ALERTMEMORANDUM

Limitation of time in arbitration of labour matters and circumstances of sufficient causes: ameliorating the manner of serving arbitral awards

April 27, 2024

BY ALLY M. KILEO, ADVOCATE

If you have any question concerning this memorandum, please reach out to your regular firm contact or the following authors:

Ally M. Kileo
Managing Advocate

+255 769 500 100
+255 787 630 150
ally.kileo@mdmlaw.co.tz

MAIN OFFICE
Msasani Peninsula, Chole Rd,
Golden Heights, 2nd Floor,
Dar-es-Salaam, Tanzania.

T: +255 22 2602382
+255 22 2602250
E: info@mdmlaw.co.tz

Abstract

Disparities in employment relations between employers, employees, labour and trade unions, employee organizations and the state have existed over time and have continued to develop from what was previously industrial relations to Employment and Labour relations throughout the world and in Tanzania.

In 2004 Tanzania passed a new law, the Employment and Labour Relations Act Cap 366 [R.E. 2019] which was a reformative law from the previous Industrial Relations Act. This new Act made provisions for core labour rights by establishing basic employment standards, providing a framework for collective bargaining, prevention and settlement of disputes and including other matters.

On the other hand the Labour Institutions Act Cap 300 [R.E. 2019] established the frame work for dispute settlement and provided for powers, functions and duties of the Commission for Mediation and Arbitration (CMA) which it established.

Arbitration of labour disputes at the CMA became an important and viable stage of labour dispute resolution of any differences of opinion arising from employment legal relations be it dispute of interest or rights. On issuance of an award the same can be executed at a Labour Court as if it were a decree of a Court of Law. However, there is no rule in our principal labour legislation, rules, regulations and guidelines which prescribes the duty and the manner in which the arbitrator or CMA shall serve an award to the parties to the dispute. Consequently, determination of proper accrual of limitation of time when filling an application to set aside an award at the High Court becomes marred with technicalities as to when the time limitation commences and when it elapses. As the law stands silent similarly no proper precedent by courts has been developed to cure this defect. Such inadequacy implies there is a lacuna in the labour and employment laws within Tanzania. In this regard, the author suggests

1.0 Introduction

In today's world, courts are duty bound to produce quick and efficient judgments and decisions to ensure that justice is met to all parties. Pressure in relation to time affects all parties and is very expensive to both courts, lawyers and parties to the suit. Legal technicalities have been the order of the day in determining rights of parties in our court rooms. The most translucent technicality is based on time and the concept of limitation of time as when to file a dispute, appeal or any other matter in courts.

The primary goal of this paper is to explore the effects of time limitation to parties to a dispute at the Commission for Mediation and Arbitration who have not been served with an arbitral award timely and who is burdened with the duty to ensure that the parties have been informed that the arbitral award is ready for collection.

In this paper we analyze the whole concept of time limitation and its effects to the rights to a party to a suit in relation to failure of a party aggrieved with a CMA arbitral award to lodge his application for revision at the High Court in time. Also courts interpretation on who has the duty to serve arbitral award to parties and in what manner this should be done have been reviewed and analyzed. Notably the duty and the manner in which the arbitrator or the CMA ensures service of an award to the parties to the dispute has not been provided. This in effect has affected the determination of the accrual of limitation of time in relation to filing an application for setting aside an arbitral award. It is discussions in this paper that call upon resolution of the same as will be seen.

1.1 Time Limit for the Court in Revision or Setting Aside the Arbitration Award

Any party to an arbitration award who alleges a defect in arbitration proceedings under the auspices of the Commission, may apply to the Labour Court for a decision to set aside the arbitration award1. An aggrieved person is required to set aside the arbitral award within six weeks of the date that the award was served on the applicant unless the alleged defect involves improper procurement where the applicant will be at liberty to set it aside within six weeks of date of discovery of the defect. In computing the effluxion of time from date of issuance of an award Rule 27 (2) of the LIMAG requires an award to the dispute to be served on all Parties to a dispute in the manner specified in the rules of mediation and arbitration proceedings. But no rules have been put in the place for serving arbitral awards by the arbitrator. This has notably been impacting on what would be the proper time and date to cause time to have commenced to run in satisfaction of the limitation of time for submitting one's application for revision to set aside an arbitral award.

1.2 Limitation of Time to file Arbitral award and Grounds for Challenging an Award

Section 91 (2) of the ELRA provides for the grounds for challenging an award when it is read together with the provisions of Rules 18 sub Rules 6 of LIMAG. The application for challenging an arbitral award shall be made in terms of a revision to the High Court (Labour Division) with a view to setting aside the award.

Grounds upon which to challenge an award include failure to adhere to Rules by the arbitrator, which affect the validity of the award in that the proceedings were not properly recorded and conducted. The Rules set up for challenging an awards made by the CMA are similar to those provided for under International Commercial Arbitration Institutvional Rules such as the ICC (International Chamber of Commerce) Rules of Arbitration 2012, the UNCITRAL Arbitration Rules 2010, the London Arbitration Rules, the East African Court of Justice Arbitration Rules, 2012 and many others.

