

**IN THE HIGH COURT OF THE UNITED  
REPUBLIC OF TANZANIA**

**(LABOUR DIVISION)**

**AT MUSOMA**

**MISC. LABOUR APPLICATION NO. 34 OF 2019**

*(Arising from the Decision of the Commission for Mediation and Arbitration in  
CMA/MUS/56/2018)*

**CHARLES N. ROBERT AND 89 OTHERS .....APPELLANT**

**VERSUS**

**MMG GOLD LIMITED ..... RESPONDENT**

**RULING**

*Date of Last Order: 1/04/2020*

*Date of Judgment: 27/04/2020*

**KISANYA, J.:**

This application for extension of time to file revision has been made under Rule 24 (1), 24 (2) (a)(b) (c) (d) (f) and 24 (3)(a)(b)(c), Rule 55(1) and Rule 56(1) and (3) of the Labour Court Rules, 2007. It is supported by the affidavit of the applicants' advocate.

Briefly, the applicants are employees and ex-employees of the respondent. Sometimes on 6/3/2018, the applicants filed Labour Dispute No. CMA/MUS/58/2018 before the Commission for Mediation and Arbitration for Musoma at Mara (CMA) claiming for overtime payments. In its decision delivered on 3/8/2018, the CMA

dismissed the applicants' claims for want of merit. Aggrieved, the applicants filed Labour Revision No. 23 of 2018 before this Court. However, the said revision was struck out for being incompetent. Determined to have the decision of the CMA revised, the applicants have filed the present application.

When the parties appeared before me on 1/4/2020, I ordered this matter to be disposed of by way of written submissions. Both parties filed their submission in accordance with the schedule fixed by the Court.

In his written submission, Mr. Ernest Mhagama, learned counsel for the applicants prayed to adopt the affidavit which had been filed in support of the application. The learned counsel advanced two reasons for the delay. The first ground was to the effect that, the applicants had filed in time the application which was struck out by the Court for being incompetent. The second ground was that, it took time to procure signature of the applicants because they are scattered. Citing the case of **Kalunga and Company Advocate Kalunga vs National Bank of Commerce** (2006) TLR 235, Mr. Mhagama went on to submit that the Court has a discretion of granting the extension after the applicant had advanced material explanation. He was of the view that applicants had advanced the sufficient reasons for the delay. Therefore, Mr. Mhagama urged me to grant the application.

The Respondent's written submission was filed by Mr. Mutandzi Akiza Matovelo, learned advocate. He argued in opposition of the application. From the very outset, Mr. Matovelo prayed to adopt the counter-affidavit sworn by Mr. Cosmass Tuthuru on behalf of the respondent as

part of his submission. The learned advocate argued that, Labour Revision No. 23 of 2018 was struck out “with leave to refile if the applicants’ interest to pursue the matter persisted.” However, he was of the view that the application at hand had been borne of the lapse of such leave and default in compliance with the order of this Court. The learned advocate argued further that, the applicants had not shown good cause for non-compliance with the Court’s order as required under Rule 56(1) and (3) of the Labour Court Rules, 2007.

Submitting against the first reason that the applicants’ revision had been struck out for being incompetent, the learned counsel cited the case **Registered Trustees of SUBISISO Foundation vs Angelus Bandali Ngatunga [2015] LLCD 201** where this Court held that the fact that the application was struck out for incompetence is not a sufficient reason on which to grant the extension of time.

As to the second reason on the time taken to procure the applicants’ signature, Mr. Matovelo submitted that the applicant had not accounted for the delay. He supported his argument by making reference to the case of **Loshilu Karaine and 3 Others vs Abraham Melkizedeck Kaaya**, Civil Application No. 140/02 of 2018, CAT at Arusha (unreported) where the Court of Appeal cited with approval the case of **Bushfire Hassan vs Latima Masaya**, Civil Application No. 3 of 2007 (unreported) that:

*“Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain have to be taken.”*

The learned advocate contended that the said reason points out “negligence of the applicants in processing their claims or their outright reluctance.” He invited me to consider the decision of this Court in **Durra Abeid vs Honest Swai**, Mis Civil Application No. 182 of 2017, HCT at Dar es Salaam (unreported). Mr. Matovelo argued further that had the applicants prioritize this matter they could have used electronic signatures and file the application **on time**. He was of the view that, the case of **Kalunga and Company Advocates** (*supra*) cited by the applicant is distinguishable to the case at hand on the ground that it involved an illegality in the court’s action which is not the case in the application at hand. For the aforesaid, Mr. Matovelo prayed this application to be dismissed in its entirety.

