

**IN THE HIGH COURT OF TANZANIA**

**MWANZA DISTRICT REGISTRY**

**AT MWANZA**

**LABOUR APPLICATION NO. 38 OF 2021**

*(Originating from Labour Revision No. 99 of 2017 and arising from Award of the Commission for Mediation and Arbitration at Mwanza by Safina Msuwakolio S. Arbitrator)*

**TUJIJENGE TANZANIA LTD.....APPLICANT**

versus

**MWAMBA PAULO MADUHU.....RESPONDENT**

**RULING**

20<sup>th</sup> September & 18<sup>th</sup> October, 2021

**RUMANYIKA, J.:**

Following dismissal, by this court (Mashauri, J) of the application for nonappearance on 10/09/2020 the dual application for extension of time and restoration of the application for revision was brought under Rules 24 (1), (2)(a) – (f), 24 (3) (a)-(d) and 55(1) of the Labour Court Rules GN No. 106 of 2007 also S. 14 of the Law of Limitation Act Cap 89 RE 2019. It is supported by affidavit of Olympia Melkiory whose contents Ms. Olympia Melkiory learned counsel for Tujijenge Tanzania Ltd (the applicant) adopted during audio teleconference on 20/09/2021. Mwamba Paulo Maduhu (the

respondent) had service of Lucas Bundala learned counsel. I heard them through mobile numbers 0676 500 424 and 0753 010 133 respectively.

Ms. Olympia Melkiory learned counsel submitted that due to lack of updates by advocate the applicant was not aware of the dismissal order therefore on that one he was condemned unheard much as against him the impugned award of shs. 56,440,000/= was about to be executed that his delay was for good reasons and justified and the CMA had afforded them no opportunity to be heard which point of illegality sufficiently constituted a ground for extension of time (case of **Permanent Secretary Ministry of Defence and National Service v. Devram Valambhia** (1992) TLR 182(CA)). Unsuccessfully the applicant having had applied for setting aside the ex-parte order. That is all.

In reply Mr. Lucas Bundala learned counsel submitted that the applicant's advocate may have had misled them yes, but the court was not to blame much as following a preliminary point of objection raised by the applicant's advocate for no reasons at all the latter defaulted the scheduling order therefore he filed no reply written submissions much as there could be endless litigation. That from 10/09/2020 the applicant hadn't accounted for each day of the 307 good days delay. The respondent had a right to enjoy the award and fruits. A refusal

by court to set aside an ex-parte order it was worth the name not a point of illegality stressed the learned counsel.

The issue is whether the applicant had assigned sufficient grounds for extension of time leave alone reasons for restoration of the application dismissed on 10/9/2020 for want of prosecution. The answer is no for.... reasons. Not only, with respect to delay or inaction of the applicant's advocate and in that regard the application lacked equally crucial advocate's supplementary affidavit but also, if, from 10/09/2020 until 26/08/2021 (say 309 days later) when the applicant surfaced and lodged the instant application the latter had stayed home relaxed and perhaps busy simply leaving the matter to advocate, the possibilities of the applicant having had lost interest should not have been ruled out. It follows therefore the applicant has failed to account for each day of the delay.

With regard to the issue of point of illegality, the applicant may have had not been satisfied by the CMA's refusing the application to set aside the ex-parte decision yes, but as Mr. Lucas Bundala learned counsel argued, it wasn't worth the name a point of illegality but simply a point of dissatisfaction much as on that one both parties were sufficiently heard. With greatest respect

therefore, the case of **Principal Secretary Ministry of Defence & National Service** (supra) it was distinguishable.

Whether or not the impugned 4 years old multimillion shillings award was due for execution it was immaterial in my considered opinion. If anything, I would entertain no doubts that the instant application was triggered by Application No. 1921 now pending before the executing officer leave alone, if at all really the applicant was in economic crisis. I think if a combination of war against endless litigation and the decree holder's right to enjoying fruits of the court decrees brought the same results so much the better.

The application lacks merits. It is dismissed and so ordered.

**S.M. RUMANYIKA**  
**JUDGE**  
**08/10/2021**

The ruling delivered under my hand and seal of the court in chambers this 18/10/2021 in the absence of the parties.



**S.M. RUMANYIKA**  
**JUDGE**  
**18/10/2021**