

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT MWANZA

MISC. LABOUR APPLICATION NO 29 OF 2013

SAID RAMADHAIN..... APPLICANT

VERSUS

GEIDA GOLD MINING..... RESPONDENT

(Original CMA/MZA/276/2009)

RULING

23/7/2014 & 25/7/2014

R.M.RWEYEMAMU,J:

The applicant seeks extension of time to file an application for revision of the CMA award. The application is opposed. Parties are represented by Mr. Joseph Mangana of TAMICO, a registered trade union and Mr Nuhu Mkumbwa Advocate, for the applicant and respondent, respectively. To put my decision in proper context, I find it useful to preface my evaluation of the parties' arguments with the following observations:

Grant of extension of time is a discretionary power of the Court to which, there is no precise formula in law or practice as to what factors or circumstances are taken into consideration before the Court exercise its discretion in terms of Rule 56 (1) and (3) of the Labour Court Rules, GN 106/2007 to decide whether or not 'good cause has been shown' for granting such application. I am however aware that, there are guiding principles in deciding the question which are discernable from court precedents, of this Court, the Court of Appeal of Tanzania and other courts whose jurisprudence is of persuasive value. The guiding principles can be generally summed up as:

1. In order to justify a Court extending the time during which some step in procedure requires to be taken, there must be some material on which the Court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time. This general position was stated by the CAT in **Regional Manager, Tanroads Kagere v. Ruaha Concrete Company Limited**, *Civil Application No. 96 of 2007(CAT)* (Unreported).

2. The test then is, whether the applicant has established some material amounting to sufficient cause or good cause why the sought for application is to be granted. According to precedents, there are two aspects of the principle of 'sufficient cause'. These are:

- a. The first is where the applicant has disclosed good cause for delay in taking the sought for action. In deciding that aspect courts take into consideration factors like, reasons for delay – where the applicant is expected to 'account of cause for delay....of every day that passes beyond the prescribed period'; lengthy of delay, that is, show how such reasons were operative for all the period of delay. Examples of cases where the principal was articulated include, **Mariaria & Others Vs. Matundure**, (2004) E.A. 163 as cited and discussed by my brother Rugazia J. in **Hadija Yusuf vs. Yusuf Same Hawa Dada**, *Civil Appeal 38/1996 (DSM registry- unreported)*; and in this Court, in **Jonathan Mwang'onda & 10 Others v. Asher's Industries Ltd**, *Misc Application No. 26 of 2013 HC Labour Division Tanga Registry (Unreported)*, (where, application was granted where four factors worked together (initial application was timely filed; when the timely filed application was struck out, the applicant timely filed an application to refile;) **Charles Petro v. S.T Caroli Institute** *Misc Application 28 of 2013 HC Labour Division, Mwanza Registry (Unreported)*, and **Mkonge Hotel Ltd v. Abdalah Betram Chingwile**, *Misc Application No. 23 of 2013 HC Labour Division Tanga Registry (Unreported)* (where factors like in

revision 26/2013 existed and prior timely filed applications were struck out on grounds not wholly blamable on negligence of the applicant).

- b. The second aspect of the principle is that there exist grounds constituting good reason for granting the application either argued by the applicant or noted by the Court *suo motu*. Examples of such grounds include, but is not limited to, situations "...where the point of law at issue (in the intended application), is the legality of the decision being challenged". See **Motor Vessel Sepideh & Pemba Island Tours and Safaris vs. Yusuf Moh'd Yusuf & Ahmad Abdullah**, *civil Application 91/2013 (CAT at Zanzibar)*, where the CAT reiterated the principle earlier stated in **Valambhia** 1992 (TLR) 185 at 189.

May be it is also important to note that this court has powers to revise a CMA decision and award, even *suo motu* where it appears that the CMA has acted contrary to rule 28 (1) (a), (b), (c) or (d) of the Labour Court Rules, GN 106/2009. Some of the grounds set in numbers of decision this Court granted extension of time on the above reasons;

3. Good grounds in a sense explained under (2) (a) above, do not include ignorance of procedure and law, or lack of diligence as rightly submitted by Counsel for the respondent who cited in support of his proposition the CAT decision in **Metal Products Ltd v. Minister For Land & Director of Land Services**. [1989] TLR. The CAT in **Benedict Mumello v. Bank of Tanzania**, *Civil Appeal No. 12 of 2002 (Unreported)*, held that such application will not be granted where there is; absence of any or valid explanation for the delay; lack of diligence on the part of the applicant.

