

TANZANIA / JUDGMENT

china henan international cooperation group co ltd vs isaya yacobo gwimbugwa 2021 tzhc 12577 29 november 2021

COURT
TZHCDECIDED
29 November 2021

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (DODOMA DISTRICT
REGISTRY) AT DODOMA MISC. LABOUR APPLICATION NO. 31 OF 2021 (Arising from the Award
of the Commission for Mediation and Arbitration for Dodoma delivered by Hon. Mataiis, R on
1/6/2021) CHINA HENAN INTERNATIONAL COOPERATION GROUP
CO.LTD.....APPLICANT VERSUS ISAYA YACOBO
GWIMBUGWA..... RESPONDENT

RULING

29/11/2021 & 29/11/2021 KAGOMBA, J. The Applicant, CHINA HENAN INTERNATIONAL COOPERATION GROUP CO.LTD, has filed this Application seeking an extension of time to file Labour Revision against the Award of the Commission for Mediation and Arbitration (CMA) for Dodoma, in Labour Dispute No. CMA/DOM/54/2021 between the Applicant and ISAYA YACOBO GWIMBUGWA, the Respondent herein. The Applicant seeks other orders or reliefs as this Court may deem appropriate to grant. The Application is made under Rule 24(1), 24(2)(a) (b) (c)(d) (e), (f); Rule 24(3)(a), (b), (c) (d); Rule 55(1) and Rule 56(1) (3) of the Labour i Court Rules 2007, GN No. 106 of 2007. The application is supported by an affidavit of Adrian F. Ndunguru, the Applicant's Advocate. In the supporting affidavit, it stated that the CMA Award which the applicant intends to seek its revision, if granted time extension to file Labour revision, was delivered in Respondent's favour on 1/6/2021, whereby the Respondent was awarded Tshs. 2,600,000/= as compensation for unfair termination. The applicant was aggrieved by the said decision and attempted to file his Labour Revision in time only to be impeded by "administrative delay in the electronic procedures of filing at Dodoma sub registry". It is averred in the affidavit that the documents were electronically filed and hard copies presented physically in the Court's Registry on 14/7/2021 but were not timely admitted pending approval of the electronic application by the Registrar. A copy of electronic proof of filing was annexed to the affidavit as Annexure 2. It was further averred in the supporting affidavit that upon consultation with the Deputy Registrar's office it was discovered that the documents which were filed online bearing the title "High Court of Tanzania Labour Division at Dodoma" could not be read in the system because of the words "Labour Division". That, the system could only allow 2 the Registrar to view such documents if they were

