

IN THE HIGH COURT OF TANZANIA
DODOMA DISTRICT REGISTRY
AT DODOMA
MISC. LABOUR APPLICATION NO. 09 OF 2019

*[Arising from an Award of the Commission for Mediation and Arbitration at Singida in
Labour Dispute No. CMA/SGD/26/2014]*

SINGIDA MUNICIPAL COUNCIL APPLICANT

VERSUS

ALEX MKENGA 1ST RESPONDENT

BAHATI MDOE 2ND RESPONDENT

RULING

20th July, 2020 & 25th February, 2021

M.M. SIYANI, J.

On 18th June 2019, Singida Municipal Council, filed the instant application for extension of time within which to lodge an application for revision of the Award of the Commission for Mediation and Arbitration Singida (CMA) in Labour Dispute No. CMA/SGD/26/2014 and dated 28th January, 2015. The application was preferred under section 91 (1) of the Employment and Labour Relation Act 2004 and Rule 56 (1) of the Labour Courts Rules GN No.

106 of 2007 and has been supported by an affidavit of one Burton Yesaya Mahenge.

By consent of the parties, hearing of the application was done through filling of written submissions. In support of the sought relief, it was argued by counsel Mahenge, that CMA Singida entertained a dispute which is a subject of this application, without having jurisdiction hence raising the question of illegality of its ultimate award. It was contended that the respondents who were employed by the applicant as assistant accountants, were terminated for misappropriating the Government funds, an action which was taken after the conduct of disciplinary proceedings. Mr. Mahenge argued further that following their dismissal the respondents exhausted their right of appeal up to the President of United Republic of Tanzania whose decision, is final. As such and while referring the case of **Gideon Mwendwa Vs DED Njombe District Council and Three Others**, Labour Dispute No.44 Of 2009, HC Labour Division at Dar es salaam (unreported), it was counsel Mahenge's view that the only remedy available to the respondent after exhausting their appeal right, was to knock the doors of this court through Judicial Review in

accordance with Regulation 60 (2) and (5) of Public Servant Regulation, 2003 GN No. 168 of 2003.

The respondents who were unrepresented, filed their joint reply submissions. Responding the above arguments, they submitted that the applicant has misdirected himself by preferring the instant application instead of applying to set aside the complained order and so restore the matter as required by section 87 (5) (a) and (b) of The Employment and Labour Relation Act No. 6 of 2004, Rule 14 (5) of the Labour Institutions (Mediation and Arbitration Guideline) GN 67 of 2017 and Rules 29 (1) (c) and 31 of the Labour Institutions (Mediation and Arbitration) Rules GN 64 of 2007.

That notwithstanding, the respondent argued that although powers of enlarging time for the purposes of initiating any court proceedings, is entirely exercised on the discretion of the court, but the same must be exercised judicially. To support their stance, the respondents cited the case of **Yusufu Same & Hawa Dada Vs Hadija Yusufu**, Civil Appeal No. 1 of 2002 and **Royal Insurance Ltd Vs Kiwengwa Strand Hotel Ltd**, Civil Application

No. 111 of 2009, (both unreported decisions of the Court of Appeal Tanzania). With regard to this application, it was submitted that the applicant has failed to account for each day of delay which is a legal requirement in applications for extension of time. Finally, on the power of the Commission for Mediation and Arbitration to entertain a labour dispute in the circumstance of this matter, it was submitted that CMA had the prerequisite powers to do so and the applicant was wrong to claim otherwise.

Having examined the rival submissions as above and as correctly argued by the parties here in, it is a settled law that an extension of time order will only be granted where there is proof that the delay has sufficient cause and not the applicant's negligence. Admittedly, there is no single accepted definition of what amounts to sufficient cause. Courts of law have however, developed a list of factors to be considered when facing with applications for extension of time. Though not conclusive, the list includes; the length of and the reason for the delay, illegality of the decision and the degree of prejudice to the respondent should the application be granted. A person seeking extension of time, must therefore demonstrate that he was prevented by causes beyond his control in taking the required legal steps within the prescribed time. See

Attorney General Vs Twiga Paper Products Limited, Civil Application No. 128 of 2008, Court of Appeal of Tanzania (unreported).

In this application, the applicant has raised a question of illegality of the CMA's proceedings and its ultimate decision on the ground that the dispute which was referred there, was finally disposed through legal venues and that CMA had no powers to further entertain the same. It is the law, that where there is such claim of an illegality courts of law should not wring their hands in desperation but must give themselves an opportunity to look into the alleged illegality by extending time within which appeals or application can be filed. (See **Losindilo Zuberi Vs Ally Hamis**, Civil Application No. 5 of 1999, **Principal Secretary, Ministry of Defence and National Service Vs Devran Valambhia** 1992 TLR 185 and **VIP Engineering and Marketing Limited and 2 Others Vs Citibank Tanzania Limited** Consolidated Civil References No. 6, 7 and 8 of 2006)

In my opinion, the fact that having exhausted all legal venues in challenging the impugned decision, the respondent resorted back to CMA, brings mixed feelings on the competency of those proceedings something which

necessitates granting of the sought order so that parties are accorded an opportunity to address the court on the alleged illegality. As such the claim of illegality of the CMA proceedings advanced by the applicant, suffices in the circumstance of this matter to move the court to exercise its discretion to extend time for filing revision.

That said, I allow the instant application and extend time within which to initiate revision proceedings against award of the Commission for Mediation and Arbitration Singida in Labour Dispute No. CMA/SGD/26/2014 and dated 28th January, 2015, to 30 days from the date of this order. Costs of this application shall follow the events of the intended revision proceedings. Order accordingly.

DATED at DODOMA this 25th Day of February, 2021



M.M. SIYANI
JUDGE