

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

MISC. LABOUR APPLICATION NO. 160 OF 2020

BETWEEN

KUEHENE NAGEL LTD APPLICANT

VERSUS

JULIUS MOSHI MAKANDORESPONDENT

RULING

Date of Last Order: 12/05/2021

Date of Ruling: 16/07/2021

Aboud, J.

This is an application for extension of time to file an application for revision to challenge the decision of the Commission for Mediation and Arbitration (herein CMA) delivered on 28/01/2020 by Hon. Igogo. M, Arbitrator in Labour Dispute No. CMA/DSM/ILA/R.502/17/. The application is made under the provision of Rule 24 (1), 24 (2) (a) (b) (c) (d) (f), 55 (1) (2) and Rule 56 (1) (2) of the Labour Court Rules GN. 106 of 2007 (herein Labour Court Rules).

The matter proceeded orally. At the hearing, the applicant was represented by Mr. Ndanu Emmanuel, Learned Counsel whereas Mr.

Madaraka Ngwije, Trade Union representative from CHODAWU appeared for the respondent.

Arguing in support of the application Mr. Ndanu Emmanuel adopted the applicant's affidavit to form part of his submission. He stated that, the reasons for the delay to file the intended application are in paragraph 5 to 15 of the affidavit. He SUBMITTED that, according to Rule 56 (1) of Labour Court Rules it is directed that, the applicant is supposed to adduce sufficient reasons to let the court give the order sought. To support his submission, he cited the Court of appeal case of **VIP Engineering and Marketing Ltd & 3 others V. Citi Bank Tanzania Ltd**, Consolidated Civil Reference No. 678 of 2006.

It was further submitted that, the award contains illegalities and among them are the ones stated under paragraph 16 of the affidavit where the trial Arbitrator deliberated on an issue which was never framed and discussed by the parties. It was added that, the trial Arbitrator awarded the respondent leave allowance which he never prayed for. He therefore urged the court to grant the application.

Responding to the application the respondent's Counsel submitted that, the applicant has no good reason for this application to be granted. He argued that, the applicant was supposed to file the application within the prescribed time after he received the copy of the award and realized the alleged illegalities.

It was stated that, the applicant waited for more than 90 days to file this application while he would have done the same within 42 days from 28/01/2020 when the award was issued and received on the same date. It was submitted that the applicant is trying to delay the respondent to execute his award. He therefore prayed for the application to be dismissed.

In rejoinder the applicant's Counsel submitted that, he did not keep quiet after he received the award and observed the illegalities, he filed the notice of intention to file revision and notified the applicant but he did not respond on time. He urged the court to grant the application to let the illegalities in the award be rectified by this court.

After considering the parties submission and court records, I find the issue for determination is, whether the applicant adduced sufficient reasons for the grant of the court to allow this application.

The court's power to extend time on applications of this nature is derived from Rule 56(1) of the Labour Court Rules, where it is provided that such powers may only be exercised upon good cause shown. The relevant provision is to the effect that:-

'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 or good cause have been discussed in a range of cases including the Court of Appeal case of **John Mosses and Three Others Vs The Republic**, Criminal Appeal No. 145 of 2006 and the case of **Elias Msonde Vs. The Republic**, Criminal Appeal No. 93 of 2005.

In the case of **Blue Line Enterprises Ltd Vs. East African Development Bank**, Misc. Application No. 135 of 1995, the Court held that:-

'...it is trite law that extension of time must be for sufficient cause and that extension of time cannot be claimed as of right, that the power to grant this concession is discretionary, which discretion is to be exercised judicially, upon sufficient cause being shown which has to be objectively assessed by Court.'

In the instant matter, the award was delivered on 28/01/2020 and the present application was filed on 20/04/2020. As rightly submitted by the respondent's Counsel a person aggrieved by the arbitration award, he/she is supposed to file an application for revision within 42 days from when the award was delivered. This is in accordance with section 91 (1) (a) (b) of the Employment and Labour Relations Act [CAP 366 RE 2019] (herein the Act).

The applicant at hand delayed for almost 90 days to file an application for revision. The applicant's main reason for the delay is found at paragraph 15 of the affidavit where he deponed that:-

'That, I state that the delay in filing the intended revision was caused by difficulties associated with the change in the management of the applicant company. It was not intentional. Neither was it negligent or

inaction on the part of the applicant and or her counsel.'

It was alleged that, the applicant's Counsel filed the notice of intention to initiate revision at the CMA on 05/02/2020 however, the application for revision was delayed due to change of management in the company as stated above. The copy of the notice is attached to this application which proves that on the alleged date the notice was filed by the applicant's Counsel.

The other reason stated by the applicant is on the existence of illegalities in the impugned award. The Learned Counsel cited the case of **VIP Engineering and Marketing Ltd** (supra) which 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 of the Court of Appeal Rule regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay.'

I fully agree with the applicant's Counsel and the case cited that an issue of illegality in the challenged decision constitutes sufficient

reason for the grant of extension of time, however that is not the general rule. The principle was expounded in the case of **Lyamuya Construction Company Ltd V. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civ. Appl. No. 2 of 2010 where it was held that:-

'Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in VALAMBIA'S case the court meant to draw a general rule that every applicant who demonstrate 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 also be apparent on the face of the record such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process.'

I have keenly gone through the records, the illegalities alleged by the applicant are not apparent on the face of record. On the basis of the above cited case, it is my view that the alleged illegalities require long drawn arguments for it to be discovered. Thus, it is my

observation the same does not constitute sufficient reason for the grant of the application at hand.

In the result, I find the applicant failed to advanced good cause to justify extension of time to file the intended application for revision as prayed. In the event, this application is dismissed. It is so ordered.



I.D. ABOUD.

JUDGE

16/07/2021