

**IN THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**AT MBEYA**

**MISC. LABOUR APPLICATION NO. 05 OF 2020**

(CMA/MBY/27/2013)

**BONIFACE MWAKAPASA ..... APPLICANT**

**VERSUS**

**BOARD OF THE TRUSTEES REPUBLIC**

**SERVICE SOCIAL SECURITY FUND ..... RESPONDENT**

**RULING**

***Date of last order:*** 04/11/2020

***Date of Ruling:*** 24/02/2021

**NDUNGURU, J**

In this application, the court is moved to exercise its discretion and grant the application for extension of time to file application for revision against the CMA award with reference CMA/MBY/27/2013 delivered on 29<sup>th</sup> May, 2017.

The court is moved by Notice of application made under Rule 24(1),(2)(a),(b),(c),(d),(e),(f), 24(3)(a),(b)(c) and (d), Rule 55(1),(2) Rules, 2007 GN. 106/2007. The Notice of Application is supported with the

affidavit duly sworn by the applicant one Boniface Mwakapasa. Upon service, the respondent filed affidavit in reply resisting the application.

In her sworn disposition, the applicant has taken time to give an account of what transpired right from the inception of the decision of CMA which was delivered on 29<sup>th</sup> May 2017. That following delivery of the award on 10/07/2017 the applicant filed revision No. 35 of 2017. That the said application was struck out on legal technicalities on 03/10/2019 with leave to refile but the fact that he was blocked with limitation of time, on 10/10/2019 the applicant filed application for extension of time/Application No. 18 of 2019. That following legal defect the same was withdrawn on 29/04/2020 with leave to refile.

The applicant further deponed that on 30/04/2020 he filed the application through e-filing, when made follow up on 04/05/2020 he was informed that the previous application is nowhere to be found in the system thus refiled this application.

The applicant at para 20 of the affidavit states that the reason for delays were technical resulted from prosecuting Application No. 35 of 2017 and the Application No. 18 of 2019.

The application has encountered strong opposition from the respondent, vide affidavit in reply (counter affidavit) sworn by one Kamru Habibu, who states that Application No. 35 of 2017 was not struck out with leave to refile.

Pursuant to the court's order the rival arguments of the parties were presented by way of written submissions. In his submission Mr. Isaya Mwanry for the applicant expounded the reason for delay. Basically the reason was based on technical delay. The respondent in his submission, through Mr. Kamru Habibu had this to say;

*"We have read the written submissions and authorities relied by the learned counsel for the applicant. We are of the opinion that the delay was technical one. To serve time and resources, let the application be granted the application be heard on merits".*

I am very grateful to the learned counsel for the respondent. To my view this is a sign of maturity in the legal profession. I am saying so because with abundance authorities on the principle of technical delay being a sufficient reason for the court to exercise its discretion of granting extension of time, I did expect long rival submission from the respondent.

**Date:** 24/02/2021

**Coram:** Hon. D.B. Ndunguru, J

**Applicant:** Absent

**For the Respondent:** Mr. Kapinga, advocate assisted by Sukayna Farouk,  
advocate

B/C: Akida Mzee

**Mr. Felix Kapinga – Advocate**

My lord I am for the respondent I also hold brief of Mr. Ngwembe  
advocate for the applicant we are ready for ruling.

**Court:** Ruling delivered in the presence of Mr. Felix Kapinga for the  
respondent who also holds brief of Mr. Ngwembe for the applicant.



  
**D.B. Ndunguru**  
**JUDGE**  
**24/02/2021**