

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. LABOUR APPLICATION NO. 72 OF 2019**

**REGIONAL MANAGER TANROADS ARUSHA..... APPLICANT**

**VERSUS**

**LEON FRANCIS SHINE.....RESPONDENT**

**RULING**

**23/11/2020 & 06/01/2021**

**GWAE, J**

The applicant's application is brought under the provisions of Rules 24(1), 24(2)(a) (b) (c) (e) (f), 24 (3) (a) (b) (c) (d) and 56 (1) of the Labour Court Rules 2007 G.N. No. 106 of 2007 and is supported by a sworn affidavit of the applicant's Regional Manager TANROADS Arusha one Johnny D. E. Kalupale who is seeking an indulgence of this court to extend time to file his application for revision out of time. The applicant's affidavit is opposed by the counter affidavit of the respondent who appears to have been an employee of the applicant.

The application is to the effect that initially, the applicant had filed an application for revision which was struck out for lack of proper citation and also the name and signature and address of the drawer was not indicated in the Notice

of application. It follows that, the applicant is persistent in challenging the award before the Commission for Mediation and Arbitration in CMA/ARS/ARB/88/2014 however the time to file the same has lapsed and the reason for the delay being that he had been pursuing Revision Application No. 59 of 2016 bonafidely which was consequently struck out.

The parties orally argued this application. The applicant was represented by the learned State Attorney Mr. Mkama Msalama while the respondent appeared in person unrepresented.

Arguing his application Mr. Mkama adopted the contents of his sworn affidavit and added that another reason for the sought order of extension of time is on the illegality of the award before the CMA particularly on the contract of employment which was on specific terms. The learned State Attorney supported his arguments with a number of decided case from both the Court of Appeal of Tanzania and High Court.

On the other hand, the respondent resisted the applicant's arguments stating that the applicant has not accounted for the days of delay and that the issue of illegality is not reflected in the applicant's affidavit and therefore prayed for a dismissal of this application.

In his rejoinder Mr. Mkama argued that it is not true that they have not explained the reason for the delay and further to that they have also explained the material irregularity which is apparent on the face of the record.

Having considered the submissions from both parties, the application before me is for extension of time and as usual applications of this nature are granted at the discretion of the court upon being furnished with sufficient reasons to do so. However, there is no hard or fast rule on what amounts to sufficient cause/good reasons to explain the delay and therefore each case is decided according to its own set of facts.

If I have grasped well the applicant's application in particular on the sworn affidavit of the applicant's Manager the reason for the delay to file his Revision was because he was pursuing another application (Labour Revision No. 56 of 2019) which was filed on time but it was subsequently struck out for being incompetent.

The Law is very clear that the time spent in prosecuting a case with due diligence against the same parties for the same relief shall be excluded when computing the period for limitation, See Section 21 of the Law of Limitation Act Cap 89 R.E 2019. This position has also been well explained by the Court of Appeal in the case of **Fortunatus Masha vs. William Shija & another** [1997] TLR 154 where it was held that;

"....a distinction should be made between cases involving real or actual delays and those like the present one which only involve what can be called technical delays in the sense that the original appeal was lodged in time but the present situation arose only because the original appeal for one reason or another has been found to be incompetent and a fresh appeal has to be instituted..the filling of an incompetent appeal having been dully penalized by striking it out, the same cannot be used yet again to determine the timeousness of applying for filing the fresh appeal."

In adherence with statutory provision and precedent cited above, it follows that the period from when the application for revision was filed to the date was the same was struck is legally excluded.

Next issue, is whether the applicant has accounted for each day of delay from the date the applicant's application for revision was struck out (16/10/2019) to the date when this application was duly filed that is on 29/11/2019 making a total of 43 days. To my view, a delay of each and every day must be accounted by the applicant through his affidavit for example an act of looking for an advocate to properly re-file his application.

A requirement of accounting for every day of delay is vitally important and the same has been emphasized by our courts in numerous decisions, for instance in the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3

of 2007 and **Karibu Textiles Mills v. Commissioner General (TRA)**, Civil Application No. 192/20 of 2016, in the **Bushiri's** case it was rightly held;

"Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps must be taken".

The applicant is found wholly relying on the exclusional provision of the law under section 21 of the Law of Limitation, Cap 89, R. E, 2019 but to my increasingly view, he was bound to explain what made him to delay to file this application for more than forty (40) days from when his former application for revision was struck. Delay of 2-6 days from the date the incompetent application was struck out would be excusable if it pertains with certain explanations.

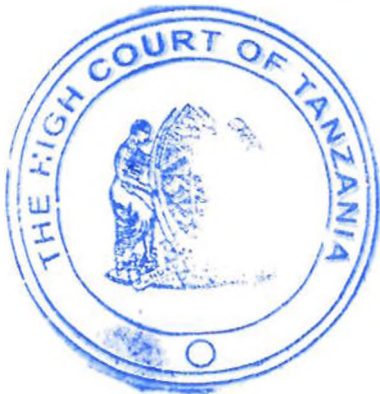
However, in this application the applicant has not even attempted to give a requisite demonstration of sufficient cause for such a long delay, 40 days delay immediately after the order of the court striking out his application. The applicant is therefore found to have absolutely failed to account for each day of delay from 11/10/2019 to 29/11/2019.


Moreover, the argument raised by the learned State Attorney that, there was illegality in the award procured by Commission, is right away unfounded as appropriately submitted by the respondent that the issue of illegality is not founded in the applicant's application. I have gone through the affidavit of the applicant's

Manager there is nowhere the applicant's raised an issue of illegality therefore raising such an issue in the course of submitting is nothing other than an afterthought which is not worthy for consideration by this court.

Having said so, this application is dismissed for want of accounting for days of delay (43 days). Each party to bear its costs as this case is a labour dispute where an order as to costs is rarely made.

It is ordered.



  
**M. R. GWAE**  
**JUDGE**  
**06/01/2021**