

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

**MISCELLANEOUS APPLICATION NO.24 OF 2016**

**ANTHONY MASONDA.....APPLICANT**

**VERSUS**

**PANGEA MINERALS LIMITED.....RESPONDENT**

**RULING**

**Last order: 11.12.2018**

**Date of Ruling: 21.12.2018**

**Ebrahim, J.:**

Anthony Masonda has filed an application seeking leave of this court to allow him to file revision against the decision of the Commission for Mediation and Reconciliation of 12.02.2016 out of time. 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.

Representing the applicant as a personal representative, Mr Dotto adopted the affidavit of the applicant to form part of his submission before the court.

Referring to paras 8 and 10 of the affidavit, Mr. Dotto told the court that the delay was attributed to the fact that the Arbitrator did not issue the Award within 30 days as required by law. The Award was issued on 12.02.2015, five months late from the last date of hearing. He stated that by the time of the issuance of the Award, the applicant was in Sumbawanga taking care of his ailing father and he was in a remote area with no telephone communications. He referred the court to the case of **Bulyanhulu Gold Mine Ltd V Ally S. Khalfani**, Miscellaneous Application No. 22 of 2015 where the High Court Judge extended time on the failure of arbitrator to issue notice after the passage of 30 days, required to issue an Award. He prayed for the application to be allowed.

Advocate Kange who represented the Respondent also prayed to adopt the affidavit of the respondent's legal officer to form part of his submission. He opposed the application on the basis that the applicant has not established sufficient reasons nor accounted for each day of delay. He challenged the applicant for failure to state as to when exactly he became

aware of the Award so that the court can determine the extent of delay and whether the applicant was vigilant with his case. He said that the applicant ought to have at least supplied means of his transportation to prove the fact he claimed that he was in Sumbawanga. He distinguished the circumstances of this case with the circumstances in the cited case of **Bulyanhulu Gold Mine Ltd V Ally S. Khalfani (supra)**. He was therefore of the view that the applicant was not vigilant in following up his case and that the reasons adduced were not supported by any evidence.

In rejoinder, Mr, Dotto repeated that the applicant was taking care of his father in responding to the argument of accounting for each day of delay.

As for the length of delay he repeated that the delay was for five months and the applicant was not aware.

He conceded that there was no bus receipt tendered but the father was treated on traditional medicine.

On the cited case of Hon. Mipawa, Judge, he said that the same is not distinguishable because the reasons for extension of time are the same.

I have thoroughly followed the submissions by both parties. The law i.e. **Rule 56(1) of GN No. 106/2007** puts an obligation for a party seeking extension of time to show good and sufficient reason for the delay before the court (see the cases of **Oswald Masatu Mwizarubi V Tanzania Fish Processors Ltd**, Civil Application No. 13 of 2010). Thus a party seeking extension has duty to establish to the court good reason for the delay and depending on the nature of the facts claimed relevant materials so that the court can exercise its judicial discretion to extend time.

The applicant stated at para 8, 9 and 10 of his affidavit that he could not file the application for revision on time because he was away from Kahama and Shinyanga to Sumbawanga for a specific task and he could not be reached. Further the Arbitrator did not issue notice of the issuance of the Award after the expiry of 30 days hence it was issued on his absence.

The Law i.e. **Section 88(9) of the Employment and Labour Relations Act, Act No. 6/2004 RE 2002** requires an arbitrator to issue an award within 30 days of the conclusion of proceedings. As it is the procedure, failure to issue an award within the prescribed time by law, an arbitrator must issue a summons to parties on the date of the award.

In our instant case, Mr. Dotto has put a reliance on the case of **Bulyanhulu Gold Mine Ltd V Ally S. Khalfani (supra)**. The wisdom on the decision of my brother Judge Mipawa (as he then was) served the purpose and circumstances of that particular case. That notwithstanding, I would not say that the same decision would serve as a pinnacle on the circumstances of each and every case on extension of time where no notice has been issued by the arbitrator. As such it does not relieve the applicant with the duty of explaining when he became aware of the award; how long did it take him to file the application afterwards; and why it took that time. Certainly the court has to be availed with thorough, concrete and substantiated facts from the reasons claimed.

