

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(LABOUR DIVISION)
AT ARUSHA**

MISC. LABOUR APPLICATION NO. 45 OF 2019

(Arising from Labour Commissioner Order dated 30th May, 2019, Originating from Compliance Order issued by Arusha Labour Officer issued on 23rd November, 2018)

MILAN CABLE TELEVISION LIMITED APPLICANT

Versus

LABOUR OFFICER ARUSHA 1ST RESPONDENT

LABOUR COMMISSIONER 2ND RESPONDENT

RULING

26th October & 7th December, 2021

Masara, J.

Milan Cable Television Limited ("the Applicant") preferred this application under section 48(3) of the Labour Institutions Act, No. 7 of 2004, praying for an extension of time to file an appeal to this Court against the order of the Labour Commissioner dated 30/05/2018. In that order, the Labour Commissioner dismissed the Applicant's objection that was filed against a Compliance Order of the Labour Officer dated 23/11/2018. The application is supported by the affidavit of Mr. Asubuhi John Yoyo, learned advocate for the Applicant. The application is contested by the Respondents. They did so by filing a counter affidavit sworn by Mr. Emmanuel R. Mweta, labour officer. The respective deponents also represented their respective parties. Parties requested and

the Court acquiesced for hearing to proceed through filing of written submissions.

Before delving into what was argued by the parties in respect of this application, I find it dutiful to encapsulate facts of the dispute leading to this application, albeit briefly. The Applicant is a company dealing with provision of cable television network in Arusha. Its services are rendered by technicians and area coordinators. On 11/12/2018, the Applicant was served with a Compliance Order by the Labour Officer in charge of Arusha Region. Among other orders, the Applicant was required to provide its employees with overtime allowances. Following the order, the employees lodged their six months' overtime claims to the Applicant. On 17/05/2019, the Applicant filed an objection to the Labour Commissioner, challenging the Compliance Order, as per section 47 of the Labour Institutions Act. On 30/05/2019, the Labour Commissioner confirmed the Compliance Order, thereby dismissing the objection for being filed out of time. The Applicant was aggrieved by that decision but did not challenge it within the prescribed time. According to the affidavit in support, the delay was necessitated by a potential settlement agreed by the beneficiaries of the Compliance Order. This Application was filed after the 1st Respondent filed for execution of its Order.

Submitting in support of the application, Mr. Yoyo rightly conceded that in applications of this nature, it is entirely in the discretion of the Court to grant the extension of time sought. He maintained that where a point in issue is one alleging illegality, it amounts to sufficient cause for extending time. On whether the Applicant demonstrated sufficient cause for the delay, Mr. Yoyo referred to paragraphs 7, 8, 9 and 10 of the affidavit supporting the Application. He submitted that the Applicant initiated the appeal process upon filing a notice, but it failed to file the appeal within time as it engaged in negotiations with the employees in a bid to settle their claims, and that they had reached in an amicable settlement. However, this application was filed after the Labour Officer filed execution application in the Labour Court. He contended that the delay was prompted by a settlement process. To support his contention that the above reason amounts to sufficient cause for the Court to extend time, he made reference to a myriad of decisions including: **Regional Manager Tanroads Kagera vs. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007 (unreported), **Mbogo vs. Shah** [1968] E.A 93, **Thomas Daniel vs. Simba Safaris**, Misc. Labour Application No. 25 of 2013 and **Ephraim Joram vs. Director of Tanga cement Company Ltd**, Labour Revision Application No. 147 of 2012.

Further, Mr. Yoyo submitted that there are illegalities in the impugned decision that needs to be determined by this Court. The alleged illegality, he referred to paragraph 6 of his affidavit to the effect that **"...in the said objection the applicant raised serious matters of law and illegalities seeking for Labour Commissioners (sic) intervention but to applicant (sic) dismay the commissioner never ever (sic) Responded to the issue..."**. He maintained that illegality in the impugned decision constitutes sufficient cause for the Court to extend time. To support his argument, he cited the Court of Appeal decision in **Anche Mwedu Ltd and 2 Others vs. Treasury Registrar (Successor of Consolidated Holding Corporation)**, Civil Reference No. 3 of 2015 (unreported). On the strength of his submission, Mr. Yoyo urged the Court to allow the application.

On his part, Mr. Mweta contested the application submitting that a party who is aggrieved by the order of the Labour Commissioner may appeal to this Court within 30 days. Like the counsel for the Applicant, Mr. Mweta affirmed that it is within the Court's discretion to extend time after such applicant has adduced sufficient cause for the delay. On the ground that the delay was prompted by settlement negotiations between the Applicant and the employees, Mr. Mweta submitted that the annexures (Milan Tano)

annexed in the affidavit show that the settlement was in respect of three employees only, while the names of the employees contained in the Compliance Order mentions 15 names of those who were claiming for overtime arrears. Mr. Mweta fortified that the Applicant has failed to demonstrate sufficient cause for the delay and that the Applicant failed to demonstrate cause as to why execution should not be carried on. He maintained that the reasons stated by the Applicant's counsel cover what happened even before service of Order of the Labour Commissioner. In Mr. Mweta's view, the application acts as a delaying tactic to suppress the employees' rights. He concluded by praying that the application be dismissed with costs.

