

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

**MISCELLANEOUS LABOUR APPLICATION NO. 276 OF 2023**

**BETWEEN**

**BIDCO OIL AND SOAP LTD. .... APPLICANT**

**VERSUS**

**EMMANUEL KIMARIO ..... RESPONDENT**

**RULING**

**Date of last Order:** 06/11/2023

**Date of Ruling:** 17/11/2023

**MLYAMBINA, J.**

The application before the Court is for extension of time to file Notice of intention to seek revision (*CMA F10*). It has been made under *Rules 24(1), (2)(a)(b)(c)(d)(e) and (f); 24(3)(a)(b)(c) and (d); 55(1), 56(1) (2) and (3) of the Labour Court Rules G.N. No. 106 of 2007* and it is supported with the affidavit of Flora Emmanuel Mbalale, Principal Officer of the Applicant.

The application proceeded orally. The parties enjoyed the service of learned Counsel Mr. Emmanuel Julius Mashamba for the Applicant and Mr. Philip Irungu for the Respondent.

Arguing in support of the application, Mr. Mashamba submitted that; the application emanates from the *Labour Dispute No. CMA/DSM/KIN/460/20/119* before the CMA Dar es Salam between the same parties herein. In the referred Labour Dispute, the Respondent

sued the Applicant for unfair termination of fixed term contract. The Award before the CMA was in favour of the Respondent herein. He was awarded TZS 55 Million as compensation for unfair termination.

Being the case, the Applicant filed a *Revision No. 293 of 2022* before this Court. Unfortunately, the application was struck out on 22/11/2022 for want of notice of intention to seek Revision (Notice Form No. 10). Immediately and diligently, the Applicant filed another *application No. 475 of 2022* for extension of time on 29/11/2022. The Court granted the application by ordering the same be filed within 14 days. He went on to state that; on 21/06/2023, immediately after the Ruling, the Applicant filed CMA form No. 10 before CMA and proceeded to file *Revision No. 145 of 2023 on 28/06/2023*. Unfortunately, it was struck out for want of CMA Form No. 10. It was found that the same was filed out of time. In that Ruling dated 18/9/2023, the Court instructed the Applicant to seek extension of time before this Court. Hence this *application No. 276 of 2023*.

Mr. Mashamba went on to submit that; the Award was issued on 29/07/2022. He argued that the grant of extension is the discretion of the Court but to be exercised judiciously. That, they have three reasons to pursue this Court to grant the sought extension of time: *First*, the

technical delay. *Second*, the Applicant acted promptly and diligently. *Third*, illegality of the Award of CMA.

To start with the first reason, on the technical delay, it was submitted that; the Applicant filed all the struck out applications within reasonable time. That, from the first *application No. 293/2023*, it was filed within time. Thus, it is clear that the Applicant did not act negligently. During all these times, almost 300 days, the Applicant was in the Court's corridor fighting for his rights. At all these times, the struck out was on technicalities point.

Mr. Mashamba argued that the law is not straight, and it is silent on the time limit to file the notice of intention to file revision. The regulation only requires filing the Notice before CMA prior revision. It does not provide for the time limit.

He added that; even there was no Court decision until on 18/09/2023 whereby this Court came up with the Ruling and directed for a specific period. The Court directed the Notice be filed within 30 days prior filing Revision. The relevant Ruling further directed that whenever there is a need for extension of time, the application be filed before the Hight Court. He seconded the Court's position on the ground that the law which established the requirement of Notice does not apply to CMA.

Therefore, it is not proper and the CMA lacks mandate to entertain the application with regards to the notice.

Another point discussed in the relevant ruling was which law should be applied to move the Court. The Ruling gave directives on the proper Rule to be applied when seeking for extension of time to file CMA form No 10.

On the basis of the above reasoning, Mr. Mashamba maintained that what transpired were technical grounds. He argued that technical ground is a genuine ground for extension of time as it was stated in the case of **Antony John Kazembe v. Intertek Testing Services (EA) (PTY) Ltd**, Misc. Appl. No. 71 of 2022, High Court of Tanzania Labour Division at Dar es Salaam (unreported), pp. 7-8. He also cited the case of **Johan Harald Christer Abrahamsson v. Exim Bank T Ltd. & 3 Others**, Court of Appeal of Tanzania at Dar es Salaam (unreported) p.8.