Section 91(1) and (2) of the ELRA provides a time limit of six week from the date that the award was served on the applicant or within six weeks when an applicant discovers an alleged defect that involves improper procurement.

This time limit has been a cause for endless litigation in terms of computing when the time limit commences and circumstances where an applicant can provide sufficient cause as to why he delayed in submitting his revision within prescribed time.

1.3 Time Limitation for Challenging Arbitral Award

An application for challenging an arbitral award as previously stated shall be done within 6 (six) weeks of the date that the award was served on the applicant unless the alleged defect involves improper procurement. And, if the alleged defect involves improper procurement, within 6 (six) weeks of the date that the applicant discovers such fact.

Thus Court may set aside an arbitration award made when it discovers that there was misconduct on the part of the arbitrator or the award was improperly procured. It may also set aside an arbitration award if the award is unlawful, illogical or irrational. In the determination of the complaint to challenge any defect or decision of the arbitration proceedings, the Court shall strictly adhere with the statutory period of time since the award was served to the parties.

2.0 Limitation of Time in Filing an Application for Setting Aside an Arbitral Award in the Labour Court

2.1 Labour Court

Labour Court Rules (hereinafter the LCR) provide the statutory limitation of time in instituting labour disputes at the High Court in challenging defects of arbitration proceeding, in filing response to the statement of complaint or cross complaint by respondent, or counter affidavit and notice of opposition by respondent; and any other leave to file a fresh proper application out of time for the interest of justice etc.

Labour Court Rules (hereinafter the LCR) provide the statutory limitation of time in instituting labour disputes at the High Court in challenging defects of arbitration proceeding, in filing response to the statement of complaint or cross complaint by respondent, or counter affidavit and notice of opposition by respondent; and any other leave to file a fresh proper application out of time for the interest of justice etc.

In terms of section 88(8) and (9) of ELRA, the arbitrator, within 30 days of conclusion of the arbitration proceedings must issue an award with brief reasons for the decision signed by the arbitrator and serve copies of the award on the other parties. Rule 27 (3) of the LIMAG further narrates what is required in the award to include details of the parties, issued framed, admitted background information of the parties, summary of the parties' evidence and arguments, reasons for the decision and the order or precise outcome of the award.

Practise however has shown that arbitrators usually do not issue their awards within the prescribed 30 days' time limit but rather at a later time and date to be informed to the Parties. In addition, the Act is silent on the consequences to the award if the arbitrator fails to issue the award within the 30 days.

However, in a South African case of A A Ball (Pty) Ltd v Kolosi & another (1998) 19 ILJ (LC), it was held that an arbitrator's failure, to issue an award within a reasonable time does not in itself nullify the proceedings or the issuing an award a few days late, was not seen as not a ground for setting aside the award or a cause for review. However, in another case, of Waverley Blankets v CCMA & Others (2000) 21 ILJ 2497 (LC) it was held that, a long delay, in issuing an award, may give rise to a finding that, the arbitrator could not have applied his mind properly to the case.

Generally and independently, an applicable expressed provision regarding computation of time has been construed as per section 60 (1) (a) of the Interpretation of Laws Act as the provision states that:

> *In computing time for the purposes of a written law where a period of time is expressed to be at, on, or within a specified day, that day shall be included in the period.*

Thus the provisions of section 91(1) (a) (b) of the ELRA; that a party who has discovered defects in any arbitration proceedings shall challenge such arbitral award within 6 (six) weeks since the award was served to him or within 6 (six) weeks of the date that the applicant discovered such fact, must be interpreted within the provisions of the above quoted section.

From the above point of view, it is now also clear that time runs from the day of service or date of discovery. Hence, Saturday and Sunday or public holiday shall be 'included days' in counting computation of days regarding time limitation. Moreover, the Law of Limitation Act has to be invoked to prescribe the right of action to the parties. Section 5 and section 6(c) of the Act provides that, the right of action to the parties shall be deemed to have accrued on the date on which the judgement was delivered or the cause of action arises.

2.2 An Arbitrator's Duty in Ensuring Parties are Served with the Award in Time

Every domestic tribunal, including an arbitrator or other person or body of persons invested with authority to hear and determinate a dispute by consent of the parties, court orders, or statute, is a "judicial tribunal" for present purposes, and its awards and decisions conclusive unless set aside. The current position of the labour law and practice mandates the CMA to appoint an arbitrator whose business is to arbitrate and render the award.

Rule 27(2) provides:

> *The award shall be served on all parties to the dispute in the manner specified in the rules of mediation and arbitration proceedings. [Emphasis mine].*

And, Rule 17(2) provides thus:

> *An arbitration award can be served and executed in the Labour Court as if it were a decree of a court of law.*

However, practice has it that the Arbitral award is issued without following any specific rule as to the duty and manner in which an arbitrator issues an Arbitral Award to the parties. This is in contrast to the Labour Institution [Mediation and Arbitration Guideline] Rules, which prescribes the duty and the manner in which the arbitrator or CMA shall serve an award to the parties. Consequently, Parties have had to ensure they follow up on the Arbitral Award at their own pace and time. This has been a cause for parties' failure to file their applications for revision within time as they are not aware as to when the Arbitral Award is issued. In such circumstances a party will be forced to lodge an application for extension of time believing the same can be granted by the court upon demonstration of existence of sufficient cause to allow extension of time which is related to having been unaware that the Award was issued by the Arbitrator in time.

