

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA**

AT SHINYANGA

MISCELLANIOUS APPLICATION NO. 27 OF 2019

*(Arising from Labour complaint No CMA/SHY/164/2018 dated 10th January,2019 in the
commission for Mediation and arbitration of Shinyanga at Shinyanya.)*

SHINYANGA MUNICIPAL COUNCILAPPLICANT

VERSUS

JUSTUS KAGYA.....RESPONDENT

RULING

Date of last order: 03.03.2020

Date of Judgement: 27.03.2020

E. Y. MKWIZU, J.:

The applicant, **SHINYANGA MUNICIPAL COUNCIL** filed the instant application seeking an order for extension of time within which to file revision against the decision of the Commission for Mediation and Arbitration Shinyanga in labour Dispute No. CMA/SHY/164/2018 dated 10th January,2019 .The application was filed by way of a chamber summons under section 14 (1) and (2) of the Law of limitation Act. Cap 89 R.E.2002 and any other enabling provision of the law.

The application is supported by the affidavit of one DORICE DARIO the Municipal solicitor.

At the hearing, the applicant, Shinyanga municipal council was represented by Mr. Josephat Mushi, municipal solicitor and Mr Justus Kagya, the respondent, appeared in person, unrepresented.

In his submission in support of the application, Mr. Mushi adopted his affidavit in support of the application to form part of his submission. It was averred in the affidavit that, the CMA issued its award in favour of the respondent on 18th January,2019 and that applicant was aggrieved by the said decision but failed to file revision on time as the solicitor who had the conduct of this matter, Mr. Bahati Wape was transferred to Bukoba in October 2018 (see paragraphs 3,4 and 5 of the affidavit in support of the application).

Mr Mushi added that, applicant engaged a new solicitor one Dorice Dario in February,2019 who then went through the decision and found that the CMA decision was not executable. They then prepared and filed the present application. He prayed to have the application granted.

On his part, the respondent Mr Kagya, resisted the application. He submitted that, the CMA's award was issued on 10/1/2019 and on 18th January, 2019 he applied for the execution. He served the applicant with a notice of hearing of the execution proceedings and that applicant's solicitor was attending the executing proceedings and that she was served with a

summons to show cause in May 2019 after she failed to pay the respondent. It was the summons to show cause, that had awakened the applicant, hence this application. Respondent clarified that, all along, the applicant was aware of the decision of the CMA and was attending the execution proceedings. He urged the court to dismiss the application for that applicant's failure to substantiate his prayer.

In his rejoinder Mr. Mushi conceded that they were attending the execution proceedings but they were not aware of the contents of the CMA award until when they were served with the notice to show cause. He, however of the prayer that the application be granted.

In the present application the issue which needs to be determined is, has the applicant given sufficient cause for the delay to warrant grant of extension of time? In the case of **Lyamuya Construction Company Limited v. Board of Trustees of Young Women Christian Association of Tanzania** Civil Application No. 2 of 2010 where the court of appeal listed down the factors to be considered before the grant of extension of time as being: -

"1. That, the applicant ***must account for all the period of delay.***

2. The delay must not ***be inordinate***

3. The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.

4. If the Court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as illegality of the decision sought to be challenged."(Emphasis added)

Guided by the principles demonstrated above, I think, I should state in the outset that, grounds stated by the applicant constitute no good cause for delay. From the events above, the court take the stance of the respondent that, applicant knew about the CMA award on 10/01/2019. It is not in dispute that the applicant was attending the execution proceedings filed by the respondent since January, 2019 but she carelessly filled the current application on 17th May 2019, five months later after she was served with a notice to show cause why execution should not proceed against her. I therefore, subscribe to Court of Appeal decision in the case of **Daudi Haga v. Jenitha Abdan Machanju**, Civil reference No. 1/2000, and **Tanzania Fish Processors Ltd v. Christopher Luhangangula**, Civil Appeal No. 161/1994 where the court held that a person seeking for an extension of time had to account on every single day for delay to enable the court to exercise its discretionary power. It is unfortunate that applicant in the present

application failed to adduce sufficient reasons to account for every day of delay.

In the case of John **Mosses and Three others Vs. The Republic**, Criminal Appeal No. 145 of 2006, Court of appeal held that:-

*"We need not belabor, the fact that it is now settled law that in application for extension of time to do an act required by law, **all that is expected of the applicant is to show that he was prevented by sufficient or reasonable or good cause and that the delay was not caused or contributed by dilatory conduct or lack of diligence on his part.**" (Emphasis mine)*

It is obvious therefore from the analysis above, that, Applicant has not only failed to account for the delay, but failed to show that he was prevented by sufficient cause. I accordingly find this application seriously wanting in merit. I dismiss it. Being a labour matter, I make no order as to costs. Order accordingly.

DATED at SHINYANGA this 27th day of MARCH, 2020.