filed in the High Court at Dodoma window. Hence delay ensued because of such technicalities. Mr. Ndunguru, who appeared for the Applicant during hearing, further cited the right to be heard under Article 13(6)(a) of the Constitution of United Republic of Tanzania, 1977 and existence of illegalities in the CMA decision as reasons to be considered by this Court for granting the application. He explained that one of illegalities on face of record, is that the CMA granted the Respondent compensation for legitimate expectation of earning of 8 months salaries while the Respondent was only on a three months employment contract. He therefore cited the case *Arunaben Chaggan Mistry V. Naushad Mohamed Hussein & 2 Others*, Civil Application No. 6 of 2016 where the Court of Appeal of Tanzania quoting its decision in case *VIP Engineering and Marketing Limited V. Citibank Tanzania Ltd*, Consolidated Civil Reference No. 6, 7 and 8 of 2006 (unreported) stated; "We have already accepted it as established law in this country that where the point of law at issue is the illegality or otherwise of the decision being challenged, that by itself constitutes 'a sufficient reasons' within the 3 meaning of Rule 8 of the Rules [Court of Appeal Rules] for extending time." The learned advocate further referred to the case of *Hussein Khanbhai Vs. Kodi Ralph Siaraz* Civil Revision No. 25 of 2014, CAT, Arusha, to cement his argument on the need for the applicant to be given time to exercise his right to be heard as a basic right. The learned advocate wound up his oral submission in chief by underscoring that the delay to file Labour Revision in time was not due to Applicant's negligence. He therefore prayed the Court to grant the extension of time as pleaded. The Respondent, on his part, opposed the granting of time extension sought in the application. His reasons for rejecting the application, according to his counter affidavit, which he prayed to be adopted as part of his submission, include: one, there is no notice of representation signed by the applicant before the Court and two; that the applicant failed to show reason for failure to use the six weeks granted by the law to file revision. 4 It was the Respondent's further views that the Applicant was unfairly putting blames to the office of the Registrar as the delay was due to Applicant's own negligence. According to the Respondent, the award granted by CMA is proper according to the law, hence prayed the Court to dismiss the Application. In his short rejoinder, Mr. Ndunguru reiterated that the aim of the application was to seek the Applicant's right to be heard for justice to be done to both parties. Having considered the above rival submissions, there are two issues to be determined. Firstly; whether lack of notice of representation is a bar to consideration of the application by this court. Secondly, whether the applicant has adduced sufficient reasons for granting of this Application. On the first issue, it has been pleaded in the Respondent's counter affidavit that there is no notice of representation before this court signed by the Applicant. The learned advocate for the applicant did not address this issue in his rejoinder. It can therefore be said that a notice of 5 representation was not issued as required under Rule 43 (1) of the Labour Courts Rules, GN 106 of 2007 The cited Rule provides; "43(1) A representative who acts on behalf of any party in any proceedings shall, by a written notice, advise the Registrar and all other parties of the following particulars -

- a) The names of the representative

- b) The postal address and place of employment or business and any available fax number, e-mail and telephone number." By the wording of the Rule, the requirement to advise the Registrar and other parties of the name of the representative and his postal address by way of a written notice is mandatory. It was also held by this court In Kiliman Dotto Richard V. Geita Gold Mine Ltd, Labour Revision No. 99 of 2018 [2019] 1; (13 December 2019) at Mwanza that failure to do so renders the presence of the representative before the court improper. While I totally agree with the interpretation of the cited Rule by the court in the above referred case, I decline to rule that this court is barred to consider the application in hand for lack of the said notice. In holding this view, I have in mind two established principles of the law: Firstly; 6 each case has to be decided on its own facts and obtaining circumstances. Secondly; the overriding objective principle whereby courts are enjoined by the Constitution of this land in Article 107A(2)(e) to render substantive justice without being unduly tied up by legal technicalities. In my perusal of the court records, I came across a Notice of Representation signed by the Applicant's Advocate dated 23rd day of July,
2021. However, the Notice is stapled as an appendix to Annexure 1, which is the impugned CMA Award. The said Notice is neither stamped nor dated by the Registry Officer like other documents for what seems to be an obvious reason. The Notice was wrongly stapled beneath another document and therefore could not be seen during presentation of documents for filing. Under this circumstance, I consider the Notice duly issued as its non-filing appears to me to be accidental but most importantly, the Respondent has not been prejudiced anyhow by non- issuance of the said notice. On the second issue, as to whether the applicant has adduced sufficient reasons for granting of the application, I have considered the submission by Mr. Ndunguru on the reasons that Applicant after being aggrieved by the Award did attempt to file his Labour Revision in time 7 only to be impended by technology used in filing documents at the Registry of this court. I have considered the fact that this reason has been supported by annexure 2 to the affidavit which was not specifically controverted by the Respondent. I have also considered the reason that there is a concern for illegality of on the face of the record of the Award, with regard to the duration of the contract vis a vis the number of months the Award compensated the Respondent. For all these reasons, I think the Applicant has adduced sufficient cause to merit the granting of this application. The application is therefore granted. The Applicant has six (6) weeks to file an application for revision. Order accordingly. Dated at Dodoma this 29th day of November, 2021. 8

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