IN THE HIGH COURT OF TANZANIA

HIGH COURT LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS LABOUR APPLICATION NO. 270 OF 2013

BETWEEN

JIREYS NESTORY MUTALEMWA...............................APPLICANT

VERSUS

NGORONGORO CONSERVATION

AREA AUTHORITY ....RESPONDENT

RULING

07/05/2014 & 03/06/2014

Mipawa, J.

The applicant is seeking an extension of time to file a revision in the full bench of the High Court as regards the decision of the Industrial Court of Tanzania (now defunct) Mwipopo, J. (Chairman) which upheld the decision of the employed respondent that the applicant had committed gross misconduct "*utovu wa nidhamu*" and the respondent had passed the decision to dismiss the applicant which decision was found by the Learned Judge Chairman of the Industrial Court as manifestly excessive and substituted thereof by a lesser sentence of termination.

I have head the applicant's reasons that ***interalia***, the award was not proper, the chairman did not consider the opinions of assessors and put them. [In the ruling] that the employer did not give reasons for termination but the chairman give the reasons himself which he was not mandated to do so. He was also not heard. That the chairman gave the award on 12/12/2008, then he revised the same after he was **functus officio** as he changed the date of termination to 26/05/2001 which date does not appear in the award. That the affidavit of the respondent has no date and place where it was taken. The witness on the affidavit did not sign when introducing the deponent. He cited the case of **Transport Equipment Ltd. Vs. D.P. Valambhia** 1993 TLR 91 CA and the case of **Mugo and Others Vs. Wanjiru and Another** [1970] 1 EA 481 can. He concluded that the court delayed to give him the copy of the ruling for eighteen months, and that time starts to run when one is given the ruling to the case.

The respondent's advocate objected to the prayers by the applicant and cited the case of **Nite Vs. Etienes Hotel**, Civil Application No. 10 of 2005. He submitted that there were no irregularities in the award of 12/12/2008 because the Judge came to give the reasons on 05/08/2009 as to why he came to the decision. That the applicant was heard properly. The chairman clearly dealt

with the opinions of the assessors and he gave reasons for departing with the assessors.

On the delay of getting a copy of ruling, the respondent submitted that the applicant was not properly doing his work for relying on the full bench decision which was not the subject matter for revision. The applicant had already had the decision of the chairman of the Industrial Court which was the very one needed to be revised. The applicant had not therefore shown the irregularities and his application should be dismissed. In his rejoinder the applicant averred that the chairman of the Industrial Court was talking on other matters which were not concerned with termination (page 26-28) and that he (applicant) could not have come to a panel without the decision of the panel Mgasha, J. Wambura, J. and Mwakipesile, J. who allowed or give him time to re-file the revision and that the decision of the panel was not given to him.

I have duly considered the submission ***viva voce*** of the two contesting sides and I am of the settled mind that the applicant has not advanced valid reasons enough to justify his delay in so far as he has had already the decision of the Industrial Court which he had sought the same to be revised. The important decision or ruling was that of the learned chairman of the Industrial Court which the applicant was championing the same to be revised. As rightly pointed

out by the learned counsel for the respondent the applicant has had the ruling sought to be revised already and there was nothing which had stopped him to file the revision in time neither did the panel of the High Court judges had contemplated to refuse his application (if any) had he diligently opted to file in court as he had the decision of the Industrial Court with him. The applicant has not even provided a slightly move or attempt of producing evidence to show and prove that he really applied for the ruling of the High Court Judges of the Labour Court which he was awaiting for. I think it could have been better for the applicant if he could have provided to this court a letter or letters championing his delight more to get the copy of the said ruling. Nothing has been provided.

In my opinion what is glaring to the eyes here is sheer negligence of the applicant to file the revision in time when he had the ruling of the Industrial Court sought to be revised. It could not had been a "sin" for the applicant to file his revision in time attaching the Industrial Court Ruling sought to be revised which he had already in possession rather that keeping the Industrial Court ruling in his shelves under the pretext of awaiting the ruling of the High Court Judges of the Labour Court Panel. It is my considered view that no sufficient reasons to extend time has been given by the applicant to convince the court to grant this application for extension of time.

One of the reasons on irregularity of the Industrial Court award pointed by the applicant was that the award was issued on 12/12/2008, then the learned chairman being **functus officio** changed the date of termination to 26/05/2005 a date which does not appear in the award. However as rightly pointed out by the respondent the learned chairman issued the award on 12/12/008 and gave reasons on 05/08/2009. The record also shows that the applicant was heard properly. There is no way where I can sustain this application for extension of time. I am not convinced with the arguments of the applicant which are totally baseless and indeed he must blame himself for being negligent and not acting with due diligence in preparing his revision and filing it in time. The case law submitted by the applicant cannot fish him out from the web of limitation because:-

> *.......The law of limitation on actions knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in the web [see* ***Makamba Kigoma Vs. PSRC and UFI,*** *Civil Case No. 109 of 2005 (HC) unreported.*

In so for as this court has detected no good cause to enable the application pass the test and thence granting the applicant an extension of time, it is clear therefore that as point of law put by the courts that "**.....normally sufficient reasons for an extension of time must relate to the inability or failure to take particular**

step....." [see **Mugo and Others Vs. Wanjiru and Another** [1970] 1 EA 481 [CAN].

In the instant case or application the applicant had the ability to file the revision in time given the naked fact that he had already in his possession the award of the Industrial Court sought to be revised. Therefore he did not have had the inability to take "the particular step" of filing the revision before the court in time. The applicant cannot come to court whenever he wants because:-

> *......Limitation is material point in the speedy administration of justice. Limitation is therefore to ensure that a party does not come to court as and when he chooses......[see* ***Tanzania FIsh Processors Ltd. Vs. Christopher Luhangula,*** *Civil Appeal No. 101/1994 [CAT].*

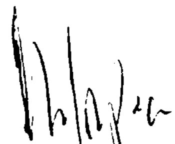
In the event and on the foregone I dismiss the application.

I.S. Mipawa
JUDGE
03/06/2014

Appearance:-

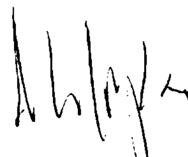
1. Applicant: Present
2. Respondent: Mr. Rwehumbiza and Mushumbuzi Advocates - Present

Court: Ruling is read over and explained to the parties as they appear in the appearance above.



I.S. Mipawa
JUDGE
03/06/2014

Further right explained.



I.S. Mipawa
JUDGE
03/06/2014