



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

**IN DISTRICT REGISTRY BUKOBA**

**AT BUKOBA**

**MISC. LABOUR APPLICATION NO. 1 OF 2018**

*(Arising from CMA/BUK/82/2015 Commission for mediation and Arbitration Bukoba)*

**M.K. TRANS-----APPLICANT**

**VERSUS**

**GEOFREY AUGUSTINE-----RESPONDENT**

**RULING.**

*14/5/2020 & 29/5/2020*

**KAIRO, J.**

The Applicant in this application is seeking to be granted leave and an extension of time within which to file application for Revision of the ruling dated 8/7/2016 given by the Commission for Mediation and Arbitration (CMA) at Bukoba in complaint No. CMA/BUK/82/2015. The said application is made under Rule 56(1) and Rule 24 (1)(2)(a)(b)(c)(d)(e)(f) and 3 (a)(b)(c)(d) of the Labour Court Rules, 2007, GN No. 106 of 2007. As usual the same is supported by an affidavit which was sworn by Magnuson Kamugisha. The Applicant is represented by Advocate Aneth Lwiza while the Respondent is self-represented. The parties on 1/4/2020 were ordered to determine the

matter by way of written submission as per the agreed filing schedule. Both parties complied with accordingly.

To avoid repetition, I will not recapitulate what has been stated by the Applicant in his affidavit as the same averments were repeated in the written submission to be addressed hereunder. Besides the Applicant further prayed the affidavit to form part of his submission.

The Applicant started by informing the court that he has decided to join two prayers in one application basing on the understanding and the principle of law as stated in the case of **Tanzania Knitwear vrs Shamshu Esmail (1989) TLR 48** to the effect that, the combination of two applications in one chamber summons is not bad in law since courts of law abhor multiplicity of proceedings. The Applicant went on that the Respondent filed a complaint no CMA/BUK/82/2015 against the Applicant claiming Tshs. 19,650,000/= as terminal benefits whereby the summons and all records particularly Form No. CMA 1 was served to the owner of the motor vehicle titled M.K. Trans; one Magnuson Kamugisha. He further submitted that. The Applicant raised a Preliminary Objection (PO) in his defence to the effect that the Respondent had sued a wrong party i.e. M.K. Trans which is a non-existing company but the CMA dismissed the objection and ruled out that M.K. Trans is an existing company and had employed the Respondent clarifying that, M.K. Trans is the name of the motor vehicle, the property of Magnuson Kamugisha who had never been sued.

The Applicant further contended that he was aggrieved by the said CMA ruling and intended to challenge it. However Magnuson Kamugisha got sick resulted from the injuries he sustained from an accident occurred in 2010, whereby he was invaded by bandits and got head injuries, adding that in year 2016 he developed unconsciousness which arose from continuous headache pain.

The Applicant went on that, he has been attending the hospital for treatment now and then after the ruling and he listed the the dates he did so to be on 15/7/2016, 22/7/2016, 2/8/2016 and 20/9/2016 and after recovery, it came to his knowledge that the time within which to challenge the said ruling had already expired. That on 10/10/2016 the Applicant filed Labour Revision No. 12/2016 out of time, but the application was struck out on 10/11/2017 for want of competence. The Applicant went on and filed the second application No. 12/2017 but discovered to be contrary to the order of the Hon. Court of 10/11/2017 requiring the Applicant to obtain leave to file it out of time and thus prayed to withdraw it.

He went on submitting that all along he has been vigilant in pursuit of both Labour Revision No. 12/2016 and 12/2017 seeking the court redress since 10/10/2016 to date, and that failure to file the application for Revision in time was for the sickness reasons above stated which he contended to be beyond his control. The Applicant further clarified that, the time within which to file revision is six weeks from the date when the award was served to him as per Section 91(1) of the Employment and Labour Relation Act 2004

(ELRA). Further that in his case, the time expired on 22/8/2016 when the owner of M.K. Trans was still sick.

The Applicant further stated that, the orders for leave and extension of time to file revision is for interest of Justice to both parties arguing that the intended application for revision is meritorious one as it touches to the irregularity and the Jurisdiction of the CMA that was exercised illegally by declaring the Applicant an existing company with *locus* to be sued. He concluded by praying the court to grant the sought leave and an extension of time so that the pointed out irregularity can be rectified, adding that the Respondent generally do not dispute his prayers as per his counter affidavit rather he subjected the Applicant to strict proof of the facts made which he submitted the Applicant have thoroughly submitted.

