to detain me. For, I am cognizant to the Legal Sector Laws (Miscellaneous Amendments) Act, No.11 of 2023 which removed such a requirement. On that aspect therefore, the application is respectfully uncalled for. The

remaining limb of application thus, is for extension of time to file a notice of appeal.

The bottom line for the granting of extension of time has all along been showing of sufficient cause. It is worth noting however, that there is no fast and harden rule for determining what amounts to sufficient or good cause. It is determined on the basis of the material presented to the court to exercise its discretion, depending on the circumstances of each case. See-**Regional Manager, Tanroads Kgera v. Ruaha Concrete Company**, Civil Application No. 96 of 2007 (unreported). Moreover, there are some other factors which have to be considered by the Court as it has been reiterated in a plethora of our decisions, for instance in **Tanga Cement Company Ltd v. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001 and **Eliya Anderson v. R**, Criminal Application No. 2 of 2013 (both unreported). These factors are: the length of the delay, reasons for the delay, the degree of prejudice which the respondent may suffer if time is extended and whether the applicant has been diligent. The follow up question thus, is whether the applicants have shown sufficient cause for the granting of extension of time.

In the present application, the alleged illegality of the impugned decision is averred at paragraphs 5, 12, and 13 of the supporting affidavit. That the High Court Judge had failed to appreciate that what was before the CMA was a representative labour dispute, through Ally Forodha and nine others, on account of the document signed by the applicants, Annexure AF-5.

I am aware of the legal principle that, once a claim of illegality of an impugned decision is apparently established, that one alone constitutes sufficient cause for granting an extension of time. See- **The Principal Secretary, Ministry of Defence and National Services v. Devram P. Valambhia** [1992] T.L.R 387 and **Kibo Hotel Kilimanjaro Limited v. The Treasury Registrar & Another,** Civil Application No. 502/17 of 2020 (unreported).

Regarding the application at hand, while remitting the record to the CMA, the learned High Court Judge made it clearly. It observed that Ally Forodha and nine others should have sought and obtained a requisite leave of the CMA to represent the applicants, as stipulated under Rule 44(2) of the Labour Court Rules. For more clarity, reads thus:

> " *(2) Where there are numerous persons having the same interest in a suit,* ***one or more of such persons may, with the permission of the Court appear and be heard or defend in such dispute,*** *on behalf of or for the benefit of all persons so interested..."*

Consistently on the issue, at pages 7-9 of her judgment, the learned judge observed that:

> *"...the issue for determination..."at the CMA and before this court... Apart from CMA, the issue of representation was repeated [before this Court]... the respondent attached a list of the employees indicating that they have appointed ten employees to represent the remaining 1,664 employees before this court...*
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> ***...Thls was a gross irreguiarity. The respondents ought to have [sought and obtained leave] of this court for one Ally Forodha and the other nine employees to represent the rest of the employees as the law requires under Rule 44(2) of the Labour Court Rules GN No. 106 of 2007..."***

I note that, for the purposes of this case, the words permission of the court is synonemous to leave of the court. It is common knowledge that courts do not grant reliefs unsolicited. Therefore, the applicants could not file the alleged representative labour dispute in the CMA as of right. The alleged applicants' consent was not a substitute of leave which is stipulated under rule 44(2) of the Labour Court Rules.

It follows therefore, that the effect of the said rule concerning leave is double-coincident, as follows: **One**, The court is assured of the party's desire and capacity to sue or being sued as the case may be and **two,** chances of execution of the resultant decree being impossible are minimized. For, no court of law is expected to risk issuing of unpopular and or unpredictable decrees. For instance, in a similar scenario in **Hamis Kaka and 78 Others v. Tanzania Railways Corporation and Kunduchi Leisure and Farming Co. Ltd.**, Civil Appeal No. 68 of 2008 the Court stated as follows:

> *"...a party whom leave is not sought and obtained may refuse to be bound by a decree passed by the Court against him..."*

Put in other words, an improperly instituted representative suit may have some far reaching effects. For instance, a case instituted in the back of a co-complaint as is the case here, is not a mere procedural technicality which the Arbitrator may simply dispense with in terms of rule 19(1) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, 2007, GN. No. 67 of 2007.

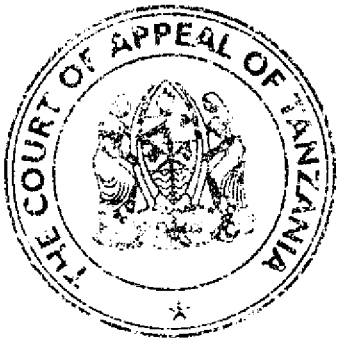
I agree with Ms. Izina's contention that, the High Court cannot be faulted for holding that the institution of the purported representative dispute had violated rule 44(2) of the Labour Court Rules. Therefore, the alleged illegality does not exist. If anything, the finding of the High Court Judge could only be a ground of appeal, however it aggrieved the applicants. It is common knowledge that the issue of illegality of an impugned decision, which is not the case here, may arise, for instance, where the court has usurped jurisdiction, it entertains a time barred matter, and or the proceedings before it have contravened law or policy of the country and so forth. In the circumstances therefore, I am not satisfied that the applicant has shown sufficient cause for the granting of extension of time.

In conclusion, I find the application unmerited which I dismiss. I make no order for costs because the application arises from a labour dispute where ordinarily costs are not awarded.

DATED at **DAR ES SALAAM** this 28th day of March, 2024.

S. M. RUMANYIKA
JUSTICE OF APPEAL

The Ruling delivered this 2nd day of April, 2024 in the presence of Mr. Florian Makelo, the 48th Applicant and Ms. Kause Kilonzo, learned State Attorney for the 1st and 2nd Respondents, is hereby certified as a true copy of the original.



F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL