

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

LABOUR REVISION APPLICATION NO.17 OF 2018

(Arising from a Decision of the Commission for Mediation and Arbitration in
CMA/MZ/GEITA/687,689,690,691,692/2017)

JAMES BANDELEA SABOYA & OTHERS APPLICANTS

VERSUS

- 1. GEITA GOLD MINE LTD**
- 2. MGUSU VILLAGE**
- 3. MPOMVU VILLAGE**
- 4. NYAMALEMBO VILLAGE**

} **RESPONDENTS**

JUDGMENT

Date of last order: 10.11.2020

Date of Judgment: 18.11.2020

A.Z.MGEYEKWA, J

This is an application which was brought under Section 91 (1),(a) and (b), (2),(a),(b) and (c) and Section 94 (1),(b),(i) of the Employment and Labour Relations Act No.6/2004 Rule 24 (1), 24 (2),(a),(b),(c),(d),(e),(f) and

(3),(a),(b),(c), (d) and Rule 28 (1),(c),(d) and (e) of the Labour Court Rules GN.No.106 of 2007.

The applicants filed a Notice of Application, Notice of Representation, Chamber summons accompanied by an affidavit deposed by James Badela Saboya. The respondents challenged the application by filing a Notice of Opposition and a Counter-Affidavit deposed by Elizabeth Karua, Principal Officer. The applicants in his chamber summons prayed for the following orders:-

- 1. That this honorable court be pleased to call for the record, revise and set aside the whole CMA Ruling in Labour Dispute No. CMA/MZAIGEITA/687, 689, 690, 691, 692 of 20017 issued on 7th February, 2018.*
- 2. That this honorable court be pleased to quash the decision of the CMA and order the hearing of of the case on merit against the respondents.*
- 3. That this court be pleased to give any relief it deems fit and just to grant.*

When the matter was called for hearing on 10th November, 2020, Mr. Nyanjugu Sadick, personal representative appeared for the applicants and Mr. Gregory, learned counsel represented the first respondent, and Ms. Godlove, Solicitor represented the second respondent.

Supporting the application, Nyanjugu, personal representative urged this court to adopt his affidavit and form part of his submission annexure GPSO1 to GPSO10. On the first point, he argued that since 18th September, 2015 the dispute in respect to CMA/MZ/GEITA/ 687, 689, 690, 691, and 692 of 2017 was filed at the CMA and it was filed within time. He argued that the applicants were terminated on 1st September, 2020, and filed their claims on 18th September, 2018, t and it was within time. He added that Revision No.17 of 2018 was filed within time on 19th February, 2018.

He avers that the matter was pending before the CMA since there was a point of law as to who was the employer and there was an issue of amendment of Form No. VII of GN.65 of 2007 which was made on 24th February, 2017. He added that the application was filed within time but the Form was required to be rectified thus at the time when he filed the application for the second time he found himself out of time.

In conclusion, he urged this court to quash the decision and award dated 7th February, 2018, and allow the main application to be determined on merit.

Responding, Mr. Gregory, learned counsel for the first respondent urged this court to adopt his counter-affidavit to form part of his submission. He argued that the applicants did not adduce sufficient reasons for extension of time. He referred this court to page 4, 5, 6 and 7 of the CMA proceedings. He argued this court to consider the submissions made at the CMA and relevant laws which the CMA considered before delivering its decision. He went on to state that the CMA analysed all issues and reached a fair decision. Finally, he urged this court to dismiss the application.

Ms. Godlove, learned Solicitor for the second respondent urged this court to adopt the counter affidavit and form part of their submission. She stated that the CMA decision dated 7th February, 2018 was rightly decided. She prayed this court to adopt the CMA proceedings and joined hands the submission of the learned counsel for the respondent.

In conclusion, Ms. Godlove urged this court to dismiss the application.

In his brief rejoinder, he reiterated his submission in chief. He insisted that they had reasonable ground for delay. He insisted that the application was filed within time and before this court. He lamented that the CMA was

not fair in dismissing the application. He urged this court to allow their application.

I have given careful consideration to the arguments for and against the application herein advanced by the Applicants and the Respondent. The central issue for consideration and determination is *whether sufficient reasons have been advanced by the applicants to warrant the extension of time to file an appeal before this court.*

In determining the application, I find it convenient to go straight to the ground of revision whereas the applicants complained that the CMA faulted itself for failure to consider his grounds for condonation. I have pursued the proceedings to grasp what transpired at the CMA only to find the applicants' main reason for his delay was due to the fact that the matter stayed at the CMA from 18th September, 2015 until 25th July, 2017 July and for the reason that the referral was struck out on 25th July, 2017 only to find that the requirement of Form CMA No.1 (F1) and CMA F7 of GN. No. 65 of 2007 was amended by GN. No. 47 of 2017.

It should be noted that granting an extension of time is a matter for the discretionary power of the Court to which, there is no precise formula in

law or practice as to what factors or circumstances are taken into consideration before the Court exercise its direction in terms of Rule 56 (1) and (3) of the Labour Court Rules, GN 106 of 2017 to decide whether or not good cause has been shown for granting such application.

In deciding whether the applicants have disclosed good reasons for delay the court should take into consideration factors like, every day that passes beyond the prescribed period, lengthy of delay that shows how such reasons were operating for all the period of delay the same was observed in the case of **Jonathan Mwang'onda & 10 Others v Asher's Industries Ltd**, Misc. Application No. 26 of 2013 HC Labour Division Tanga Registry (unreported) and **Charles Petro v S.T. Carolu Institute**, Misc. Application No. 28 of 2013 HC Labour Division, Mwanza Registry (unreported). Good grounds in a sense explained above do not include ignorance of procedure and law.

The grounds adduced by the applicants' Advocate for the delay were insufficient considering the fact that no explanation was given for delay up to the moment the CMA struck out the last application covering between the date of striking out the application by CMA and the date of filing

CMA/MZAIGEITA/687, 689, 690, 691, 692 of 20017 was quite justified to refuse it. The records reveal that from 18th September, 2015 the applicants were before the CMA whereas several applications were struck out thus they lodged another application for condonation on 25 February, 2017 the same was struck out. It was the duty of the applicants to account for days of delay from 18th September, 2015 to 25 February, 201. Striking out of applications is not a good reason as stated by the CMA. The applicant submitted generally that the applicants were before the court without giving any explanation.

Additionally, in the instant application, the applicants' Advocate has based his argument on the amendments of Form No. 1 of CMA as a good cause on which I right away reject the explanation of ignorance of the legal procedure given by the applicants. As it has been held times out of number, ignorance of law has never featured as a good cause for extension of time. See the case of **Ngao Godwin Losero** (supra) the Court of Appeal cited with approval the case of **Bariki Israel v The Republic** Criminal Application No.4 of 2011 [18th October, 2016 TANZLII]. This appeal is seriously wanting in merits. It is accordingly dismissed with costs.

Applying the foregoing authorities and the principle of the application at hand, I am not persuaded to grant the applicants' application because the applicants have not demonstrated any good cause that would entitle them extension of time. As a result, this application fails and is accordingly dismissed without costs.

Order accordingly.

Dated at Mwanza this date 20th November, 2020.




A.Z.MGEYEKWA

JUDGE

20.11.2020

Judgment delivered on 20th November, 2020, and both learned counsels were remotely present.


A.Z.MGEYEKWA

JUDGE

20.11.2020