

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(LABOUR DIVISION)

AT MBEYA

MISC. LABOUR APPLICATION NO. 10 OF 2023

(Arising from the Labour Dispute No. CMA/MBY/KYL/21/2020/AR.14)

TANZANIA PORTS AUTHORITY.....APPLICANT

VERSUS

GEORGE A. LUTEGO.....RESPONDENT

R U L I N G

Date of last order: 12/12/2023

Date of Ruling: 11/03/2024

NDUNGURU, J:

The applicant, Tanzania Ports Authority has lodged this application for order of an extension of time to lodge an application for labour revision out of time against the award of the Commission for Mediation and Arbitration at Mbeya (herein referred to as "CMA"), in Labour Dispute No. CMA/MBY/KYL/21/2020/AR.14, delivered on 04th day of October 2021.

The application is brought by way of Chamber Summons and Notice of Application under Rule 24 (1) and (2) (a), (b), (c), (d), (e), and (f), (3) (a), (b), (c), and (d), Rule 55 (1) and (2) and Rule 56 (1) and Rule 28 (1) (c), (d), and (e) of the Labour Court Rules, 2007 G.N. No. 106 of 2007. It is supported by the affidavit deposed by one, Ramadhani Ngogo, the applicant's Principal Officer. On the other hand, the respondent filed counter affidavit opposing the applicant's application which the same deposed by Dr. Vicent Mtavangu, the respondent's counsel.

Before proceeding any further, I find it pertinent at this interval to spell out albeit briefly the background to this application. The respondent, George A. Lutego successfully sued the applicant before CMA in Labour Dispute No. CMA/MBY/KYL/21/2020/AR.14, for unfair termination. The record also reveals that; the award of the CMA was delivered on 4th day of October 2021 and the same was collected by the applicant on 12th day of October 2021. Unfortunately, the applicant delayed to file an application for revision on time. Thereafter, on 2nd day of December 2021, she filed an application for extension of time vide Misc. Labour Application No. 20 of 2021, which was struck out for being incompetent on 23rd day of December

2022. Then, on 14th day of June 2023, the applicant filed the present application.

When the application was called on for hearing, the applicant was represented by Mr. Joseph Tibaijuka, State Attorney whereas the respondent enjoyed the services of Dr. Vicent Mtavangu, learned advocate. Upon the parties request, the Court allowed the application to be argued by way of written submissions and they complied with filing schedule.

In elaborating the application, Mr. Tibaijuka commenced his submissions by adopting the contents of supporting affidavit as part of his submissions and said that the reasons for delay are only two namely; first, is the illegalities and, second, is the technical delay.

On the ground of illegalities, Mr. Tibaijuka argued that, the impugned award is marred with illegalities which need to be addresses by this Court. These illegalities have been pointed out in paragraph 2.14 (i), (ii) and (iii) of the supporting affidavit, he submitted. The alleged illegality is of three folds; one, the CMA had no jurisdiction to entertain the dispute between the applicant and the respondent who was a public servant. Two, the CMA had no jurisdiction to entertain the dispute which was time barred no

condonation was granted to the respondent to prefer the dispute beyond time set by law and third, the evidence of all the witnesses were taken without administering oath contrary to the law. He added that, where there is an illegality in the decision sought to be challenged, that by itself constitute good cause for extending time. On this, he placed reliance on a number of authorities including the case of **Mohamed Salum Nahdi v Elizabeth Jareemiah**, Civil Reference No. 14 of 2017, CAT at DSM (unreported), which discussed the circumstances when the illegality amounts to good cause for extension of time.

He further averred that, there is an apparent illegality on the face of the CMA award dated 4th day of October 2021 and also it does not need long drawn argument in order to be discovered. To justify his proposition, he referred the Court on the decision of the Court of Appeal of Tanzania in the case of **Lyamuya Construction Company Limited v Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, (unreported).

As regards to the ground of technical delay, Mr. Tibaijuka clarified that, the first application for extension was struck out by this Court for

being incompetent as evidenced in paragraph 2.11, 2.12 and 2.13 of the supporting affidavit. To cement his argument, he cited the case **of Victor Rweyemamu Binamungu v Geoffrey Kabaka & another**, Civil Application No. 602/06 of 2017, CAT at Mwanza (unreported), which discussed the applicability of the rule of technical delay as a good cause for extension of time. Having so said, Mr. Tibaijuka implored the Court to allow the application and grant the orders sought.