Other grounds on which this Court has refused to grant such applications are; to mention just a few; **Tanzania Postal Bank v. Xavier Aliko Mwalunga**, *Misc Application No. 37 of 2013 (Unreported)*, **Muyenjwa B. M. Mafiri v. Tanzania Electrical Supply Company Ltd** *Misc Application*

No. 278 of 2013 (Unreported) and National Microfinance Bank PLC v. Farady Z. Mushi Misc Application No. 141 of 2013 (Unreported)

What grounds were advanced by the applicant in this application? The grounds submitted on by Mr. Mangana were in brief that: -

- The applicant **timely applied** for revision of the CMA decision issued on 29/11/2010, a matter registered as revision 32/2010 but ordered struck out on ~~21/7/2013~~ after the applicant admitted defect regarding jurat of attestation and improper citation of enabling provisions of law.
- Thereafter, the applicant filed a Misc. Application on 6/7/2013, for extension of time. It was registered as Misc.7/2013. That application was also struck out on **10/9/2013** parties advised to pursue amicable settlement; but they pursued it unsuccessfully. Following that, they filed the current application on **11/11/2013**.
- The applicant concluded that, since the original application was timely filed; the application for revision has never been heard, the applicant has demonstrated **good cause** for delay.

Mr. Nuhu, Counsel for the respondent vehemently opposed the application and submitted that;

- The applicant has not shown good cause, stressing that ignorance of law and procedure, or failure to check the law do not amount to good cause. To buttress his arguments, Counsel referred to two cases, **Metal Products** and that of **Candico Textiles** referred to, herein above.
- What is demonstrated in this case is consistent lack of diligence in this matter evidence by:-
Time taken to refile the four application- Misc. Appl. No. 7/2013 was struck out on **10/9/2013** and the present application filed **11/11/2013**; the fact that the applicant made a mistake of procedure twice.

Counsel added that there was undue delay because the period of delay was over 65 days, a period which goes even beyond the time prescribed for filing an application for revision.

- The applicant refuted the applicant's reason that they were pursuing a settlement out of court. He gave two reasons for refusing it. First, that there was no evidence of efforts for amicable settlement, but added that, even if there was, he submitted that in law, negotiations for amicable settlement do not check the period of limited.

In rejoinder, Mr. Mangana added that the applicant has consistently indicated good intentions, he was the one making application to withdraw after noting anomalies, and that were efforts for amicable settlement although admittedly, that issue was not averred to the are not averred to in the supporting affidavit.

The issue I have to decide, based on the principles referred to herein above, and from parties contending submissions, is whether the application for extension of time is merited or not. After careful considerations, I observe and decide that:

1. No sufficient grounds were adduced by the applicant or noted by the Court, constituting good grounds in terms explained under paragraph **2(b)** above, as would move the court to grant the prayed for order for extension of time.
2. The grounds adduced by the applicant for delay were insufficient considering that the facts that:
 - No explanation was given for delay in taking action between 10/9/2013 when the 2nd application was ordered struck out and 11/11/2013 when this application was filed.
 - I take no account of the applicant explanation that delay was due to parties attempts to settle the dispute amicably as advised by the Court on the main, for reasons advanced by Counsel for the respondent. Counsel submitted that the reason was not averred to in the supporting affidavit, which would have

given fair opportunity to the other side to respondent – the ground was simply submitted on from the bar which is unprocedural.

- Delay was on the main due to lack of diligence, evidence by the fact that the applicant has made a mistake on procedure twice. I agree that was inexcusable, given that the applicant was represented.

In the end result of all the above, I find this application unmerited and dismiss it.

R. M. Rweyemamu
JUDGE
25/07/2014

Date: 25/07/2014

Coram: Hon. R. M. Rweyemamu, J

Applicant:

For Applicant: Mr. Joseph Mangana of TAMICO

Respondent:

For Respondent: Mr. Angelo Samwel Advocate for Mr. Nuhu Mkumbwa Advocate

CC: Lwiza/Christopher

Court: This matter is scheduled for ruling today. Ruling delivered in presence of parties' above.

Right of Appeal Explained.

R. M. Rweyemamu
JUDGE
25/07/2014