This is an inadequacy which amounts to a lacuna in the labour and employment law within our jurisdiction. Such a lacunae is termed as an exceptional circumstance and could be resolved by adopting the Civil Procedure Code (CPC), or any other procedure deemed proper as per Rule 55(1) of the Labour Court Rules permits. Note that the CPC is only applicable in arbitration related matters when there is no specific remedy or provision.

Section 51 of Labour Institution Act excludes the use of the CPC and the Limitation Act when it comes to labour matters. This position has been reiterated in various case laws thus, do not apply and cannot be invoked in any labour matters as was stated in the High Court (Labour Division) in The Registered Trustees of ELCT Northern Western Diocese v Mutagahywa Kabisa Revision No. 1 of 2010 (Bukoba) and Alhamdu Ndimkanwa & Others v Director Vic Fish Revision No. 196 of 2009 (Mwanza) (both unreported).

Rule 55 (1) of the Labour Court Rules provides that, in case of lacuna, the Labour Court may adopt any procedure that it deems appropriate in the circumstances. Hence in determining matters of time limitation the Labour Court has extensive jurisdiction to interpret the statutes and each particular case depending on its circumstances.

In Tanzania Breweries Ltd. v. Edson Muganyizi Barongo & 7 Others, Misc. Labour Application No. 79 of 2014., the High Court (Labour Division) permitted the application of section 3 of the Law of Limitation Act to be used as a remedy to a time barred application which was earlier dismissed. The court stated that there is a lacuna on the remedy of the dismissed application in the Labour Court Rules. Since the Rules do not provide the remedy on matters filed out of time (time barred), then it is right for the court to revert the Law of Limitation Act to fill such lacuna.

Along with the enhanced standing of the provisions of the Labour Court Rules, there has been the practice adopted by the High Court to invoke inherent jurisdiction to give various orders in disputes relating to arbitration matter. This is due to the fact that, it is impossible for the legislator to contemplate all sorts of litigation and provide the procedure for them. In a situation where there is no procedure to cater for a certain situation, the court is obliged to use its common sense, justice, equity and good conscience and resolve the problem before it to further the interests of justice and prevent abuse of the process.

In Covell Matthews Partnership v. TRC Civil Case No. 106 of 1996., Katiti J (as he then was) and in Kobil Tanzania Ltd. v. Mariam Kisangi Misc. Commercial Application No. 12 of 2007., Massati J (as he then was), quickly invoked inherent jurisdiction and gave various orders in furtherance of the cause of arbitration related matters. Particularly, in Kisangi's case, Masati J, was of the opinion that:

> *From the above, it appears to me that although a petition is not a suit, it is nevertheless a civil proceeding, and in the absence of any provision for stay of such petition in the Arbitration Act, or which prohibits the application of the provisions of the Civil Procedure Code Act, the court is free to use the provisions of the Code in such exceptional circumstances. And it may do so under its inherent powers, if it is in the interests of justice or to prevent abuse of process.*

And, that is the philosophy behind the court's inherent powers under section 95 of the Civil Procedure Code Act. However, under the labour law regime, even case law has not been developed by judicial precedent to rectify or modify such defect, hence its entrenched in our jurisprudence. There is a long line of authorities to support this proposition.

In John Elias v. Chama Cha Mapinduzi (CCM) Revision No. 296 of 2014., Judge Mipawa struck out applicants' application for revision and extension of time from the Court as a result of failure to attach the CMA challenged award that was sought to be revised, and was still subsisting in the hands of the arbitrator. In the strict sense, the Court opined by saying that:

> *It is not the duty of this court to deep its fingers searching for the CMA award elsewhere lest the law and rules of the court could be turned as ass and scare crow of the law as one celebrated poet had put it.*

3.0 Practices in Other Jurisdictions with regards to Limitation of Time in Arbitration of Labour Matters

In JAMS Employment Arbitration Rules & Procedures effective July 1, 2014, Rule 24 under item (i) provides as follows:

> *It is not the duty of this court to deep its fingers searching for the CMA award elsewhere lest the law and rules of the court could be turned as ass and scare crow of the law as one celebrated poet had put it.*

Similarly, in the Law Writer Ohio Laws and Rules on Employment Dispute Resolution 4901, it is clearly stated thus:

> *The arbitrator shall have the authority allowed by the law. The arbitrator shall issue the arbitration award in writing and serve it upon the parties. The award shall be served on all parties to the dispute in the manner specified in the rules for mediation and arbitration proceedings.*

The two above cited instances can be cited as among some best practices which are not structured in our labour law, rules, regulations and guidelines. The missing aspects in our law are that:

- "The award shall be issued by serving copies to the parties by the arbitrator in the manner specified in the rules for mediation and arbitration proceedings"; and
- "Service to the parties may be made by registered mail, hand- to –hand, e-mail, fax or any other effective manner whose proof of execution is easy to establish".