I appreciate both counsels for their submissions and the cited authorities. I have given due consideration to application, affidavit, counter-affidavit and the submission by the parties. Pursuant to section 91(1) (a) of the Employment and Labour Relation Act, 2004 (as amended), application for revision of award made by CMA is required to be filed within six weeks (42 days) from the date on which the award is served to the applicant. The said section provides that:

*“91.-(1) Any party to an arbitration award made under section 88(10) who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for a decision to set aside the arbitration award-*

*(a) within six weeks of the date that the award was served on the applicant unless the alleged defect involves improper procurement.”*

However, according to rule 56(3) of the Labour Court Rules, 2007, this Court has discretion of extending the time limitation or condoning non-compliance with the time limitation if there is good cause. The issue then is whether there is good cause for the Court to extend the time in the matter at hand. The law does not define “good cause”. That issue has to be decided depending on the circumstances of each and upon being satisfied that the applicant has demonstrated good cause for the delay. This position was stated in **Finca (T) Limited vs Kipondogoro Action Mart and Another**, Civil Application No. 589/12 of 2018, CAT at Iringa, where the Court of Appeal held that:

*“It is settled that where extension of time is sought, the applicant will be granted, upon demonstrating sufficient cause for the delay. Conversely, it is also well settled that the sufficient cause sought depends on deliberation of various factors, some of which revolve around the nature of actions taken by the applicant immediately before or after becoming aware that the delay is imminent or might occur.”*

Further, in **Omary Ally Nyamalenge (as Administrator of the Estate of the late Seleman Ally Nyamalenge) and Others vs Mwanza Engineering Works**, Civil Application No. 94/08 of 2017 the Court of Appeal held that factors to be taken into in ascertaining whether good cause has been established include length of the delay, the reasons for the delay, the degree of prejudice the respondent stands to suffer if time is extended and whether the applicant was diligently.

In demonstrating the reasons for the delay, the applicant has to account for each day of delay as held in the case of **Loshilu Karaine and 3 Others** (*supra*) referred to by Mr. Matovelo. Such requirement ensures

that the objective of having provisions on time limitation is met. Otherwise, there will be endless litigations in court.

The award to be revised in the matter at hand was delivered by the CMA on delivered on 3/8/2018. It is not in dispute that, the applicants had filed in time an application (Revision No. 23 of 2018) to revise the said award. Further, both parties are in agreement that, on 6/11/2019, the said application was struck out for being incompetent. Mr. Matovela went further to state that Revision No. 23 of 2018 had been struck out with leave to refile. However, the leave to refile was subject to the law of limitation.

It is settled law that the time used in court to pursue justice in good faith is an excusable delay. This position was stated by the Court of Appeal in the case of **Omary Ally Nyamalenge (as Administrator of the Estate of the late Seleman Ally Nyamalenge) and Others** (*supra*). Therefore, I am of the considered opinion that, the time used by the applicants in pursuing the application which was struck out on 6/11/2019 can be excluded in extending the time hand. This is because it has not been shown that the same was filed in bad faith.

However, this reason is not sufficient to determine the fate of this application. It covers the period of up to 6/11/2019 when the application was stuck out with leave to refile. The record shows that the present application for extension of time was filed on 27/12/2019. That was after lapse of 51 days.

The applicants herein contend that the delay was caused by the snag in procuring signatures of the applicants on the ground that they are

scattered. This reason is depicted from paragraphs 8 and 9 of the Affidavit as follows:

*“8. That, since the applicants are scattered, the exercise of getting their signature took more than a month and also the matter was filed within time but it was struck out for being incompetent.*

*9. That the reasons for delay is that the matter was filed within time but it was struck out by the Court on 6<sup>th</sup> November, 2019, and also after being struck out the exercise of getting the applicants signature consumed time.”*

The said reason has been reproduced in the applicants' written submission in support of the application. Mr. Matovello was of the view the reason advanced by the applicants indicates that they had not prioritized this case. On my part, the applicants have not proved as to how they are scattered. This fact was required to be proved accordingly. According to paragraph 3 of the affidavit, “some of the applicants are still the employees of the respondents, and other were employees”. Therefore, there was a need of showing the applicants who are not working with the respondent and relevant particulars as to residence including their hamlet or village, mtaa, district and region to prove that they are scattered. This was not shown in Annexure CR1 to the affidavit in support of the application. The said Annexure CR1 contains names and signature of each applicant only.


The applicants state further that the exercise of getting their signature consumed time. It was averred that the exercise took more than a month. Again, this fact was not proved because the specific time used to collect the said signatures was not stated or proved. Also, Annexure CR1 to the affidavit does not show the date on which every applicant put his

signature. In such a case, I find that each day of delay has not been accounted for by the applicants as required by the law. Further, the means used to procure the signatures was not stated. As rightly argued by Mr. Matovela, the Electronic Transactions Act, 2015 allows electronic signatures. It was not stated as to how the applicants' signature could not be procured electronically.

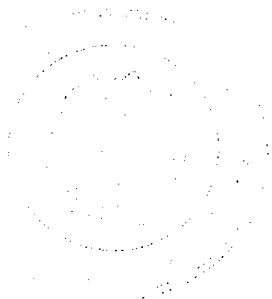
To this end, as the applicants have failed to prove how they are scattered and the time used to get signatures, I find that they have not accounted for the 51 days of the delay. Consequently, they have not established and proved good cause for the Court to grant the application.


In view thereof, I hold that this application is devoid of merit and it is accordingly dismissed. I make no order as to costs because of the nature of this case.

DATED at MUSOMA this 27<sup>th</sup> day of April, 2020.

  
E.S. Kisanya  
JUDGE  
27/4/2020

Court: Ruling is delivered this 27<sup>th</sup> April, 2020 in the absence of the parties with leave of the court due to COVID-19 outbreak. Parties to be notified to collect copy of ruling at the registry office of this Court.



  
E.S. Kisanya  
JUDGE  
27/4/2020