

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

**MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**MISC. LABOUR APPLICATION NO. 9 OF 2017**

(C/f MOS/CMA/M/233/2011)

**DISTRICT EXECUTIVE DIRECTOR,**

**MOSHI DISTRICT COUNCIL ..... APPLICANT**

**Versus**

**ALFRED MBUYA ..... RESPONDENT**

*Date of Last Order: 10/12/2019*

*Date of Ruling: 19/02/2020*

**RULING**

**MKAPA, J:**

The applicant is seeking for extension of time to file revision out of time to this court against the Award of the Commission for Mediation and Arbitration (the Commission) before G.P. Migire - Arbitrator dated 06/03/2015. The application is brought under **Rule 24 (1), 24 (2) (a) (b) (c) (d) (e) (f), 24 (3) (a) (b) (c) (d)** and **rule 56 (1)** of the **Labour Court Rules, 2007**, GN No. 106 of 2007 (the Rules). The application is supported by the sworn affidavit of Mr. Grayson Orcado, applicant's learned advocate (Solicitor) and through counter affidavit, the respondent contested the application.

The brief facts that gave rise to this application is that the respondent was employed by the applicant as a primary school teacher on 01/01/1969, where he worked in different schools and in different regions in mainland Tanzania. It is alleged that, in 1992 he joined Red Cross Society under Youth Project and was given leave of absence to that effect. In January 2006 he informed the applicant of his leave expiry and his intention to resume work but he was told there were no job vacancies. He was officially dismissed on 01/12/2000 for absconding but was never paid all his dues. He thus decided to refer the matter to the Commission. The Commission decided in his favour and ordered the applicant to pay him a total of shillings 17,041,650/= as his terminal benefits for unfair termination.

Aggrieved with the decision, the applicant filed Revision No. 38 of 2015 before this court but the same was struck out for non-citation of enabling provision. The applicant then filed Misc Labour Application No. 10 of 2015 before this court praying for extension of time to file revision but the same was also struck out for wrong citation hence this application.

The applicant had the services of Mr. Muhsin Kilua, Solicitor, and the respondent was represented by Mr. Elikunda Kipoko, learned

advocate. Both parties consented to argue the application by way of written submissions.

Supporting the application, Mr. Kilua submitted that, they fully adopt the applicant's affidavit which categorically explained that this matter was heard and decision made ex-parte in favour of the respondent. However, when the ex-parte hearing order was made on 16/12/2014, the applicant was late for 30 minutes as they had another Application No. 26/2014 at the District Land and Housing Tribunal for Moshi. They prayed to the Arbitrator to vacate the order but the same was declined. Also after the decision was made they prayed for the Commission to set aside the ex parte award but the same was also denied.

Mr. Kilua submitted further that, there are substantial and triable legal issues emanating from the Commission's award that require the attention of this court. He mentioned a few as failure of the Arbitrator to set aside the ex-parte proceedings and award, entertaining a matter which was not preferred by the Labour Commissioner contrary to section 42 of the Written Laws (Miscellaneous Amendments) (No. 2) No. 11 of 2010 and application of the Employment and Labour Relations Act, 2014 instead of the substantive law which were in force in 2001 when the dispute arose.

Mr. Kilua finally prayed that, this application be allowed so that they can be able to file application for revision out of time.

Responding to the applicant's submission, Mr. Kipoko for the respondent contended that in application for extension of time the applicant must state clearly when he/she obtained copy of the award failure of which the court should dismiss the application with cost. He cited the case of **Cosmas Construction Co. Ltd V. Arrow Garments Ltd** 1992 TLR 127 which emphasized that without disclosing when the applicant got to know of the existence of the judgment it is not possible to gauge the extent of delay. Mr. Kipoko argued that through applicant's affidavit and submission, they have failed to disclose when they recieved the copy of the award hence this application should be dismissed with cost.

Furthering his argument, Mr. Kipoko argued that, in application for extension of time, the applicant must account for each day of delay as was held in the case of **Lyamuya Construction Co. Ltd V. Board of Registered Trustees of Young Women's Christian Association of Tanzania Civil Application No. 2 of 2010** (Unreported). However, in the applicant's affidavit and submission they have failed to show any sound reason for the delay from the date of the award to the day this application was filed. For the

above reasons he prayed that this application be dismissed with cost. No rejoinder was filed.

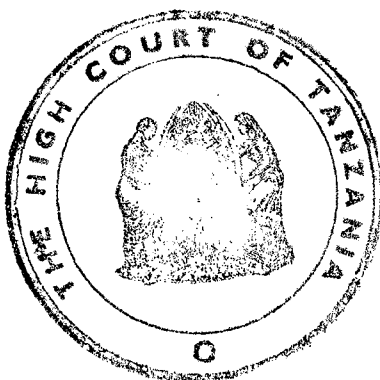
After going through parties' affidavits and submissions, I think the only issue for determination is whether the applicant has demonstrated sufficient reasons to warrant the grant of extension of time.


It is undisputed that, this application was heard ex-parte and decision was also given ex-parte on 6<sup>th</sup> March 2015 at the Commission. However, immediately thereafter the applicant filed an application to set aside the ex-parte award on 31<sup>st</sup> March 2015. Their application was dismissed with cost thus, decided to file for revision in this Court on time through Application No. 38 of 2015, which was struck out for non-citation of the enabling provision of the law. The applicant then filed Misc. Labour Application No. 10 of 2016 for extension of time to file revision out of time since the required time had lapsed, unfortunately the same was also struck out on 1<sup>st</sup> June 2017 for being incompetent and improperly filed before this court. The applicant was given 14 days to file a proper application hence the one at hand which was filed on 6<sup>th</sup> June 2017 (5 days after the order was given).

From the surrounding circumstances it is evident that the applicant is desperately seeking for his rights. The question whether the applicant has given sufficient cause to warrant this Court to grant the application, is from the outset answered in affirmative. The original application for revision was filed on time the only problem arose when the same was struck out for lack of competent legal requirements hence the application was time barred. It is evident that the applicant has not specifically accounted for each day of delay, but I think justice demands to consider the history as it speaks for itself. The principle of overriding objective urges the Courts to exercise substantive justice instead of encouraging minor technicalities.

For the reasons discussed, it seems to me that justice demands that this application be allowed. I therefore allow the application for extension of time to file revision, and order the applicant to file the revision within 14 days from today.

Dated and Delivered at Moshi this 19<sup>th</sup> day of February, 2020.



  
**S.B. MKAPA**  
**Judge**  
**19/02/2020.**