In his brief reply the Respondent started by stating the criteria to be considered for granting an application for revision out of time as follows:-

- (i) Whether the delay was inordinate.
- (ii) Whether there was sufficient reason for delay.
- (iii) Did the delay prejudice the other party and
- (iv) Chances of the application to succeed

citing the case of *Pius Massawe and Another vrs Simon Rafael; Civil Application No. 21 of 1988 (unreported)* as quoted by Ben Lobulu in PITFALLS in Litigation (2002) at Pg 250, which he didn't supply to court for reference. The Respondent went on that, the Applicant has filed this application with

the intention to delay Justice to be done to him as he has filed different revisions he mentioned to be No. 12/2016 and 12/2017.

He went on that there was no chance of winning by the Applicant but he only wants to delay his legal rights to be paid Tshs. 19,650,000/= by the Applicant for the illegal acts done to him. He cited the case of *Mwana Sika vrs Kanyiki (1970) HCD No. 240* wherein it was held that where the case stands no chance of winning the application out of time should be rejected. He insisted that the Applicant's delay is due to his own default that is why the Applicant filed the two application for an extension of time and that the grant of this application will prejudice his rights. The Respondent dismissed the Applicant's allegation that he didn't dispute the prayers by the Applicant arguing that affidavits are to contain, facts only and not prayers. He concluded that the Applicant's prayers have no base to warrant consideration by this court and thus prays this application be dismissed with cost.

As a rejoinder, the Applicant repeated mainly what he has contended in his submission in chief. Reacting on the issue of chances to success, the Applicant pleaded with the court to consider this arguing that even in these proceedings; he stated the reason for delay is due to the Applicant's sickness but in real sense, the motor vehicle cannot fell sick, adding this to be the reason the Applicant decided to put it clear that despite suing under the name of the motor vehicle, the Respondent served the summons to Magnuson Kamugisha who is the owner of the stated M.K. Trans which he

argued to be a misnomer, as the Respondent had sued a non-existing person in the eyes of the law. The Applicant went on to clarify that the Applicant wants to challenge the ruling of the CMA which declared M.K. Trans a company. In his opinion, if the said ruling will be left to stand and the complaint is determined to its finality, the Respondent will not be able to receive a proper legal award. He reiterated his earlier prayer to have this application be granted.

At the onset, I join hands with the Applicant that the two orders sought that is leave and an extension of time to file for revision though omnibus, can still be sought together to avoid multiplicity of suits, as correctly submitted by Advocate Aneth Lwiza for the Applicant. But in my view, determining a prayer for an extension of time should precede the one for leave in the circumstance of this matter.

It is common knowledge that in order for the court to exercise its discretion and power in extending time under Rule 56 (1) of the Labour Court Rules, sufficient reason for delay has to be shown which provides as hereunder:-

*“The Court may extend or abridge any period prescribed by these rules on application and on good cause shown, unless the court is precluded from doing so by any written law.” (Emphasis mine)*

In the application at hand, the central issue for consideration therefore is whether or not good cause have been advanced to warrant the extension of time sought by the Applicant. Going through the affidavit and written

submission, the Applicant contended that, he had the intention to apply for revision against the CMA decision delivered on 8/7/2016 but filed the same on 10/10/2016 which is three months later while the time within which to file it is 30 days. However he did so for the circumstances that were out of his control which he attributed to sickness following the injuries he sustained from the accident in year 2010 whereby he was invaded by bandits/thieves. He added that following the said accidents he developed unconsciousness which arose from continuous headache pain and attached several copies of the hospital chits to support his contention.

Going through the said copies of the Hospital chits, I noted that Magnus Kamugisha/Applicant was assaulted by thieves in year 2014 as per the Kagera Sugar Hospital chit and not 2010 as he had sworn in his affidavit. Further, when invaded he was 52 years of age, but 6 years later in 2016 when he had recurred headache pain, the ailment which prevented him to appeal within the prescribed time, he was recorded to be 54 years of age according to the outpatient record of Wizara ya Afya na Ustawi wa Jamii he attached as Annexure 'A' collectively while by simple arithmetic his age was to be recorded as 58 years.