Thus, the development and the uses of digital technology, for instance, the use of electronic communication such as computer, data messages, interactive social media or paperless method should not be discriminated in addressing such inadequacy to prescribe the duty and the manner in which the arbitrator or CMA shall serve award to the parties. As new opportunities arise, the law has to be evolved in order to resolve the existing challenges. The view should be aimed at satisfying the need of the fast-growing changing society, among others, to keep abreast with the economic developments taking place in our country.

4.0 Rectification by the CAT on Duty and Manner in Serving an Award to the Parties

In the recently pronouncement decision made in the Court of Appeal case of Serengeti Breweries Limited v. Joseph Boniface, Civil Appeal No. 150 of 2015., the Court determined, inter alia, the issue of time bar and statutory time limit in lodging a revision application in the High Court (Labour Division). The framed issue (among others) was whether the CMA is duty-bound to serve the awards to the parties after completion of arbitration proceedings. In this matter the CAT observed that; revision of the award in/by the High Court could not be pursued unless the applicant is served with the award which remains in the domain of the arbitrator. Such uncertain practice is termed by the Court as un-conducive for the timely adjudication of labour disputes at the High Court.

In the recently pronouncement decision made in the Court of Appeal case of Serengeti Breweries Limited v. Joseph Boniface, Civil Appeal No. 150 of 2015., the Court determined, inter alia, the issue of time bar and statutory time limit in lodging a revision application in the High Court (Labour Division). The framed issue (among others) was whether the CMA is duty-bound to serve the awards to the parties after completion of arbitration proceedings. In this matter the CAT observed that; revision of the award in/by the High Court could not be pursued unless the applicant is served with the award which remains in the domain of the arbitrator. Such uncertain practice is termed by the Court as un-conducive for the timely adjudication of labour disputes at the High Court.

However, the Justices of Appeal in this matter exercised their mind sufficiently in an attempt to explore and answer such inadequacy or lacuna. The Court bravely and innovatively directed clearly that respective labour legislation be rectified by way of amendment so as to require the arbitrator to notify parties on the date of delivery of the award and arbitrator be required to serve the award to the disputing parties so as to enable them to pursue their rights in case they are aggrieved or dissatisfied; this should be read in tandem with proof of service of award like any other document of the Court. The direction of the Court rhymes and stands on the inevitability of incorporating the two points suggested above as material for amendment of the Act and related subsidiary legislation.

It should be noted that, under Section 91(1)(a) of ELRA, a party aggrieved by an arbitrator's award may apply for its revision within six weeks of the date the award was served on the applicant.

In the case of Marcel Itima & Others v International School of Moshi, Revision No. 298 of 2009 (Unreported), two scenarios were discussed under which the court may consider a time-barred application:

First, if the employee/applicant had stated the date the award was served on him and the filing was found to be in time, counting from that date, but that he did not do so.

Secondly, where the applicant has filed an application for leave to file the application out of time under section 24 of the Labour Court Rules GN 106/2007. The Court then, using powers under Rule 56 of the Labour Court Rules, could extend the prescribed period, if the applicant adduces good cause for delay.

In this case, it was also pointed out that, the question of limitation of time is fundamentally affecting the court's jurisdiction, such that, it can be raised at any time in legal proceedings and can even be raised by the court on its own motion.

4.1 Proof of Service

Manner and Procedures for proof of service of the documents are stipulated under the provisions of Rule 9 of the Labour Court Rules. Rule 9(3) of the same Rules specially stipulates that, proof of service shall be proven in court by an affidavit of the process server or any other person who effected service; or a signed acknowledgement of receipt by the party on whom the document is served where the person on whom the document has been served is already on record as a party. It is complete when it is endorsed by putting a signature by a person who receives it. If it is stamped but not endorsed, in law no service is effected.

It may be proved in court by producing receipt by the post office for the posting registered mail and an affidavit that the letter posted contained the document concerned. Such evidence shall be taken as the proper position in serving and presenting documents to the parties in the dispute. This position was upheld by Judge Aboud in the matter of complaint between *Hellen Ndemasi Mbezi & the Chairman of the Board of Trustee of Tanzania Teacher's Union (TTU) v. President of Tanzania Teacher's Union & the Secretary General-Tanzania Teacher's Union Complaint No. 3 of 2013 (Unreported).*

5.0 Rectification by the CAT on Duty and Manner in Serving an Award to the Parties

5.1 Good Cause for delay must be shown

The High Court in granting leave of application for labour revision or setting aside an award to be filed in the court out of the statutory period of 6 (six) weeks, shall consider such application on merit. It has to determine whether the applicant has shown good cause or sufficient cause beyond all the reasons adduced for non-filing of an application within the required statutory period of time. This opportunity is given under Rule 56(1) and (3) which states thus:Rule 56.-

> *(1)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 (3)The Court may, on good cause shown, condone non-compliance with the period prescribed by the Court.*

However, allowing parties to file their application at their own whims, without having good cause would lead to endless and unnecessary litigations as was stated in Tatu Ramadhani v Najmdin Jaffar., Misc. Lab No. 23 of 2008 (Unreported).

In another case of Said Msham & Another Tananingra Contractor Ltd., Revision No. 244 of 2008 (Unreported) time limits for filing application for Revision for filing out of time was at issue. The Applicant argued that, they discovered that they were unlawfully paid after computation document was availed to them, however, they filed within 6 weeks. The advocate for the respondent argued that, the discovery should not be an open ended; and that there ought to be evidence that he discovered that fact on that date. He said that, time has to be computed from that date, when the decision was pronounced in the presence of the parties. He added that, the issue was when does time for computation of the six weeks start to run. According to Section 91(1)(b), it is when the fact is discovered. The Judge held that, since the computation was part of the award made by the arbitrator, he declined arguments made by Advocate for the applicant to having any base.

Moreover, the Limitation Act (though not applicable in labour matters) specifically under section 14(1), empowers the court to warrant the extension of time to file a revisionary application once good cause for delay has been shown. It states:

> *Notwithstanding the provision of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of the appeal or an application, other than an application for the execution of a decree, and an application for such extension may be either before or after expiry of the period of limitation prescribed for such appeal or application.*

Also, this is the case at the Court of Appeal level where the person aggrieved by the decision, order or judgment of the High Court may seek for relief by filing an appeal or review to be considered out of time after such leave has been granted by the court to consider such application on merit. Still, such determination shall be based on whether the applicant has shown good cause or sufficient cause beyond all the reasons adduced for non-filing of an application within the required statutory period of time.

5.2 The meaning of reasonable or sufficient cause

From the above points of law, it is clear that, granting of extension of time is subject to the court's discretion, and such discretion must be exercised judiciously. Therefore, good cause or sufficient cause beyond all the reasons adduced for non-filing of an application within the required statutory period of time has to be clearly addressed by the aggrieved party. However, what constitutes “reasonable” or “sufficient cause” under both stated Rules and section 14 (1), has not been statutorily defined, other than case law that provides guidance.

In the case of *Tanzania Fish Processors Ltd v. Christopher Luhangangula., Civil Application No. 161 (1994) (Unreported)* the Court was of the view that:

> *One should not be allowed to come to court whenever he wishes to do so*

In giving a wider interpretation of the term ‘sufficient cause’, the Justices of Appeal in *Felix Tumbo Kisima v. TTCL Limited & Another., [1997] TLR 57* had the following to say:

> *The term sufficient cause should not be interpreted narrowly but should be given a wide interpretation to encompass all reasons or causes which are outside the applicant's power to control or influence resulting in delay in taking any necessary step.*

Furthermore, in Elius Msonde v. Republic., Criminal Appeal No. 93 of 2005 Mandia J.A held thus:

> *We need not belabour, the fact that it is now settled law that in application for extension of time to do an act required by law, all that is expected of the applicant is to show that he was prevented by sufficient or reasonable or good cause and that the delay was not caused or contributed by dilatory conduct or lack of diligence on his part.*

In *Joel Silomba v. R., Criminal Application No. 5 of 2012 (Unreported)* the case provided, among others the meaning of good cause and three factors to be considered in an application for extension of time, specifically under Rule 10. These factors includes;- the length of the delay; the reason for the delay- whether the delay was caused or contributed by the dilatory conduct of the applicant; and, whether there is an arguable case, such as, whether there is a point of law or the illegality or otherwise of the decision sought to be challenged.

Therefore, the word sufficient or reasonable cause should generally be given a liberal construction in order to advance substantial justice, when no negligence, or in-action or want of bonafides, is imputable to the applicant. Though the Court should, no doubt, give a liberal interpretation to the word "sufficient cause," its interpretation must be in accordance with judicial principles. If a party [to the dispute] has a good case on the merits but is out of time and has no valid excuse for the delay, the court must guard itself against the danger of being led away by sympathy, and the appeal [or revision] should be dismissed as time – barred, even at the risk of injustice and hardship to the appellant [applicant].

5.3 Sufficient causes accounting for grant of extension of time

It is now trite law that where the court is satisfied that extension of time as prayed is guaranteeable upon reasonable or sufficient cause having been shown and submitted by an applicant, save for the negligence and lack of diligence, among others, on his part; which should not be taken as reasonable or sufficient reason to extend the time, such extension will be granted. Going by the requirement of Rule 56(1) of the LCRs in connection with the discretional power of the court expressed within the provision of, the interpretation of the word reasonable or sufficient cause which may warrant extension of time of limitation shall mean such reasons which are reasonable and sufficient to justify extension of time.

As well, it is the same where a matter at the Court of Appeal involving an application for extension of time for lodging an appeal out of time. Under Rule 10 of the Court of Appeal Rules, 2009 the Court has wide discretionary powers to extend the time for the execution of any act, provided good or sufficient cause has been shown. The reasons might be sickness, or ignorance of the award or any reason which hinders the applicant from filing the application on time. The only issue for consideration in the likely matters is whether the applicant has shown good cause for the delay in lodging complaint for revision or the appeal. Hence, what constitutes good cause differs from case to case.

