

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI

MISC. LABOUR APPLICATION NO. 14 OF 2020

*(Arising from Ex-parte Judgment and Decree in Miscellaneous
Labour Application No. 2 of 2016 – Hon. Mipawa .J.)*

CHUI SECURITY CO. LTD APPLICANT

VERSUS

TANZANIA SOCIAL SERVICE WORKS RESPONDENT

RULING

MUTUNGI .J.

The applicant prays for extension of time to set aside the Ex-parte proceeding, judgment and decree of this Court (I.S. Mipawa, J.) dated 21st July, 2016 in **Misc. Labour Application No. 2 of 2016**. The application was brought under **Rule 24 (1), (2) (a) (d) (e) (f), 24 (3) (b) (c) (d), 24 (11), 55 (1) and 56 (1) of the Labour Court Rules, GN. No. 106 of 2007** (Labour Court Rules). The application is further supported by the applicant's

Zonal Manager sworn affidavit, which the respondent disputed and filed a counter affidavit through Mr. Festo Kyaruzi from TASIWU.

Briefly, the dispute involved deduction of new applicant's employees' membership fees which the applicant was notified through the later dated 23/10/2013. According to the respondent, the applicant was warned that, incase he delayed to remit the deductions he will pay the same with a 5% penalty everyday as per section 61 (3) of the Employment and Labour Relation Act. The applicant did not comply with the said request hence the matter was taken to Moshi Commission for Mediation and Arbitration vide Dispute No. MOS/CMA/M/93/2014. The applicant did not show up and the matter was referred to this Court which again the applicant did not appear hence the matter was heard ex-parte. This Court proceeded to grant the application. According to the applicant the matter was silent until 20th August, 2020 when they received summons in respect of Labour Execution No. 2 of 2016 hence this application.

During the hearing the applicant was represented by Mr. Joseph Ngowi (Zonal Manager) whereas the respondent was

represented by Mr. Manase Gideon. Supporting the application, Mr. Ngowi stated that, the matter was heard Ex-parte and they received a wakeup call through a summons for execution. He argued that, they were never summoned in court while the respondent knew their branch office but no one notified them on the matter which was heard ex-parte in this court. Moreover, procedures of service were not followed not even the option of notifying them by phone.

He further argued that, in matters concerning Labour Relations, the respondent could have sat with them if at all they needed members but the same was not done. In that regard, he prayed for extension of time so that they can either solve this dispute amicably or be allowed to set aside the ex-parte decision.

In reply, Mr. Manase submitted that, the respondent applied for members from the applicant and they met one Mr. Samwel (the Kilimanjaro Supervisor). They registered some members following the procedure laid down by the relevant forms and notified the applicant in respect of the same. The applicant in the given circumstances was aware of the dispute on members' contributions including the matter

before the court. In that regard the reasons for extension of time are insufficient. The disputed decision is of 2016 and the headquarters was well aware of the decision. Further that, they promised to settle the matter but delayed purposely and if the applicant had good will, they would have negotiated earlier but not at the execution stage pending before the Deputy Registrar. He prayed the application be dismissed so that the execution can proceed.

In rejoinder, Mr. Ngowi insisted that, the said Samwel was not the Office Supervisor but was a mere watchman supervisor. If at all they thought were in the right channel then, they were wrong. There was no link between the applicant's office and the respondent. The person they had communicated with had no mandate at all in the business of the applicant. This is the essence of the filed application, to have the ex-parte decision set aside.

Having considered both parties' submissions, affidavit and counter affidavit, the main issue for determination is: -

Whether the applicant has shown sufficient cause to be granted extension of time to set aside the ex-parte proceeding and decision.

It is undisputed that, an application for extension of time is entirely upon the discretion of the court to grant or not. This discretionary power, however, is judicial in nature and must be confined to the rules of reason and justice. It also has to be judicial and not according to private opinion or arbitral. The case of **Eliakim Swai and Another V. Thobias Karawa Shoo, Civil application No. 2 of 2016 (CAT) at Arusha (unreported)** set out the tests in determining good cause for granting extension of time. Among others, the applicant must account for all the period of the delay; and the delay should not be inordinate; the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that intends to take. The same position was also observed in the cases of **Daudi Haga V. Jenita Abdon Machafu, Civil Reference No. 1 of 2000** and **Lyamuya Construction Co. Ltd V. Registered Trustees of YWCA of Tanzania, Civil Application No. 2 of 2010.**

I have carefully considered the argument put forward by Mr. Ngowi on failure to file an application to set aside the ex-parte proceeding and decision. According to him failure to file the application early, was due to lack of knowledge of

the pending matter before the Commission and in this Court. He argued that it was until when the matter was scheduled for execution, that they were aware of this matter. The respondent on the other side claimed that since the genesis of the matter at the Commission, the applicant was notified of the same but failed to appear due to the best reasons known to themselves. However, he failed to substantiate such claims by proof of copies of summons served to the applicant or otherwise.

In the case of **Republic V. Yona Kaponda & 9 Others [1985] T.L.R. 84** the Court pointed out that, the court should not only consider if there are sufficient reasons for the delay but also the reasons have to be sufficient for extending time to entertain an appeal. In the matter at hand, I am of the firm view that the delay was due to legal and/or procedural technicalities and the reasons advanced by the applicant for the delay are sufficient and sound in law and for that matter justify the grant of the application.

Accordingly, the applicant's prayer is granted as requested and is given 21 days to file her application to set aside the ex-

parte proceeding and decision so that both parties can have their fate determined justly.

It is so ordered.




B. R. MUTUNGI

JUDGE

11/12/2020

Ruling read this day of 11/12/2020 in presence of Mr. Joseph Ngowi (Zonal Manager) for the Applicant and Mr. Festo Kyaruzi for the Respondent from TASIWU.


B. R. MUTUNGI

JUDGE

11/12/2020

RIGHT OF APPEAL EXPLAINED.


B. R. MUTUNGI

JUDGE

11/12/2020