

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION
AT MOSHI
LABOUR APPLICATION NO. 13 OF 2018
BETWEEN
SAIDI KITUNDU SHOLE AND 149 OTHERS APPLICANTS
AND
AND THE CHIEF EXECUTIVE OFFICER TPC LTD.....RESPONDENT

Date of last order:27/11/2019

Date of Ruling 28/2/2020

RULING

MKAPA, J:

The applicants have approached this court in an application seeking to extend time under section 57 of the Labour Institutions Act No.7 of 2004, Rule 24(1) (2) (b) (c) (d), 54 and Rule 56 (1) of the Labour Court Rules, 2007, G.N No. 106 of 2007 and section 5 (1) (c) and 11 (1) of the Appellate Jurisdiction Act CAP 141 (R.E 2002) to enable the applicants to lodge a notice of appeal and appeal out of time to the Court of Appeal of Tanzania against the decision of this court (Mipawa J;) dated 20/7/2016 in Revision No.33 of 2015. The application is support by an affidavit sworn by Mr. Faustin Materu learned advocate for the applicant. The respondent opposed the application and filed a counter affidavit.

The brief facts which gave rise to this application is to the effect that the applicants were employees of the respondent at various dates and positions in the respondent's undertaking or business TPC, which deals with plantation notably of sugar cane for the purpose of processing sugar for consumption and selling outside and within the country. It is alleged on 22/01/2007 the respondent and the security officers were informed of an intention by TPC workers to hold a strike. The officer commanding station at TPC Police station, the Moshi District Commissioner and the respondent head of legal affairs arrived at the respondent factory and witnessed a group of workers scattered in groups without reporting to their work place. The respondent terminated the applicants for participating in illegal strike. The applicants filed a trade dispute with the Commission for Mediation at Moshi in Application No. CMA/Moshi/ ARB/04/2007, which the Commission decided in favour of the respondent.

At the date of hearing of the application, parties advanced their submissions orally. Applicants were represented by Mr. Faustine Materu learned advocate while the respondent had the services of Mr. David Shilatu also learned advocate.

Submitting in support of the application Mr. Materu narrated that, following the CMA decision in Application No. CMA/Moshi/

ARB/04/2007 in which the mediator (Hon. S. K. Mzava) ruled in favour of the respondent, the applicants were aggrieved and appealed to this court in Revision No 33 of 2015 where this court also ruled against the applicants.

Dissatisfied, the applicants appealed to the Court of Appeal in Civil No. Appeal No.172 which was struck out because the record of appeal was incomplete as Rev. No. 28/2004 which had granted extension of time to the applicants to file application No. 33/2015 was missing from the records.

Mr. Materu submitted further that, after 12/07/2018 the applicants approached the Deputy Registrar Court of Appeal of Tanzania who supplied them with both the Ruling of Revision No. 28/2014 of the High Court of Tanzania and the order of the Court of Appeal of Tanzania in Civil appeal No 172 of 2016 which struck out the appeal on 12/07/2018.

Furthering his argument Mr. Materu elaborated that, legal issues that arose from the material facts of CMA/Moshi/ARB/04/2007 and its award, the ruling and order of this Court in Revision No. 33 of 2015 to be decided by the Court of Appeal are:-

- a. Whether under section 4 of the Employment and Labor Relations Act (EALRA) No 6 of 2004 there was a strike at TPC Co Ltd on 23rd and 24th of January 2007
- b. Whether an employee who was off duty can under section 4 of the EALRA be held to have taken part in a strike at TPC Co. LTD on 23rd & 24th January 2007
- c. Whether under the EALRA the applicants were legally terminated and if not whether they are entitled to be reinstated and to be paid compensation under the Act.

Mr. Materu contended further that, after the Court of Appeal struck out Civil No. 172 for missing document the applicants did not sit idle but they made a follow up and obtain the missing documents from the Registrar of High Court Arusha.

Mr. Materu prayed for this court to allow the application while citing the case of Fortunatus Masha V. Willian Shija and Another (1997) TLR 154 where the court held that:-

".....the filling of an incompetent appeal having been duly penalized by striking out, the same cannot be used yet again to determine timelines of applying a fresh application"

Responding while opposing Mr. Materu submission for the applicants Mr Shilatu submitted that, it has been a practice for

application with the nature like the one at hand for the applicant to show good cause. It was Shilatu's contention that the applicants have failed to show good cause.

Supporting his stance he cited the case of **Hanspaul Automechs Limited V. RSA Limited Civil Application No126/02/2018** where **Kitusi J.A** held that;

" Extension of time is a matter for discretion of the court and that the applicant must put material before the court which will persuade it to exercise its discretion in favour of an extension of time"

Mr . Shilatu generally argued that, there was no ruling of the High Court Labour division on Revision 28/2014 as averred by Mr. Materu for the applicants because the same was struck out for non citation of the provision of the law thus the position that no extension of time was given by the High Court labour division stands firm.

Finally, he prayed for the application to be dismissed to allow the decision of the High Court and the Commission for mediation to stand.

Rejoining, Mr. Materu reiterated his stance in his submission chief, He also referred learned advocate Shilatu to the second paragraph in Saidi Kitundu Shole & 149 V. Chief Executive Officer TPC LTD, Civil Appeal No. 172 of 2016 by Mwambegele, J.A.

Having considered either side submissions, I think the question is whether the applicants have shown good cause to warrant this court grant the extension of time sought.

It is on record that Civil Appeal No. 172 (*supra*) was struck out by the Court of Appeal for lack of accompanied necessary document to form part of the record of appeal. It is also on record how applicants immediately after the said Application was struck out did make a follow up in obtaining the required documents for appeal purposes which shows promptness on their part.

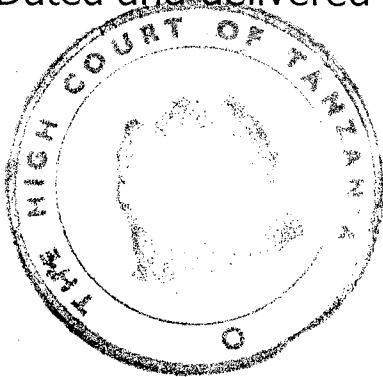
It is trite principle as was held in **Cropper V .Smith (1884) 26 CH D 700 (CA)** that, "*the object of the court is to decide the rights of parties and not to punish them for the mistake they have made in the conduct of their rights. I know of one kind of error or mistake which if not fraudulent or intended to overreach, the court ought to correct if it can be done without injustice to the other part. Court does not exist for the sake of discipline but for the sake of deciding matter in controversy*"

If I subject the above legal position to the present case, justice demands that this application be allowed since the follow up of the records which were missing for appeal purposes is sufficient cause.

Accordingly, the application is hereby allowed and applicants are ordered to file the notice of appeal within seven days from today.

It is so ordered.

Dated and delivered at Moshi this 28th day of February 2020




S.B.MKAPA.
JUDGE
28/02/2020