In *Laurent P. Sabuni v. Global Alliance for Africa., Misc. Labour Application No. 30 of 2013 (Unreported).*, the court determined sufficient reason as a pre-condition for granting an extension of time as per Rule 56(1) of the LCRs. In this case the applicant timely instituted the complaint at CMA where he was awarded. Being dissatisfied with the award, he filed an application No. 41, 2011 which was struck out on 16th July, 2013 for being incompetent before the court. The applicant was allowed to file a fresh application out of time within 2 (two) days from the court order of 16th July, 2013. The applicant failed to comply with the court order; hence he filed the present application for extension of time under Rule 56 (1) and (2) of the LCRs and any

other enabling provision of the law. The application was supported by applicant's affidavit. Arguing for the application which was not objected by the respondent, the applicant advanced the reasons for delay to re-file his application as follows:

> (a)That, the applicant was served with copy of the order on 16th July, 2013 and took it to the Legal and Human Right Centre (LHRC) to be assisted in preparing a competent application;
>
> (b)That, the LHRC prepared the same having in mind that the 2 (two) days given to the applicant ware due on Thursday 18th July, 2013. Unfortunately, when the applicant filed the said application, he was informed that he was out of time as he was required to file the same on 17th July, 2013;
>
> (c)That, the delay occasioned in filing of the application was not intentional but rather that it was due to a misunderstanding as to when the date starts running from the date of the order;
>
> (d)That, in such circumstance the applicant wishes to be granted with an opportunity to apply for revision out of time since revision itself has merit, and reason which occasioned the delay in lodging the revision within the prescribed time limit are reasonable as stated.

The Court considered the applicant's submission and respondent's acquiescence and further read the records of the court carefully, and applied the well-established principle in law that sufficient reason is a pre-condition for court to grant extension of time as per Rule 56(1) LCRs. The Court found and agreed that the applicant diligently pursued his matter as he did not sit idle but looked for legal aid as an effort to catch up with the time limited by the Court in order for him to file an application; but the LHRC failed to prepare the application on time as they misunderstood the order of the Court. The applicant's conduct did not reflect any signs of negligence. Hence, the application was allowed for the applicant to re-file his application for revision within a month from the date of the order.

In the matter between *Tanzania Wildlife Corporation v. Ms Frida Mwijage., Civil Application No. 2 of 2014*, the Court granted such leave for extension of time for revisionary proceedings to take place. The facts of the application for leave were that; an application for extension of time was lodged by the applicant so that it would be allowed to file revisionary proceedings in the Court of Appeal. The application was made under Rule 10 of the Court of Appeal Rules, 2009 (herein referred to as the Rules). The application was made by the affidavit attached along with the notice of motion. The reason adduced by the applicant for delay to file revisional proceeding was that they were yet (and delayed) to be supplied with copies of the proceedings, ruling and order from the trial court. In this case, the Justices of Appeals' observed that the reasons for delay to file an appeal that the applicant was yet to be supplied with the documents from the High Court to enable it to file revisional proceedings were of a good cause to extend time. Hence, extension was granted as prayed.

In another matter between *Barclays Bank Tanzania Ltd v. Phylisian Hussein Mcheni., Civil Application No. 176 of 2015 the Court of Appeal* had to determine an application for extension of time to lodge a Notice of Appeal from the judgment of the High Court of Tanzania, Labour Division issued at Dar es Salaam. The applicant, Barclays Bank Tanzania Ltd., was seeking an extension of time within which to lodge an appeal against the Order and Drawn Order of the High Court of Tanzania, Labour Division. The application was made by way of Notice of Motion as preferred under Rule 10 of the Court of Appeal Rules, 2009 (the Rules), and supported by affidavit of the applicant's learned advocate. The grounds upon which the extension of time was sought as per Notice of Motion were that:-

i)The Registrar of the High Court Labour Division issued a defective Certificate of Delay, a defect that was discovered on 27th August, 2015 and the applicant requested a new one that was issued on 2nd September, 2015 whereby 60 (sixty) days to file the appeal expired on 30th August 2015;

ii)That, the delay was beyond the applicant's control and it was unseen.

Briefly, background facts of the matter were that the respondent filed Complaint No. 31 of 2010 at the Labour Division of the High Court at Dar es Salaam. On 28th September, 2012 the Complaint was struck out. The striking out order of the complaint aggrieved the applicant who had expected that it would have been dismissed as the court found, and there was also a concession that the Complaint was time barred. On the same day that the Complaint was struck out, the applicant wrote a letter applying for copies of Ruling, Drawn Order and Proceedings. On 7th December, 2012, the applicant filed a Notice of Appeal. In the meantime, the applicant also preferred an application for leave to appeal. On 2nd July, 2015 the Deputy Registrar of the High Court Labour Division issued a certificate of delay in accordance with Rule 90(1) of the Rules. Apparently, the Certificate contained some clerical errors on the names of the parties. The applicant wrote to the Registrar informing him of the error on 27th August, 2015. The error was corrected on 2nd September, 2015 but the Certificate bore the same date that it had been initially issued. The applicant claimed that by 2nd September, 2015 when the rectification was done it was already late by two days in filing the appeal.

