

**THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)**

AT MWANZA

Misc. LABOUR APPLICATION No.22 OF 2019

(Arising from the Award in Employment Dispute No.
CMA/MZ/ILEM/650/2018)

RUTH LANGENI MFANGA APPLICANT

VERSUS

ILEMELA MUNICIPAL COUNCIL RESPONDENT

RULING

Last Order: 18.02.2020

Ruling date: 21.02.2020

A.Z. MGEYEKWA, J:

The applicant filed a chamber summons which is made under Rule 24 (1) Rule 24 (2)(a)(b)(c)(d)(e) and (f) and Rule 55 (1) and 56(1)(2)(3) of the Labour Court Rules, 2007 GN No. 106 of 2007. The order sought is extension of time to file an application for revision out of time. The application is supported by an affidavit deposed by Ms. Ruth Langeni Mfanga, the applicant. The respondent filed a counter-affidavit sworn by Mr. Ludovick Ringia, learned Solicitor.

At the hearing, the applicant was represented by Mr. Marwa Chacha, Personal Representative. On the adversary side, the respondent had the service of Mr. Ludovick Ringia, learned Solicitor.

Commencing his submission, Mr. Marwa submitted that the application before this court is for extension of time to challenge the CMA Award which was issued on 14th day of June, 2019. He prayed for this court to adopt the applicant's affidavit and form part of his submission. He submitted that the respondent acknowledges paragraphs 1 to 6 of the applicant's affidavit that means he conceded with the applicant's application.

Submitting further, Mr. Marwa stated that the defects were not in the knowledge of the applicant since Form No.4 is a legal form and the applicant's name and signature were appended in the said form. Therefore it is a good reason for delay taking into account that the applicant was already in court premises pursuing her case. To support his submission he cited the case of **Loshilu Karaine and 3 others v Abraham Melkizedeck Kaaya** Civil Application No.140/01 of 2018.

It was Mr. Marwa contention that the issue of procedural irregularities does not go to the root of the case since the same is resolved by overriding principle. To fortify his contention, Mr. Marwa referred this court to two decisions: Yacobo **Magoigo Gichare v Peninah Yusuph** Land Appeal No. 25 of 2012; and **Marwa Kisike v Medard Nyantoro** Land Case Application No.85 of 2013 (unreported).

It was Mr. Marwa further submission that the applicant has adduced good cause that the delay was not caused by idleness but it was out of the applicant's conduct. To buttress his submission, he cited the case of **Mbaja Wagome Minene v Mwanza Baptist Secondary School Baptist Convention of Tanzania (BTC)** Labour Revision Application No.93 of 2016 (unreported). In the premises, Mr. Marwa prayed that the applicant be given the right to be heard and allowed to file her application within 14 days. To support his prayer he cited the case of **Patrobert Ishengoma v Kahama Mining Corporation Ltd and two others** Civil Application No. 172 of 2016 (unreported).

In reply, the learned Solicitor considered the applicant's submission that in the absence of negligence and inaction of idleness are good grounds to be considered in an application for extension of time. However, he disputed the fact that the applicant's negligence of rectifying the Order of this court was attributed to this court; He added that such claims cannot be raised in the same court. Mr. Ringia argued that the applicant was required to concede that there was an error and obey the Court Order not otherwise. He submitted further that the law requires any person who prepares the document to indicate his name and signature while the applicant did not append his name and signature in the Notice of Application and Chamber Summons, therefore, the applicant was negligent; he prays this court to observe that ignorance of law is not a ground for extension of time. To fortify his contention, Mr. Ringia referred this court to the decision of **Calico Textile Industries Ltd v Pyaraliesmail Premji** 1983 TLR 28. He forcefully argued that the issue of limitation of time is a legal issue; it is not cured by overriding objective since it goes to the root of the jurisdiction of the court.

Submitting further the learned Solicitor stated that the applicant was required to account for each day of delay from when the Court Order was issued on 01.08.2019 to 06.08.2019. He stated that the applicant did not account for 6 days of delay in his affidavit. He referred this court to Loshilu case (supra). He differentiated the cited cases by the Personal representative and he prays this court to dismiss the applicant's application.

In his rejoinder, Mr. Marwa insisted that the applicant was not negligent instead she filed her application in time. He concluded by praying this court to consider their submission and exercise its judicial discretion power as provided under Rule 57 of the Labour Court Rules.

I have given careful consideration to the arguments for and against the application herein advanced by the learned counsels for the applicant and the respondent; there is no gainsaying that the power to extend time is at the court's discretion. In the instant application, the personal representative submitted in length in relation to Form 4 and cited several authorities to oppose the Court Order by saying that the name and signature of the applicant were appended and that the irregularities were not in

the knowledge of the applicant. In my view, the submission of the Personal Representative and the applicant's wording in paragraph 7 of her affidavit are baseless and was not supposed to be raised as a good cause for a delay as stated in length by the learned Solicitor for the respondent that ignorance of law is not a ground for extension of time.

I had to peruse the applicant's affidavit to find out if she had given other good reason to move me to grant his application and noted that paragraph 9 of the applicant's affidavit clearly states that the applicant timely filed her Labour Revision No.66 of 2019 before this court but on 01.08.2019 it was rejected for being defective and the applicant hastily on 06.08.2019 filed this application in respect to Misc. Labour Application No.22 of 2019 for extension of time. It is only 5 days passed after the rejection of the Labour Revision No.66 of 2019. As it was observed in the case of **Juma Ibrahim Magesa v Fanaka Sishnet (T) Ltd**, Revision Application No. 56 of 2014 (Mwanza). In my view, the applicant acted promptly to file this application which amounts to a good cause and it reveals that the applicant was keen to pursue her Revision. Therefore, the reasons given by the Personal

Representative that she was in court fighting for her right is indisputable.

Under the circumstances, I am satisfied that the applicant has adduced sufficient reason for his delay. Consequently, the application is granted, the applicant is granted extension of time of 14 days exclusive of the weekend and public holidays from the date of this order to file the intended revision.

It is so ordered.

Dated at Mwanza on this 21st day of February, 2020.





A.Z.MGEYEKWA

JUDGE

21.02.2020

Being delivered in the chamber this on this 21st day of February, 2020 in the presence of Mr. Marwa Chacha, Personal Representative.


A.Z.MGEYEKWA

JUDGE

21.02.2020