

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**(LABOUR DIVISION)**  
**AT MBEYA**  
**MISC. LABOUR APPLICATION NO. 09 of 2017**  
*(Originate from Complaint No. CMA/MBY/162/2014)*

**MBARALI DISTRICT COUNCIL.....APPLICANT**  
**VERSUS**  
**HUSSEIN SEIF FADHILI.....RESPONDENT**

**R U L I N G**

*Date of last order:* 22/02/2020

*Date of Ruling:* 12/05/2020

**NDUNGURU, J.**

In this application, the applicant, Mbarali District Council is seeking for extension of time to file an application for revision out time against the award which was given by the Commission for Mediation and Arbitration at Mbeya in Complaint No. CMA/MBY/162/2014.

The application has been made under Rule 24 (1), 24 (2) (a), (b), (c), (d), (e), (f) and 24 (3) (a), (b), (c), (d), Rule 55 (1) and Rule 56 (1), (2), and (3) of the Labour Court Rules, G.N No. 106 of 2007. Also the application is supported by the affidavit affirmed by the one Athumani Mickidadi Bamba, Solicitor.

Upon being dully served with the application, the respondent filed counter affidavit and notice of opposition to oppose the application.

On the date fixed for hearing, both parties were represented. Mr. Fortunatus Mwandu, solicitor whereas Innocent Borniface learned advocate.

In his submission in support of the application, Mr. Mwandu submitted that the applicant was dissatisfied with the decision of CMA dated 29<sup>th</sup> day of February, 2016 due to the irregularities on record. He went on to submit that on 01/12/2015, the parties were informed by the Arbitrator one E. Mwalongo that, they will be informed on the date of judgment. He added that, from that date the applicant was never informed the date of judgment.

Also he submitted that the applicant on 30/03/2016 was told informally by the Arbitrator that the judgment was already delivered and wanted him to collect the copy. That on 05/04/2016 the applicant came to collect the award at CMA Mbeya but was in veil there was nobody in the office who could supply him with the copy.

He continued to submit that the judgment was supplied to the applicant on 12/04/2016 due to the fact that the applicant is located 150 km from Mbeya it caused the applicant to collect the same on that date.

He added that the said copy of judgment minute to the legal department on 14/04/2016. He went on to submit that it took only five days for preparation and filing of this application, by then it was 10 days late to file the same.

He further submitted that, the application was struck out, then the applicant filed this application for extension of time. He added that the delay was not deliberate it was caused by CMA. He cited the case of **Mase Simon Rhobin vs. Green Star English Medium School**, Misc. Land Application No. 9 of 2019 (unreported). Finally, he prayed for the Court to grant the application.

In rebuttal, Mr. Borniface contended that there is no evidence that the CMA ordered judgment on notice, that is mere statement from the applicant they are not worth of giving weight by this Court. He added that it was a duty of the applicant to make follow up of the judgment date. He went on to submit that the applicant in his affidavit states that the applicant got information that the ruling is delivered on 30/03/2016 but the respondent immediately having received the award wrote to the applicant on 21/03/2016 which was received on 22/03/2016, thus the applicant was aware.

He also cited the case of **CRDB Ltd. vs. George Kilindu**, Civil Application No. 162 of 2016, Court of Appeal of Tanzania, **AG vs. Wafanyabiashara Soko Dogo Kariakoo Cooperative Society & Other**, Misc. Civil Application No. 606 of 2015, Court of Appeal of Tanzania and **National Microfinance Bank PLC vs. Farady Z. Mushi**, Misc. Application No. 141 of 2013 (All unreported) to the effect that the applicant is required to give sufficient cause for his delay.

He continued to submitted that, the case cited by the solicitor for the applicant is distinguishable because in the cited case the applicant was a layman but I the present case the applicant has enough solicitors are situated in the same compound, thus 10 days delay was due to the lack of diligence, because the ruling took two days from the District Executive Director to legal department.

Furthermore, he submitted that it took five days to prepare application for revision this shows clearly that the applicant was not that diligent. He added that from 2016 the applicant has been delaying this case to proceed for his non-appearance. In conclusion, he prayed for the Court to dismiss this application.

In his rejoinder, Mr. Mwandu reiterates what is submitted in his submission in chief. He also dispute the contention that the applicant

was informed that the ruling delivered on 30/03/2016. He went on to submit that it was not proper for the applicant to rely on the award brought by the respondent.

He further dispute that they have not absented and there is no proof that the council has many lawyers. He added that all cases cited by the counsel for the respondent are distinguishable because the applicant was not negligent. Finally, he reiterated his prayer that, this application be granted.

Having carefully passed through the submissions made by both parties and chamber application filed before this court. The issue calling for determination is whether the applicant has managed to disclose sufficient grounds to warrant the Court to grant the sought relief of extension of time.

At the outset I wish to point out that, it is settled law that, in order for the Court to exercise its discretionary power of extending time, good cause for the delay must be shown by the applicant. However good cause has not been defined. It is therefore up to the applicant to sufficiently convince the Court that good cause exists. See the case of **Tanga Cement Company Ltd. vs. Jumanne D. Masangwa and**

**Amos A. Mwalavanda**, Civil Application No. 6 of 2001, Court of Appeal of Tanzania (Unreported).

Turning to the merits of this application, it is common cause that the applicant's quest for extension of time in order to institute an application for revision before this Court for examining the correctness and propriety of the award which was delivered by CMA at Mbeya on 29/02/2016.

The solicitor for the applicant submitted that the CMA did not inform the applicant the date of the delivering the award. Also he contended that was delayed to be supplied with the copy of the award. In the line of the submission advanced by the solicitor for the applicant the CMA contributed to the delay of the applicant to file an application for revision on time.

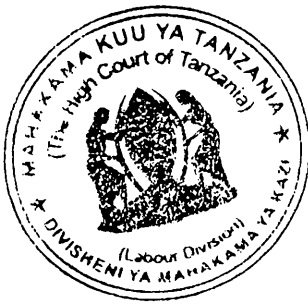
From the submission of the applicant that having received the copies of award and proceedings, the applicant in ten days time filed the application for extension of time within which to file revision. Therefore, the applicant taking 10 days to prepare and filing this application before this Court it shows that the applicant acted promptly and diligently.


In the circumstances, I disagree with the submission of the counsel for the respondent that this application has no bases as the

applicant has not succeeded to show that good cause exist to entitle applicant to file an application for revision out of time.

In the end, in view of what I have observed above, I am satisfied that this application has merits and the applicant succeeded to advance the good cause. Further the leave is granted to the applicant to file the intended application for revision within 21 days from the date of this ruling. No order as to costs.

It is so ordered.



  
**D. B. NDUNGURU**  
**JUDGE**  
12/05/2020

**Date: 12/05/2020**

**Coram:** D. B. Ndunguru, J

**Applicant:**

**For the Applicant:** Mr. Mwamarenke Advocate holding brief of Mr.  
Mwandu Solicitor

**Respondent:**

**For the Respondent:** Ms. Rose Kayumbo – Advocate

**B/C:** M. Mihayo

**Mr. Twamarenke – Advocate:**

The matter is for ruling, we are ready.

**Ms. Rose Kayumbo – Advocate:**

We are ready.

**Court:** Ruling delivered in the presence of Mr. Twamarenke  
Advocate holding brief of Mr. Mwandu and Ms. Rose  
Kayumbo holding brief of Mr. Innocent Boniphace for the  
respondent.



  
**D. B. NDUNGURU**  
**JUDGE**  
12/05/2020