

**THE UNITED REPUBLIC OF TANZANIA
HIGH COURT LABOUR DIVISION SHINYANGA
AT SHINYANGA**

MISCELLANEOUS APPLICATION NO.15 OF 2016

HENRY LUHUNGA.....APPLICANT

VERSUS

PANGEA MINERALS LIMITED.....RESPONDENT

RULING

Last order: 04.10.2018

Date of Ruling: 14.12.2018

Ebrahim, J.:

Before this Court is an application filed by the applicant, Henry Luhunga seeking an order granting him extension of time to file revision in this court against the decision of the Commission for Mediation and Reconciliation of 06.03.2012. The application has been brought under **Section 94(1)(e) of the Employment and Labour Relations Act No. 6 of 2004, Rule 24(1),(2)(a)(b)(c)(d)(e) and (f), Rule 24(3) (a)(b)(c)(d), Rule 24(11) (a) and Rule 56(1) of the Labour Court Rules 2007 (GN No. 106 of 2007);** supported by the affidavit of the applicant.

At the hearing of the application, Mr. Benjamin Dotto, a personal representative of the applicant adopted the affidavit of the applicant to form part of his submission.

Mr. Dotto explained to the court that the applicant had initially filed revision application but he withdrew it for being defective. The court on 02.04.2014 allowed him 28 days to file a proper application of which he did. However on 16.11.2015 the matter was struck out again and the applicant was availed 90 days to file application for extension of time to file revision. He elaborated the reasons for the delay being that the applicant after being given those 90 days he could not file application because he was taking care of his ailing father on traditional medicine. He referred the court to the cases of **Samwel Kimaro Vs HidayaDidas,, and BGML V Samson Hango and 16 others**, Application for Labour Revision No. 36/2017 on praying to court to extend time and avoid relying on technicalities.

Advocate Kisanga learned Counsel for the respondent objected the application on the basis that no reasons for the delay have been established. He cited the cases of **Monarch Investment Limited V Stephen**, Miscellaneous Application No. 17/2014; and **LeonsBarongo V**

Sayona Drinks Limited, Application for Revision No. 182/2012. He challenged the reasons adduced by the applicant at para 9 of his affidavit that from 10th November 2013 to April 2014 he has been caring for his sick father and that is the reason for the delay and lack of funds. Referring to the submission by his representative, he said that the applicant filed the application after his father got better. Mr. Kasanga therefore argued in terms of **Rule 56(1) of GN No. 106/2007** that from 02.04.2014 where the application was struck – out, and later his father died on 07.04.2014 – five days later; applicant did not do anything until 31.03.2016. Which means almost 2 years lapsed. Referring further to the case of **Leons Barong**, Mr. Kasanga argued that the applicant ought to state reason for each day of delay and at least produce the evidence of death certificate. He surmised that the applicant was negligent despite the fact that he was represented and misused the lenience of the court. On the argument of lack of funds, he said that the same is not sufficient reason as a labour matter allows a personal representative as. The applicant has been previously represented and there is no filing costs. He prayed for the application to be dismissed.

In rejoinder, Mr. Dotto insisted that the applicant was caring of his sick father that was why he could not file the application on time. As for costs, he said that there are costs of travelling and preparation of documents. He reiterated the prayers.

I have thoroughly followed the submissions by both parties. Indeed **Rule 56(1) of GN No. 106/2007** puts an obligation for a party seeking extension of time to show a good cause for the delay. As stated in the cases of **Oswald Masatu Mwizarubi V Tanzania Fish Processors Ltd**, Civil Application No. 13 of 2010; and the cited cases of **Monarch Investment Limited** and **Leons Barong**. Thus it is for the party seeking such extension to provide the court for the relevant materials so that it can exercise its judicial discretion.

The applicant has stated at para 8, 9, 10 of his affidavit that the previous application was struck out on 2nd April 2014 and his sick father died on 7th April 2014. He was availed leave of 28 days to re-file the application however he could not do so because he was appointed by his family to make follow up of their father's estate.

I find no difficult to say that the reason stated is farfetched because as the law requires, the applicant has not provided this court with any explanation as to what exactly he was doing for all that period from 1st May 2014 when 28 days leave expired to 31st March 2016, almost two years when he filed the present application apart from the blanket narration that he was making a follow up of his father's estate. Two years is a long time which requires explanation and the applicant could have at least provide a document if he was appointed as the administrator of the estate if at all he was making follow up of his father's estate.

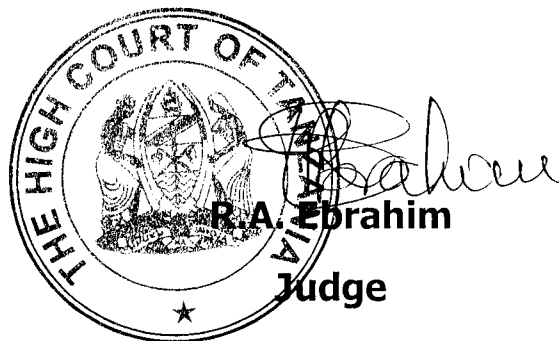
Certainly and as stated above, the applicant ought to have accounted for those days of delay and not give general statements. This position which I fully associate myself with, has been well illustrated in the case of **Sebastian Ndaula V. Grace Rwamafe**, Civil Application No. 4 of 2014 (unreported) where the Court of Appeal held that:

"The position of this Court has consistently been to the effect that in an application for extension of time, the applicant has to account for every day of delay: See Bariki Israel Vs. The Republic, Criminal Application No. 4 of 2011 (unreported)".

The applicant in this case has not done so and it is not therefore certain if he was truly working on his father's estate. The reliance on the case of Samwel Kimaro (supra) would not fit in the circumstances of this case as this is not a technical issue but rather a requirement of the law.

That being said, I find that the applicant has not managed to establish good and sufficient reasons for this court to exercise its judicial discretion to extend time. I therefore dismiss the application. As it is a labour matter no order as to costs.

Accordingly ordered.



Shinyanga

14.12.2018

Date: 14/12/2018

Coram: Hon. S. P. Mwaiseje, DR

Appellant: Present in person

Respondent: Mr. Kange, Advocate for

B/C: Raymond, RMA

Court: Ruling delivered today 14th day of December, 2018 in the presence of the Applicant in person, Mr. Kange Advocate for the Respondent and Raymond RMA.

Court: Right of Appeal fully explained.