The respondent resisted the application with some force. Speaking through Dr. Mtavangu and having adopted the counter affidavit as part of his submissions. He submitted that, the applicant failed to demonstrate the ground of illegality and has well failed to account from 12th day of October 2021 when the CMA award was served to her to 14th day of June 2023 when this application was lodged. He added that, the applicant's unexplained delay of more than eighteen (18) months is inordinate and decelerates the respondent's effort to realize the fruit of his award. He went on to submit that, the applicant was not prompt enough to apply for this second bite immediately after being supplied with the ruling which struck out the first attempt to apply for enlargement of time to lodge a

revision. To bolster his stand point, he referred the Court to the case of **Yazid Kassim Mbakileki v CRDB (1996) Ltd Bukoba Branch & another**, Civil Application No. 412/04 of 2018, CAT at Bukoba (unreported), to the effect that the promptness of the applicant in taking action is one of the consideration for granting extension of time.

He further argued that, failure to cite the specific provision of the law for an extension of time, as stated in paragraph 2.12 of the applicant's affidavit, is a clear indication of the lack of diligence, negligence and sloppiness on the part of the applicant's counsels in prosecuting the application for extension of time. Dr. Mtavangu cited a number of authorities to justify his submissions including the case of **Kambona Charles (as administrator of the estate of the late Charles Pangani) v Elizabeth Charles**, Civil Application No. 529/17 of 2019, CAT at DSM (unreported), it was held that it is settled that a mistake made by a party's advocate through negligence or lack of diligence cannot constitute a ground for condonation of delay.

He continued to submit that, the applicant did not demonstrate sufficiently the point of illegalities to warrant extension of time. He also

said that, the alleged points of illegalities are not apparent on face of the CMA award and the same need long drawn argument. He added that, the allegation of illegality raised do not fit to be an illegality. He further demonstrated that, the ground of illegality is not an automatic reason for the Court to grant an extension of time. He cited the case of **Mega Builders Limited v D. P. I Simba Limited**, Civil Application No. 319/16 of 2020, CAT at DSM (unreported), to support his contentions. He insistently prayed for dismissal of this ground.

In relation to the ground of technical delay, Dr. Mtavangu argued that, negligence or inaction of the applicant's counsel is neither a technical delay nor sufficient cause for seeking an extension of time. He also submitted that, even if it is assumed that the period between the time when the impugned award was delivered, that is 4th day of October 2021 and the time when the first application for extension of time was struck out, that is 23rd day of December 2022, is excluded as a technical delay, still the applicant failed to account for each day of the delay from 24th day of December 2022 to 14th day of June 2023, when the present application was filed. He sought reliance from the case of **The Registered Trustees**

of Redeemed Assemblies of God in Tanzania (TAG) v Obed Herizon Sichembe & another, Misc. Land Application No. 82 of 2020, HC at Mbeya, (unreported), which discussed the major conditions for the doctrine of technical delay to constitute as a good cause for extension of time. He further distinguished the case of **Victor Rweyemamu Binamungu** (supra), cited by the counsel for the applicant, on the ground that, in the instant case, the applicant was not prompt enough to apply for this second bite immediately after the first application for extension of time was struck out by this Court.

Finally, Dr. Mtavangu argued that, the applicant has failed to show good cause for the Court to exercise its discretion in favour of the applicant. Basing on these submissions, the learned counsel for the respondent urged me to dismiss this application.

In his rejoinder, Mr. Tibaijuka reiterated his submission in chief. He went on to submit that, the applicant in his affidavit in paragraph 2.14 pointed out the illegalities which offend the law in the decision sought to be challenged by way of revision. He also said that, the counsel for the respondent misinterpreted the decision of the Court of Appeal of Tanzania

in the case of Mega Builders Ltd (supra), in respect of the ground of illegality as a good cause for extension of time. He further submitted that, the period from 12th day of October 2021, to 14th day of June 2023, when the present application was filed, the applicant was not idle or acted negligence as clearly stated in the supporting affidavit.

Moreover, the counsel for the applicant argued that, the ground of illegality is a good cause for extension of time even if the applicant has failed to account for each day of the delay. To cement his submissions, he referred the Court to the case of **The Attorney General v. Emmanuel Marangakisi (As Attorney of Anastansious Anagnostou) & 3 others**, Civil Application No. 138 of 2018, CAT at DSM (unreported), to the effect that where illegality is an issue in relation to the decision being challenged, the Court has a duty to extend time so that the matter can be looked into. Finally, he reiterated his prayer that the application be allowed and the prayers sought be granted without costs.

Having considered the opposing submissions from both sides, the CMA record and pleadings filed in this Court, the pertinent issue is whether

or not the applicant has advanced good cause to convince the Court to extend time within which she can lodge labour revision to the Court.

Principally, an application for extension of time to do a particular act is entirely in the discretion of the Court to grant or refuse it. This discretion, however, has to be exercised judicially, the consideration being that there must be sufficient cause for doing so. See the position in the case of **Fares Munema v Asha Munema**, Civil Application No. 122 of 2005, CAT at DSM (unreported), where the Court stated that:

"The applicant has not advanced a reason or reasons to explain away the decision in filing the intended reference within time. It will therefore follow that no reason (s) let alone sufficient reason (s) has/have been shown to warrant the exercise of the Court's discretion any power under Rule 8."