As regards to the second ground, it was submitted that; the Applicant acted promptly and diligently within seven days in bringing this application. The last Ruling was on 18/09/2023. The present application was registered on 29/09/2023 digitally. Whereas, the Applicant obtained the Court order on 22/09/2023 while on 05/10/2023, he presented this application manually. Thus, it is vividly and obvious that the Applicant

acted diligently and promptly in bringing back this application. In support of his submission, Mr. Mashamba cited the case of **John Harald Christer Abrahsson** (supra) p.8.

Turning to the ground of illegality, Mr. Mashamba was of the submission that; this application is for bringing revision of the CMA Award tainted with a lot of illegalities; to mention a few reasons, is on the compensation. He argued that; whenever there is a fixed term of contract, the compensation for unfair termination is only on the remaining monthly salary. This is the law. That, the Arbitrator referred the case of **Good Samaritan v. Joseph Robert Savari Munthu**, Labour Revision No. 165 of 2011, High Court Labour Division, Dar es Salaam (unreported) but his decision is against such decision as reflected at page 12 of the impugned Award.

Mr. Mashamba argued that; whenever a ground of illegality is raised, it constitutes a ground for extension. He put reliance of his submission to the case of the **Registered Trustees of Kanisa la Pentekoste v. Lamson Sikazwe & Four Others**, Civil Application No. 191/06 of 2019 Court of Appeal of Tanzania at Mbeya (unreported) p.14. Therefore, it was the Mr. Mashamba's humble prayer that this application be granted.

Mr. Irungu vigorously opposed this application. He was of the view that the Applicant has failed to provide reasons to make this Court exercise its discretion to warrant grant of extension of time to file CMA form No. 10. In response to the reason of technical delay, Mr. Irungu submitted that the Award of CMA was issued on 29/07/2022. The Applicant filed the application for Revision on 05/09/2022. He was within time to file Revision. Those were 37 days. The Applicant did not explain in his affidavit as to why they did not file the notice within those 37 days. He did not account for those 37 days. To support his supposition, Mr. Irungu cited the case **Lyamuya Construction Co. Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 Court of Appeal of Tanzania at Arusha (unreported) p.6.

According to Mr. Irungu, the law requires to account for all the days of delay. Failure to account for each day of delay cannot move the Court to grant extension. That, the Applicant is moving the Court to turn a blind eye of 37 days of delay. Annexure BIDCS at page 5 reveals that the Applicant was given time to rectify the error, to breath in, but he did not use such chance.

He further argued that; *Regulation 34 of the Employment and Labour Relations (General) Regulations, 2017 GN. No. 47 of 2017 (herein GN. No. 47 of 2007)* kept a requirement of filing notice prior Revision. He maintained that the requirement was set on 24/2/2017 when the GN. No. 47 of 2017 was published to the General Public. The law required to file notice prior 42 days. Now it is 30 days as per case laws. It is not stated why Mr. Mashamba did not file the notice. He added that the submission that there was no time limit is a mere excuse which the Court should not follow it.

Mr. Irungu pleaded the Court not to condone ignorance because the Applicant has been represented by Advocates who were negligent and acted in ignorance of the law. To buttress, he referred the Court to the case of **Wambele Mtumwa Shahame v. Mohamed Hamis**, Civil Reference No. 8 of 2016 Court of Appeal of Tanzania at Dar es Salaam (unreported) pp. 10-11. He stated that looking at page 11 of the decision in *Revision No. 145/2023* p. 11, it is more than what the Applicant alleges. He strongly submitted that the Applicant never served Notice as required.

It was Mr. Irungu's submission that the filing of improper application and refiling shows sloppiness. As per annexure BDC 5 p. 4,

In rejoinder Mr. Mashamba maintained that they have accounted for the 300 days of technical delay. It is a pure point of law. It is not ignorance.

I have dutifully considered the submissions of the parties, Court records as well as relevant laws. In the instant matter, the Court is called upon to determine only one issue; *whether the Applicant adduced sufficient reason for the grant of extension of time sought.*

The notice of intention to seek for revision of Award is filed pursuant to *Regulation 34(1) of GN. No. 47 of 2017 (supra)* which provides that:

The forms set out in in the Third Schedule to these Regulations shall be used in all matters to which they refer.