I have dispassionately considered the respective affidavits of both sides, the rival submissions of the counsel for the Applicant and that of the Labour Officer, the pertinent issue for determination is whether the Applicant has adduced sufficient cause for the extension of time sought.

In order for a party to succeed in an application of this nature, it has to be established sufficiently that the delay was with sufficient cause. As correctly submitted by Mr. Yoyo, Courts are vested with discretionary powers to grant extension of time but such powers must be exercised judicially. Sufficient cause for the delay is the underlying factor for Courts

to exercise such discretion and grant a party extension of time sought. In

Wankira Benteel vs. Kaiku Foya, Civil Reference No. 4 of 2000

(unreported), it was held:

*"We are respectfully in agreement with the learned single judge on this. We only wish to emphasize that although Rule 8 of the Court Rules, 1979 gives **a discretionary power to the Court to extend time such discretion can only be used where there is sufficient reason.** Generally, rules of procedure must be adhered to strictly unless justice clearly indicates that they should be relaxed."*
(Emphasis added)

I have gone through the affidavit in support of the application, specifically paragraphs 6, 8 and 9 of the same. Mr. Yoyo stated that the delay to file the appeal was due to settlement undertakings between the Applicant and the employees. In the application, he annexed agreements signed by the employees who had received part payment as full settlement with the Applicant (see annexure Milan Tano Collectively). That annexure shows that three employees: Damas Deus, Joseph Laizer and Elibariki Joseph Martine, entered into settlement arrangement with the Applicant and they agreed to be paid TZS 200,000/= each as their overtime dues. The record shows that the agreements were signed on 31/7/2019. Although the record does not disclose the number of employees who had overtime claims against the Applicant, Mr. Mweta stated that the settlement involved only three employees, while the employees who had the overtime claims against the Applicant were fifteen (15). He annexed the

names in his reply submission. Mr. Mweta did not dispute that such an endeavour was undertaken, his main concern was on the number of employees involved. It may be true that not all employees signed the settlement agreement; nonetheless, the existence of such discussions is beyond doubts.

The next question is whether the settlements amount to sufficient cause for the delay in filing the appeal. In my considered view, it does not. In the first place, the Applicant was mandated to comply with the Compliance Order including, but not limited to, payment of the employees' overtime dues. The decision of the Labour Commissioner was issued on 30/5/2019. On 17/6/2019, the Applicant manifested its intention to appeal against that decision. According to the affidavit in support of the application, the employees intimated to the Applicant that their overtime claims were exaggerated and were willing to settle. That they were in settlement arrangements until 31/7/2019. There is nothing on record to support the assertion that the Applicant was somehow curtailed from pursuing the appeal. As stated under paragraph 10 of the affidavit, the Applicant saw a need to pursue the appeal after the Labour Officer lodged execution of the Order at the Labour Court on 13/08/2019 (see annexure Milan Sita), prompting this application. In my considered opinion, and supported by

the grievances that the Applicant had shown against the Compliance Order, the mere fact that the employees had agreed to a lesser pay should not have prevented the Applicants from opposing the decision of the Labour Commissioner. Accordingly, I do not find the settlement arrangement to be a good cause for the delay.

The Applicant also relied on illegality of the Commissioner's decision as a ground for extension of time. As referred hereinbefore, paragraph 6 of the affidavit supporting the Application, Mr. Yoyo urged the Court to consider illegalities to be a good cause for the extension of time. In his written submissions, Mr. Yoyo maintained that there are illegalities and legal issues in the decision of the Labour Commissioner that needs to be addressed by this Court. Although the learned advocate for the Applicant did not disclose the alleged illegalities, my reading of the objection filed to the Labour Commissioner and the response thereof, warrants consideration of the Court. I hold this view because in the objection lodged against the Compliance Order, the counsel for the Applicant raised a number of legal issues none of which were addressed in the decision of the Labour Commissioner. Even if the objection had been filed out of time, it was incumbent for the Commissioner to respond to the legal issues raised, irrespective of the outcome of his decision.

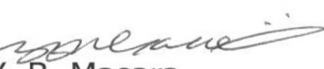
It has been held time and again that existence of an illegality in the impugned decision amounts to sufficient cause for the Court to exercise its discretion to extend time. In this respect I am guided by the Court of Appeal decision in **The Principal Secretary, Ministry of Defence & National Service vs. Devram P. Valambhia** [1992] TLR 185, where it was held *inter alia*:

"We think that where, as here the point of law at issue is the illegality or otherwise of the decision being challenged, that is of sufficient reason within the meaning of rule 8 of the rules for extending time."

In the upshot, it is my considered view that, based on the illegality aspect, the Applicant has managed to adduce sufficient cause for the delay to warrant grant of extension of time sought. The application is granted on account of illegality of the decision sought to be challenged. The Applicant to file its intended appeal in this Court within 14 days of this Order. I make no order as to costs.

Order accordingly.




Y. B. Masara
JUDGE

7th December, 2021