IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

AT DAR ES SALAAM

MISC. LABOUR APPLICATION NO. 306 OF 2020

BETWEEN

PIA MAKASI ..... APPLICANT

VERSUS

SIMPLE BEREAU DE CHANGE ..... RESPONDENT

RULING

S.M. MAGHIMBI, J:

In this application, the Applicant is seeking for an extension of time within which to file an application for revision against the decision of Commission for Mediation and Arbitration for Ilala ("the CMA") in Labor Dispute No. CMA/DSM/ILA437/19 ("the Dispute"). The application was lodged under the provisions of Rules 24(1), (2) (a) (b) (c) (d) (e) and (f),(3) (a) (b) (c) and (d), and 28(1)(a)(b0(d)&(e) and Rules 55 and 56 (1)(2) and (3) of the Labour Court Rules [G.N. No. 106 of 2007] ("LCR") read together with Rule 56(1) and 55(1) of the Labour Court Rules, 2007 and Section 91(1)(a) &(2)(a)(b) and 94(1) of the Employment and Labour Relations Act, No. 6 of 2004. It was lodged by Chamber summons supported by an Affidavit sworn by James Mwenda, learned advocate representing the Applicant, dated 01st June, 2020. Several attempts to

notify the respondent proved futile hence this application proceeded ex-parte of the respondent.

The application was disposed by way of written submissions. In his submission to support the application, Mr. Mwenda initially prayed that the affidavit in support of the application be adopted in its entirety. On the essence of the dispute, he submitted that the dispute arose after the applicant herein was unlawfully terminated by the respondent without being afforded an opportunity to be heard. He was also not paid all of her statutory rights as provided for under the law after termination. He then unsuccessfully lodged the dispute at the CMA, an award which the revision is sought for which was delivered on 16th August 2019 before Hon Fungo.

Mr. Mwenda then submitted that to shows how serious she was, the applicant herein has made necessary steps as required by the law to pursue her constitutional Right to challenge the award. Referring to the case of **Tropical Air (TZ) Limited Vs Godson Eliona Moshi (Unreported) Civil Application No 9 of 2017**, he submitted that it is the requirement of the law that for the Court to extend time, the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action which he intends to take. He then argued that the applicant has well complied with this principle, further citing the decision of the Court of Appeal in the case of **Lyamuya Construction Company Ltd Vs Board of Registered trustee of Young Women's Christian Association of Tanzania, Civil Application No 2 of 2010** (unreported) where the same position was held.

Mr. Mwenda submitted further that the trial Court proceedings were tainted with illegality as the Honourable Arbitrator erred in Law for determining the substantive claim instead of an application for condonation. That as a result, he failed to consider sufficient grounds adduced by the applicant which rendered the applicant to lodge the complaint before the commission of mediation and arbitration timely. He then cited the Case of **Principal Secretary Ministry of Defence and National Services Vs Devram Valambhia (1992) TLR No 185**, where the court had this to say as far as issues of illegality is concerned:

> *When the point at issue is one alleging illegality of the decision being challenged the Court has a duty even if it means extending the time for the purpose, to ascertain the point and if alleged illegality be established to take appropriate measures to put the matter and the record right.*

He further cited the case of **Kalunga and Company Advocates Vs National Bank of Commerce (2006) TLR 235**, where the Court held:

> *The Court may upon good cause shown extend the time limited by these Rules or by decision of the High Court or Tribunal, for the doing of any act authorized or required by these Rules whether before or after the expiration of that time and whether or before or after the doing of the act and any reference in these Rules to any such time shall be construed as a reference to that time so extended.*

He concluded that the applicant has established good and reasonable cause sufficient for this Honourable Court to grant the prayer sought for

extension of time within which to lodge revision out of time. Further that the issue involved in the intended application suffice that in the interest of justice, the application be granted to enable the applicant to exercise his constitutional right. He hence prayed that the application be granted.

I have gone through the records of this application and have considered the submissions by the applicant. In an application of this nature, as per the cited cases of **Lyamuya Construction Company Ltd** (Supra), the applicant is required to account for each day of delay in order to convince the court that the delay was not caused by something that was in his control. He must show that he took all reasonable steps to ensure that the matter is lodged within time. In the case that he could not take steps, then it is his duty to explain the reason why the matter could not be filed within the prescribed time.

Now, looking at the applicant's submissions, I have not seen a single place were the applicant has explained her delay to file this application from the 16th August, 2019 when the impugned ruling was delivered by the CMA, to the 20th July, 2020 when this application was lodged. It is a period of almost a year, (11 months and 4 days to be more precise) which has not been explained for. The law requires the applicant to explain each day of delay but instead, Mr. Mwenda's submissions solely based on the fact that the arbitrator's decision was tainted with illegality as he determined the reasons for termination and not condonation.

On my part, I will not go on to call that a point of illegality because Mr. Mwenda is attacking the reasoning of the arbitrator instead of

explaining what happened in the period of almost a year that he did not file the intended revision. In the decision of the Court of Appeal in the case of **Selemani Kasembe Tambala vs The Commissioner General of Prison & Others (Civil Appl No. 383/01 of 2020)[2021] TZCA 70; (12 March 2021);** while addressing the issue of illegality, the Court held on page 8:

> *"I agree with Ms. Lupondo that the complained illegality is not apparent on the face of record. Besides, the applicant was accorded the right to be heard all the time and what made him not to fulfill his intention is acknowledged by himself under paragraph 12 of his affidavit...."*

The Court further added on page 9:

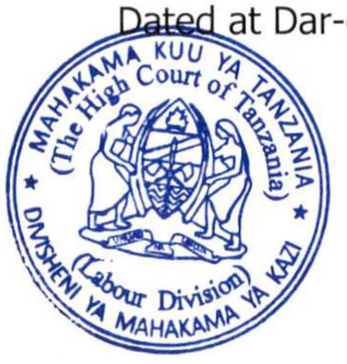
> *I may add here that decision of the court does not become illegal simply because a party is not satisfied with it. Apart from narrating a sequence of events in his affidavit, nothing apparent on record indicating that there was an illegality.*

From the above holding of the Court of Appeal, it is obvious that to justify an extension of time regardless of the actual delay, the point of illegality must be such that it is apparent on the face of the decision and not something involving the reasoning of the adjudicator. For instance, if the applicant shows that by the time the matter was lodged in court, it was time barred, or that the court determined the matter without having jurisdiction or where the party's constitutional right to be heard was apparently infringed. As held by the Court, just because the party is not

satisfied with the reasoning of the decision does not mean that there is illegality in the impugned decision.

That said, it is conclusive that the applicant has failed to adduce any reason for the delay, let alone sufficient reasons to warrant the discretion of this court to extend time. Consequently, this application is hereby dismissed.

Dated at Dar-es-salaam this 15th day of September, 2021.



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S.M. MAGHIMBI.

JUDGE.