

**IN THE HIGH COURT OF TANZANIA  
LABOUR DIVISION  
AT MWANZA**

**MISC. LABOUR APPLICATION No. 29 OF 2019**

*(Arising from Revision No. 57 of 2018, originating from CMA/MZ/ILEM/123/2017)*

**COMMUNICATION AND TRASPORT**

**WORKERS UNION OF TANZANIA..... APPLICANT**

**VERSUS**

**MARIAM SAID ..... RESPONDENT**

**RULING**

**TIGANGA, J**

In this application the court is called to issue two orders;

- i. That this court be pleased to extend time for the applicant for the applicant to file an application to set aside the dismissal (struck out) order issued by this Honourable court, on 04/07/2019 by Hon. Siyani, J.
- ii. Any other relief(s) and or orders as this court may deem fit and just to grant in the premises thereof.

The application was filed by a chamber summons predicated under section 94 (1) (b) (i) of the Employment and Labour Relations Act No. 6 of 2004 as amended, Rule 24 (1), (2) (a), (b) (c), (d), (e) and (f), Rule 24 (3) (a), (b),



(c) and (d) and Rule 56 (1) of the Labour Court Rules GN No. 106/207 and any other enabling provision of the law.

It was supported by the affidavit sworn by Lucas Nyagawa a principal officer of the applicant holding the title of legal officer. In that affidavit he said that they did not immediately know that the Revision was dismissed, as on the date when the case was called they were confused by the court clerk one Edson who mistakenly told them to appear before Honourable Mgeyekwa, J instead of the trial judge. He said they went to Hon. Mgeyekwa, J, but their case was not called. Thereafter no one assisted them to know where their case was. It is his further averment that, despite the facts that they were seriously making follow-up, but they were not told the status of the case up to when they were informed by the court clerk one Mama Sekela that the matter had already been dismissed.

By the time they were informed it was already too late, that is a reason they had to file this application to ask for extension of time so that he can file an application to set aside the dismissal order.

The application was countered by the respondent, through the counter affidavit filed by Mariam Saidi the respondent, on the ground that the applicant failed to make follow up. She deposed that the applicant deserted the application that is why the same was dismissed, due to non follow up of the case by the applicant.

On 21/05/2020, the court ordered the application to be heard by way of written submission and parties filed their respective submissions in time. Starting with what the applicant submitted in chief, in support of the



application, he submitted that in the application of this nature, two factors must be considered and taken into account, **first**, is whether the applicant has disclosed good cause for delay and **second**, is whether there are other grounds constituting good reasons for granting the application. He cited the case of **CRDB Bank vs Allen Butembero** (2013) LCCD 151. He submitted that its delay was caused by the misleading information and directives which they were receiving from court through court clerks on which they had no option other than believing them and that they only became aware of the dismissal order on 19/09/2019, and within 48 hours to be precise on 21/09/2019 the applicant filed this application.

Further to that, he submitted that the delay was not on the applicant's fault and other grounds constituting delay were because they were not given sufficient information by the court clerk.

In the submission in reply the Respondent asked for the court to dismiss the application, because it was filed almost two months and three weeks from the date of the decision on 04/07/2019 to 24/09/2019 when this application was filed. She also submitted that the application was dismissed, it was not struck out. She in essence submitted that the applicant has no justification or good cause for his delay. He was negligent which fact caused him to fail to file this application in time. She prayed for the application to be dismissed with costs.

In rejoinder, the applicant said that he delayed for 20 days as he was supposed to file his application within sixty days as per paragraph 21 of part II of the schedule to the Law of limitation Act (Cap 89 RE 20019) as the

labour Rules GN No 106 2007 do not provides for the period of limitation. He submitted that, he has managed to establish the reason as to why he delayed to file the application to restore the matter in Labour Revision No. 57/2018.

Now having made a summary of what the parties availed the court for it to decide on the issue before it. It is instructive to find from number of case authorities that this court has powers to extend time as prayed provided sufficient reasons for delay are shown.

In the case of the **Attorney General vs Twiga Paper Products Limited** CAT, Civil Application No.108 of 2008 (unreported) the following factors were stipulated as the matter to take into account in granting or refusing extension of time;

- i. The length of delay
- ii. The reason for delay
- iii. The degree of prejudice to the respondent if the application is granted.

Also the authority in **Lyamuya Construction Company Limited vs Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 02/2010 (unreported) in which the following guidelines were given;

- i. The applicant should account each day of delay,
- ii. The delay should not be inordinate,



- iii. He must show diligence and not apathy, negligence or sloppiness in prosecuting the action he intended to take,
- iv. There must be sufficient reason such as the existence of the point of law of sufficient importance such as the illegality of the decision sought to be challenged.

In this case from when the Labour Revision was dismissed up to when the application has been filed is about two months and twenty days. Eliminating the two months which is the period provided by the law within which this kind of an application can be filed the remaining delayed days are 20 days.

The law requires the applicant to account every single day of delay. What the applicant has done in this case is to give the general reason that he was being misdirected by the registry clerks mentioning two clerks Edson and Mama Sekela. However, the applicant through his officer did not say in the affidavit and or in the submission that he took any action to show that he was diligent and not negligent. I am imagining for the person roaming around in the court corridors of the High Court for 80 days without any help and yet still, failed to knock the door of the office of the Deputy Registrar who is in charge of the registry and ask for assistance. That in my opinion would have exhibited his diligence.

In the absence of diligent follow up, it is hard to believe that the applicant was delayed by the reasons he gave. Short of that, he must account all days he delayed. Non accounting of each day of delay without proving that he was diligent which the authority in **Lyamuya Construction Company Limited Vs Board of Registered Trustees of**

**Young Women's Christian Association of Tanzania** (supra) insists, I find the applicant to have failed to give good cause for the delay to file the application to set aside an order which dismissed Labour Revision No. 57/2018. For the foregoing reason, I dismiss the application for want of merits.

It is so ordered.

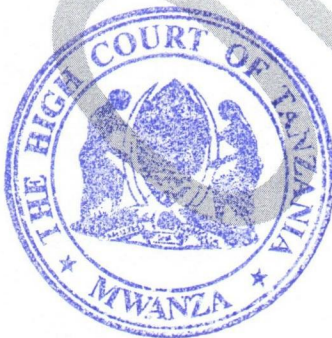
**DATED at MWANZA on this 27<sup>th</sup> day of August 2020**

  
**J. C. Tiganga**

**Judge**

**27/8/2020**

Ruling delivered in open chambers in the presence of the parties.  
Right of appeal explained.



  
**J. C. Tiganga**

**Judge**

**27/8/2020**