

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
(LABOUR DIVISION)**

**AT SHINYANGA**

**MISC.LABOUR APPLICATION NO 26 OF 2019**

*(Arising from the decision of the Commission for Mediation & Arbitration of  
Shinyanga by Mnembuka K. (Arbitrator) dated on 16<sup>th</sup> March, 2018 in Labour  
Dispute No. CMA/SHY/241/2017.)*

**BENJAMIN MICHAEL JACOB.....APPLICANT**

**VERSUS**

**PANAFRICAN MINING SERVICES (T) LIMITED.... RESPONDENT**

**RULING**

*Date: 10<sup>th</sup> March, 2020 - 8<sup>th</sup> April, 2020*

**MKWIZU, J:**

This is an application for an extension of time to file an application for revision out of time against the decision of the CMA in Labour Dispute No. CMA/SHY/241/2017. The application is made by a chamber summons under rule 24(1), 24 (2 (a) (b) (c) (d) (e ) (f), 24 (3) (a) (b) (c) (d) and Rule 55 (1), 56 (1) of the Labour court Rules GN No. 106 of 2007. The application is supported by an affidavit deposed by FELIX JAMES, applicant's advocate. The respondent filed a counter affidavit sworn by EDWARD JOHN MTAKI the respondent's counsel.

At the hearing, the applicant was represented by advocate Felix James while the respondent had the services of Mr. Edward Mtaki. also learned advocate.

In support of the application, Mr. Felix submitted that applicant had timely filed a revision application before the High Court which he withdrew on 2<sup>nd</sup> May, 2019 with leave to refile. He stated that, on 15<sup>th</sup> May, 2019 applicant opted to file this application because he was out of time. He urged the court to grant the application because the applicant acted promptly and that he delayed while pursuing the withdrawn application before the High Court. He cited the case of **Fortunatus Masha V. William Shija and Another**, (1997) TLR 154 to the effect that the delay was a technical one.

On his part, Mr. Mtaki opposed the application. He contended that, the applicant has not adduced sufficient reasons as to why this application should be granted. He cited the case of **Marcky Mhango and Others V. Tanzania Shoe Company Ltd and Another**, Civil application No. 37 of 2003 (unreported) stating that extension of time can only be granted where sufficient reasons for delay is shown.

Mr. Mtaki contended further that, the applicant failed to show why he did not file the revision within fourteen (14) days he was granted by Kibela J. He argued that, reasons for the delay ought to be given in the applicant's affidavit. He cited the case of **The Registered Trustees of Arch Diocese of Dar es salaam v. The chairman Bunju Village**. Civil application No. 137 of 2006 (unreported) to bolster his argument. Making reference to the applicant's affidavit, Mr. Mtaki said, paragraphs 2,3,4,5 and 6 of the applicant's affidavit talk of the withdrawn application and not why he was not able to file the application within time specified in the courts order. He finally requested the court to dismiss the application.

In his short rejoinder the applicant's advocate stated that paragraphs 5 and 6 of his affidavit in support of the application have established grounds for the delay.

I have gone through the court's record and the submission made by both parties and I have the following observations; the applicant's employment was terminated on 8<sup>th</sup> September, 2014, he referred the dispute of unfair termination to the Commission for Mediation and Arbitration on 29<sup>th</sup> November, 2017 by filling Form No CMAF1. Because he was late, he

filed application for condonation. The CMA dismissed the application for condonation for failure by the applicant to give sufficient reasons for the delay. Applicant, filed application for revision No. 48 of 2018 before this court which he withdrew on 2<sup>nd</sup> May, 2019 with leave to refile. The High Court Kibela J(as he then was) granted the prayer, and the applicant was given fourteen (14) days leave within which to file a fresh revision if he so wishe. The High Court order goes thus:-

*“Order: Prayer by Mr. Felix James is hereby granted. The application is hereby marked withdrawn with no order as to costs. However, the applicant is hereby allowed to refile the application within fourteen days from today.*

*R.M.kibella  
JUDGE  
2/5/2019”*

Regrettably, instead of filing a fresh revision within the time specified in the High Court’s order, applicant on 15<sup>th</sup> May, 2019 filed this application which is for extension of time to file revision before this court.

It is worth to observe here that, when the applicant filed this application, he was still within fourteen (14) days leave to file revision. Paragraph six (6) of the applicant’s affidavit in support of the application gives

explanation as to why he could not follow the terms of this court's order. It reads:-

*"6. That, since the said Application I decided to withdraw was filed in time and on the course of its hearing absconded with some technical delay, I found out that prayer to refile the fresh application for revision recently can not be tenable since it will be out of time from the date that order of the court was granted, hence this application."*

The explanation given in the above paragraph of the applicant's affidavit is untenable. It does not clearly come out as to why the applicant opted to file application for extension of time while he was within the time specified in the leave to file revision. This application is redundant and superfluous amounting into abuse of courts processes.

In the result, this application has no merit, it is hereby dismissed accordingly.

**Dated at Shinyanga this 28<sup>th</sup> day of April, 2020**



*E.Y. Mkwizu*  
**E.Y. Mkwizu**  
**JUDGE**  
**28/4/2020**