As intimated earlier, the applicant stated generally in his affidavit that he could not file the revision on time because he was away on special task and the fact that no notice was issued. However, the present application was filed on 20.04.2016. Mr. Dotto said that the applicant was at Sumbawanga taking care of his ailing father. Clearly submissions by Mr. Dotto are not evidence and cannot therefore be considered as facts with a view of explaining the delay it is a submission from the bar. That fact has to be stated clearly in the affidavit and not crop up during submissions and

in our case from the representative. The position that a fact has to be stated in the affidavit was illustrated by the Court of Appeal in the case of **ElfaziNyatega and 3 Others V Caspian Mining Ltd, Civil Application No. 44/08 of 2017**. Conspicuously, that fact is missing in the affidavit of the applicant. Furthermore, the fact that the arbitrator did not issue notice of the later date of the award, does not give the application a blanket to file an applicant whenever he wishes, thus the explanation as to the reasons of delay and when exactly the issuance of the award came to his knowledge.

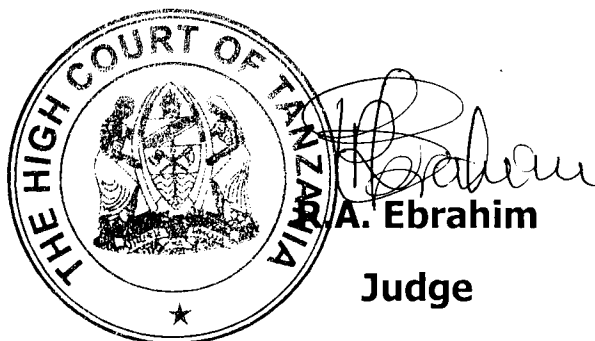
Again, the applicant stated in his affidavit that he was away from Kahama to Shinyanga to Sumbawanga, but no proof of that trip like a bus receipt was presented to the court as correctly observed by Mr. Kange.

More importantly, I had an occasion of going through the original records of the Commission for Mediation and Arbitration and found that on 12.02.2016, the Commission recorded the presence of the representative for the applicant. More so on 17.02.2016, there was a signature of a person who collected a copy of the Award. The said signature does not need a forensic proof as it is the same signature of the representative of the applicant who presented notice of application before this court and

signed on 18.04.2016; acknowledged by his signature to have drawn and filed the chamber summons and the affidavit of the applicant; together with notice of representation. Again, it is the same representative who represented the applicant during the whole proceedings at the CMA.

That being said, I join hands with the Counsel for the respondent to say that that applicant has not establish good and sufficient reasons for the delay; nor has he accounted for those delays; more so, the original proceedings from the CMA reveals that the present representative of the applicant was fully aware of the date of the award and he is the one representing him. That being said, I dismiss the application. No order as to costs.

Accordingly ordered.



**Shinyanga**

**21.12.2018**

**Date:** 21/12/2018

**Coram:** Hon. E.G. Rujwahuka, DR

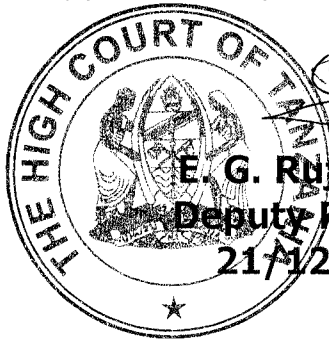
**Applicant:** Mr. Benjamini Dotto a personal representative for the Applicant

**Respondent:** Absent

**B/C:** Grace, RMA

**Order:** 1. Ruling delivered today in the presence of Mr. Benjamini Dotto a personal Representative of the Applicant while the Respondent absent

2. Right of appeal hereby explained.

A circular seal of the High Court of Tanzania. The outer ring contains the text "THE HIGH COURT OF TANZANIA" at the top and a star at the bottom. The inner circle features a coat of arms with two figures holding a shield. Overlaid on the seal is a handwritten signature and the printed text: "E. G. Rujwahuka", "Deputy Registrar", and "21/12/2018".

E. G. Rujwahuka  
Deputy Registrar  
21/12/2018