Leaving that aside, the Applicant was attended as an out patient on the dates shown to have attended the Hospital that is 15/7/2016, 22/7/2016, 2/8/2016 and 20/9/2016. Nowhere was he given an E.D to which I construe that, his sickness couldn't have prevented him from performing his other duties, including pursuing for his rights. As if that is not enough, Annexure, A

(hospital chits) are photocopies and no explanation was advanced on the whereabouts of the original copies, which is contrary to the provision of the Law of Evidence Act Cap 6 RE 2002 which requires the tendering of original copies. The above pointed out defects to say the least has made the court to doubt the veracity of the said hospital chits which trickle down to the authenticity of his sickness, and even if he was sick, the sickness wasn't to extent of making him unable to pursue his right in this court with much respect.

In his affidavit, the Applicant deposed that he had representation services of Advocate Rweyemamu at the CMA. But didn't state why his Advocate didn't file the revision early after the CMA decision considering that he fall sick and went to hospital on 15/7/2016, which is a week later.

The Applicant further deposed that after he felt better, he approached Advocate Lwiza and on 10/10/2016 which is three months later he filed application 12/2016 but was struck out on 10/11/2017 for being filed out of time (para 8 of the affidavit). Despite being categorically informed by the court the requirement to pray for an extension of time first on 10/11/2017, again the Applicant filed revision No. 12/2017 which ended up to be withdrawn. It should also be noted that, the Applicant had also filed Labour Revision No. 10/2016 in August 2016 which was dismissed with cost for want of prosecution. To say the least, the above scenarios shows negligence of the highest degree on the part of the Applicant and/or his advocates and in my view this is a clear incident of an abuse of the court process.



Looking the chronological event, I am not convinced that the Applicant was vigilant in pursuing/his right.

The court has time and again stated that the party or advocates inaction or negligence cannot be a good reason for revision, in the same vein cannot be a good reason for granting of an extension of time [Refer the case of **Kassim Magassa vrs Willy Bukuku; Civil Application No. 46 of 1998 CAT Mza** (unreported)].

In a move to convince the court to grant his prayers in this matter, the applicant stated that there was an overwhelming chances to succeed in his revision as it touches the irregularity and Jurisdiction of the CMA for declaring the Applicant an existing company with *locus standi* to be sued. Suffice to state that, the court cannot determine the failure or success of the revision to be filed at this juncture as it needs to hear the arguments from both parties on that aspect. As such the point in my view has been prematurely raised with due respect.

Regarding the argument on the presence of an irregularity, the case of **Tanzania Harbours Authority (THA) vrs Mohamed R Mohamed [2003] TLR 76** can be of assistance wherein the court in a similar situation whereby there was lapse on the part of the applicant and claimed the presence of a point of law as a justification for the grant of the prayer sought, the court had this to say-

*“the defendant had been grossly negligent and surely cannot be heard now to claim that there is a point of law at stake. The court is bound to see that rules of the court are observed strictly and cannot aid a party who deliberately commits lapses---”.*

In the same vein the Applicant in this matter has shown lack of diligence and thus cannot be heard to claim the presence of irregularity on the part of the CMA. But also the assertion is premature at this juncture as the same has to be determined during the intended revision. I found fortification on this point in the case of **Tanzania Posts and Telecommunication Cooperation vrs Ms. B5 Henrita Supplies (1997) TLR 141** at Pg 144 whereby Justice Lubuva J.A (as he then was) on similar argument observed as follows:-

*“It is however relevant at this Juncture to reflect that this court has on numerous occasions taken the view that the chance of success of an intended appeal, though a relevant factor in certain situation, it can only be meaningfully be assessed later on appeal after hearing the argument from sides”.*

Though the above matter was an appeal, but in my view, the principle is applicable even on revision.

All in all, the court has found that there are no sufficient reasons to warrant the grant of the extension of time which its denial has rendered the application for leave superfluous. Accordingly the application is dismissed with cost.

It is so ordered.



L.G. Kairo

Judge

29/5/2020

R/A explained.



L.G. Kairo

Judge

29/5/2020

Date: 29/5/2020

Coram: Hon. Kairo,J

Applicant: Advocate A.Lwiza

Respondent: Absent

C/C: Lilian Paul

Court: The matter is scheduled for ruling. The same is ready and is read over in the presence of Advocate A.Lwiza for the Applicant but in the absence of the Respondent in open court today 29/5/2020.



L.G. Kairo

Judge

29/5/2020