It was the court's considered opinion that, in the circumstances of this case, the applicant had shown good cause for the delay in lodging the appeal. A correct certificate of delay was essential in the circumstances of the case. The applicant had to ensure that the defective one was rectified. The rectified certificate of delay did not bear the date of the rectification but rather the initial date. The rectified certificate was issued on 2nd September, 2015 as per Registrar's letter with Ref. No. Rev No. 31/2010.

Hence, the considered view of the court was that the delay was not caused by the dilatory conduct of the applicant as suggested by the learned counsel for the respondent, but rather the real cause for the delay was the fact that the applicant was pursuing a misconceived application. In the circumstances of the case, it would amount to a good cause as it shows that the applicant was genuinely pursuing the matter albeit mistakenly.

In view of the foregoing considerations, the court was satisfied that good cause had been shown for extending the time within which to lodge an appeal against the decision of the High Court, Labour Division in the respective complaint. The applicant was to lodge the appeal within 14 (fourteen) days of the delivery of the ruling to the parties.

5.4 Sufficient causes accounting for grant of extension of time

It is trite law that grounds advanced in any particular case amount to reasonable or sufficient cause have to be shown in the affidavit in support of the application. The applicant must place before the court material which would move the court to exercise its judicial discretion in order to extend the time limited by those particular relevant statutes.

However, sympathy has no place in considering an application for extension of time, particularly an applicant who has no valid excuse for failure to utilize the prescribed time. At any rate, an on-going out of court negotiation of a political nature or an amicable political solution out of court does not constitute any explanation for failing to appeal in time. Tardiness, negligence or ineptitude of counsel (or applicant) should not be extended extra time merely out of sympathy for his cause. If a party [to the dispute] has a good case on the merits but is out of time and has no valid excuse for the delay, the court must guard itself against the danger of being led away by sympathy, and the appeal [or revision] should be dismissed as time – barred, even at the risk of injustice and hardship to the appellant.

In the Labour Revision case between the Director General of PCCB v. Frank Ipyana., Revision No. 23 of 2009 the respondent filed a complaint of CMA from which the award was issued by an arbitrator in favour of the respondent for reinstatement and payment of salaries from the date he was terminated. The reasoned award was that the respondent's termination was procedurally unfair. That decision was handed down on 16th April, 2009.

Being aggrieved by the arbitrator's awards the applicant, Director General of Prevention and Combating of Corruption Bureau [PCCB] filed an application for revision out of time of the period of 6 (six) weeks from the day of procurement of an award. The court had to consider the applicant's reasons and grounds for delay to file an application as to whether it amounted to a good cause. It was stated, inter alia, that the said CMA award reached the Director General of PCCB who directed the legal department to prepare for the revision of the arbitration award before the High Court, but the copy of the award with the instructions for filing for revision was misallocated by the office clerk. The copy of the arbitration award and instructions for application for revision came into the knowledge of the responsible officer on 10th July, 2009. However, it was observed by the Court in its ruling that the adduced reason did not satisfy the court to believe them as sufficient ground for delay and not whether the intended application for revision had merit.

Interestingly, the High Court concluded that; since the grounds adduced by the applicant had failed to show the good cause for delay, it amounted to an omission that the delay was caused by the negligence in the party of applicant. It has long been an observed principle of law that negligence on a party's side is not a sufficient cause of failure to comply with the law. As rightly pointed out that the applicant office is among those expected to show a higher degree of care in keeping records entrusted to it and laxity has no place in its operation. Hence, the delayed application was accordingly dismissed.

5.5 Consideration of scope of delay in application for extension of time by the court

The long established practice, and currently the Court has clearly established for itself, is that, in considering an application for extension of time prompted by "reasonable" or "sufficient cause" under both the stated Rules and section 14 (1), it may take into consideration such factors as length of delay, the reason for the delay and the degree of prejudice that the respondent may suffer if the application is granted. Although it is given within certain statutory provisions that, where there is no specific time scale in filing any application, the 60 (sixty) days should fill the lacuna, it still may cause injustice, to those who come to the Court late because of long sickness, etc.

In *Bushfire Hassan v. Latina Lucia Massaya., Civil Application No. 3 of (2007); (Unreported)* the Court in dealing with delays and applying the Court of Appeal Rules of 1979, stated;

> *Delay, of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken.*

In *Mustapha Mohamed Raza v. Mehboob Hassanali Versi., Civil Application No. 1168 of (2014); CAT (Unreported)* while considering an application for extension of time, particularly for review of an application brought under Rule 10 of the Rules, the Court had this to say;

> *From the wording of this Rule, it is my view that, an application for extension of time may be brought at any time, even after expiration of the prescribed time. It is also my understanding that, the applicant's obligation is to account for the delay of everyday within the prescribed period.*

The Court is now of the strong view that a person applying for extension of time would have to account for each day of delay for the whole period of time he has been late. A remark favorably made on the principle set in the case of *Tanzania Fish Processors Ltd. v. Christopher Luhangangula., (supra)* is that public policy requires that litigation must come to an end, and that one cannot be allowed to file an application for which no time limit is specified by Rules or any other law, as and when he wishes. However, as a final point opposing such principle due to the fact that an application for extension of time, there is a sufficient control firmly placed by the court.