What amounts to good cause has not been defined but there are certain factors which must be exhibited by the applicant for consideration by the Court. These include: an account for the delay; whether the application has been brought promptly; the exercise of diligence on the part of the applicant; and any other sufficient reasons according to the particular circumstances of the case such as the illegality of the impugned

decision. See the cases of **Lyamuya Construction Company Ltd** (supra), **Yusufu Same & another v Hadija Yusufu**, Civil Application No. 1 of 2002, CAT at DSM, **Hussein Salim Fungo v Jurad Kilango**, Civil Application No. 7/05 of 2021, CAT at Moshi and **Symbion Power Tanzania Limited v Oilcom Tanzania Limited & another**, Civil Application No. 497/01 of 2017, CAT at DSM (all unreported).

The application basically is premised on two reasons namely; illegalities and technical delay.

Starting with the first reason of illegality, at the outset, I wish to state that, as the general rule, the applicant is required to account for each day of the delay consistent with the decision of the Court of Appeal of Tanzania in **Hassan Bushiri v Latifa Lukio Mashago**, Civil Application No. 3 of 2007 (unreported), where the Court stated:

"Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

Nonetheless, the exception to the general rule is where an issue of illegality is raised as a reason for applying for extension of time, such reason amounts to good cause. See the case of **Principal Secretary,**

Ministry of Defence and National Service v Devram Valambhia

(1992) TLR 182.

Also, it must be noted 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. See **Sriyanjit Perera v. Research Triangle Institute of Tanzania**, Civil Application No. 409/17 of 2022, CAT at DSM and **Hamisi Mohamed (as administrator of the estate of the late Risasi Ngawe) v. Mtumwa Moshi (as administratrix of the estate of the late Moshi Abdallah)**, Civil Application No. 407/17 of 2019, CAT at DSM (both unreported).

Further note be taken that, not every kind of claim of illegality is the good cause for extension of time, there must be material illegality. See **Mwanaheri Mrisho v Saad Khamis & another**, Civil Application No. 576.01 of 2021, CAT at DSM (unreported). On that basis, where illegality is raised as one of the ground for extension of time, it must be satisfied that the claimed illegality really exists.

As far as the instant application is concerned, the applicant raised three point as the ground of the illegalities namely; first, the CMA had no

jurisdiction to entertain the dispute between the applicant and the respondent who was a public servant, second, the CMA had no jurisdiction to entertain the dispute which was time barred and no condonation was granted to the respondent to prefer the dispute beyond time set by law and third, the evidence of all witnesses were taken without administering oath contrary to the law.

On the first limb, the complaint is on the jurisdiction of the CMA when the dispute involves a public servant. Counsel for the applicant is of the view that the CMA is not seized with jurisdiction to entertain such matter when there was not exhaustion of remedies provided for under the Public Service Act, Cap. 298 R.E. 2019. Counsel for the respondent resisted the argument on the reason that the claim does not constitute illegality as it needs long argument thus, that it is not apparent on the face of the record.

I have scanned the record, it is on its face that the dispute involved a public entity, that is the Tanzania Ports Authority and her former employee, that is the respondent. There is also a basis to the requirement of **section 32A of Cap. 298** that a public servant is obliged to exhaust all remedies provided under the Act before referring the dispute to the CMA. The

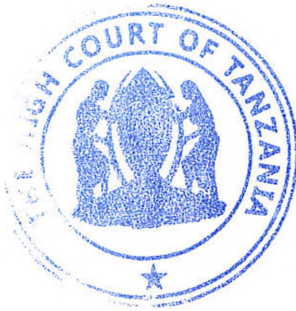
position was underlined by the Court of Appeal of Tanzania in the case of **Tanzania Posts Corporation vs Dominic A. Kalangi**, Civil Appeal No. 12 of 2022 (unreported).

Following the position of the law in relation to the applicant's complaint of illegality, I am inclined to find that, indeed, the same constitutes illegality, specifically on the jurisdiction of the CMA which is worthy for this court to grant the applied extension of time so that the applicant may pose it in the intended revision for consideration. The averment by the respondent's counsel that it needs long argument and proof or process is a misconception. This is because, in itself the issue raised by the applicant is legal. The process of resolving whether the respondent was a public servant bound to comply with the procedure governing public servants under Cap. 289 cannot be resolved at this very stage where the court is sought to grant extension of time but it may concisely be delt in the main course.

Having said so, it is my concerted view that the applicant's application has merits without need of testing the rest of the reasons advanced in support of his application.

In the event, I hereby grant the application. The applicant is availed with 30 days from the date of this order to an application for revision as prayed for. I make no order as to costs.

It is so ordered.




D. B. NDUNGURU

JUDGE

11/03/2024