As clearly provided in the provision of *Regulation 34(1) (supra)*, the forms set in the relevant provision are mandatory and shall be used by the parties in all matters to which they refer. In this application, it is CMA F10. The relevance of the notice in question has been highlighted in various Court decisions including the case of **CRDB Bank Plc v. Sylvester Samson Mboje**, Miscellaneous Labour Application No. 505 of 2022, High Court Labour Division, Dar es Salaam where it was held that:



In my humble view, the alleged notice is an important document. It ought to be filed at the CMA by any party intending to file revision application before the Court.

As stated above, the Applicant delayed to file the notice in question. Hence, he filed the present application. The Applicant advanced three reasons for the delay to file the notice including technical delay, acting promptly and diligently and illegality of the impugned decision. I have thorough examined the records. The contested Award was issued on 29/07/2022. Thereafter, the Applicant filed *Revision No. 293 of 2022* which was within time limit provided by the law. However, such application was struck out because the Applicant did not comply with the requirement of filing the CMA F10. Afterward, the Applicant filed CMA F10 to the CMA and filed an application for extension of time to seek revision which was registered as *Miscellaneous No. 475 of 2022*. The extension sought was granted.

Then, the Applicant proceeded to file *Revision No. 145 of 2023*. In response to that application, the Respondent's counsel raised a preliminary objection that the CMA F10 was filed out of time without leave of the Court. The Court sustained the preliminary objection and struck out the revision application. Following that, the Applicant decided

to file the present application in compliance with the Court's decision in *Revision No. 145 of 2023* in which it was held that:

Given the fact that *Rule 11 (1), (2) and (3) and 29 of GN No. 64 of 2007* does not apply on *Rule 34 of GN No. 47 of 2017* which requires filing of CMA F.10, I advise the responsible person or body to make amendment of GN. No. 47 of 2017 in order to allow a party who delays to file CMA F.10 to file the same before the CMA.

Meanwhile before *GN No. 47* is amended to cater the procedure for extension of time to file CMA F.10, I lay a supposition that the Applicant should file the application for extension of time before the High Court Labour Division in terms of *Rule 56 (1) of the Labour Court Rules, GN. No. 106 of 2007*.

In the premises, I find the ground of technical delay stands in this application. Before the ruling delivered on 18/09/2023 in *Revision No. 145 of 2023*, the parties were at dilemma of the procedure to follow if ones fail to file the notice before filing Revision application. Under the circumstances, it will be unjust to deny the Applicant this application.

I am not in disregard of Mr. Irungu's submission that the Applicant failed to advance reasons why they failed to file the notice in question within 37 days before filing their first revision in this Court. It is my view that the Applicant has been punished for failure to comply with

*Regulation 34(1) (supra) in Revision No. 293 of 2022 (supra)* where their application was struck out for failure to file the notice in question thus, they cannot be punished twice. After the striking out, since there was no codified procedure to follow, the Applicant could not apply for extension of time to file CMA F10. In the premises, I find the ground of technical delay in this application is meritorious since the first application was filed timely. This is also the Court's position in the case of **Fortunatus Masha v. William Shija & Another** [1997] TLR 154 in which it was held that:

A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but has been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the Applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances, an extension of time ought to be granted.

In the application at hand and from the first application which was struck out, the Applicant acted promptly to file another application. Those efforts cannot be ignored by the Court. The Applicant is pursuing the Court to be afforded the right to be heard. Taking into account that

the impugned Award has not been challenged by any Court, the Respondent will not be prejudiced by the grant of this application.

As to the ground of illegality, I find no need to dwell much on the same at this stage because it will pre-empt the intended revision. The reason of technical delay and acting promptly suffice to grant the extension sought.

In the result, I find the Applicant has accounted for the delay. Consequently, the application is hereby granted. The Applicant is granted fourteen (14) days leave from the date of the order to file the intended notice of intention to seek revision (CMA F10) at the CMA. It is so ordered.



**Y.J. MLYAMBINA**

**JUDGE**

**17/11/2023**

Ruling delivered and dated 17<sup>th</sup> November 2023 in the presence of, learned Counsel Mr. Emmanuel Julius Mashamba for the Applicant and Mr. Philip Irungu for the Respondent.



**Y. J. MLYAMBINA**

**JUDGE**

**17/11/2023**