In the matter between the Tanzania *Rent a Car Ltd. v. Peter Kimuhu., Civil Application No. 226/1 of 2017* the Court trumpets clearly such departure basing on the requirements that the applicant must show a good cause of delay and has to account for every single day of delay from the date of decision/order/judgment to the date when the application was lodged, as sufficiently restricts unmerited applications from being filed. Complementing the comment by T. R Desai in his book Commentary on the Law of Limitation Act, 9th Edition Universal Law Publishing Company, at pages 121-122, also quoted in the case of Dimension Data Solutions Limited v. Wia Group Limited & 2 Others., the Court observed that;

> *It is axiomatic that condonation of (a) delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of the delay is not a matter; acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may (not) be condonable due to want of acceptable explanation whereas in certain others cases delay of very long range can be condoned as the explanation thereof is satisfactory.*

Therefore, in accordance to this principle, it is now the established that, the limitation period of whenever days could not have been meant to apply to applications for extension of time; as there is no specific time limit set within which such an application for extension of time should be filed.

6.0 Conclusion

One of the key issues dealt with in this paper is that of time limitation. The review of relevant statutory provisions and case law in this paper has shown that time limitation in arbitration of labour disputes and hearing of revision or setting aside an award is a matter of essence and not a matter of discretion dependent upon the parties. Hearing of any matter beyond prescribed time limit by the CMA or the Labour Court **seems to have no jurisdictional basis for determining such matter be it with respect to revision or setting aside an award**. This needs to be clarified/recasted, how is jurisdiction come into being while CMA and Labour Court are categorical about this time limit. According to Rule 10(1) of the Labour Institutions (Mediations and Arbitration Rules, 2007), dispute about the fairness of an employee's termination of employment, must be referred to the Commission, within thirty days, from the date of termination or the date that the employer made a final decision to terminate. Rule 10(2) provides that all other disputes must be referred to the Commission within sixty days from the date when the dispute arose.

In the case of *Swiss Port Tanzania Ltd v Mohamed Nanah., Labour Revision No. 138 of 2009 (Unreported)* it was held that, the position of the law regarding the Commission jurisdiction, in a dispute filed out of time, could not be processed unless the Commission had condoned the delay. The Judge added that, …when the dispute is time-barred, the CMA has no power to entertain it, unless it has heard and granted an application for extension of time, that is, condoned the delay.

In Kioo Ltd and Kennedy Chalamila., Revision No. 147 of 2008 (Unreported) it as stated that….'Perhaps to remove doubt as to when and how the issue of limitation of time should be heard and decided by the Commission, attention was drawn on the following provisions.

First, the Commission can process time-barred disputes following application by the referring party;

Second, under Rue 32 of the rules "the Commission may condone any failure to comply with the time-frame in these rules on good cause". The Court further opined that, the rule gives a wider power to the Commission to proceed in a time-barred dispute provided it shows on record, its reasons for doing so.

The extension of time is provided for in the Labour Court Rules GN 106. Rule 56(1) empowers the court to grant extensions of time on application and on good cause. Also, section 91(1)(b) of the Act which provides for revision of Arbitration awards.

This goes as far as complaints filed out of time, hence, being time barred. This position was first seen in the case of Precision Air Tanzania Services v. Masoud Roshanker., Revision No. 73 of 2010 (Unreported), in which CMA had proceeded to hear and determinate a matter filed out of time limits prior to considering and determining an application for condonation. Rweyemamu J (as she then was) held, inter alia, that by failure to hear and decide the issue of limitation of time, the CMA had proceeded to determine the dispute without jurisdiction.

The law does not absolve the CMA or the Labour Court from the duty to decide whether the delay was due to a good cause, but rather, that it permits the arbitrator/court to hear and decide the application without requiring the other party to follow all the process of - as provided for within the labour statutes. The amendment recommended herein below will go a long way towards addressing the problem created by lack of needed mandatory statutory provisions. It is recommended that immediate action should be taken by the respective authorities to rectify deficits or lacunae in the arbitration guidelines and rules prescribing the duty and the manner in which the arbitrator or CMA shall serve awards to the parties, so as to harmonise and ameliorate such inadequacy situation. This shall go hand in hand with an amendment of the statutes to mandate arbitrator's duty and manner in serving award to the parties to provide them with an opportunity to pursue their rights once they are aggrieved or dissatisfied in a timely and efficient manner. The envisaged amendments, among others, will go an extra mile to remove all the bottlenecks to justice; since it will save courts' time and, to a large extent, reduce the backlog of cases, as well as, unnecessary miscellaneous applications for extension of time.