

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

MISC. APPLICATION NO. 11 OF 2020

(Arising from Execution No. 15 of 2020 filed in the High Court of Tanzania (Labour Division at Moshi)

MBOSHO COFFEE ESTATES CO. LTD ----- APPLICANT

VERSUS

MATHAYO JULIAS KIMARO ----- RESPONDENT

JUDGMENT

MUTUNGI .J.

The applicant under Rule 24(1), 24(2),(b),(c),(e),(f), 24(3)(a),(b),(c),(d), Rule 55(1), Rule 56(1) of the Labour Court Rules, 2007 (Government Notice No. 106 of 2007) and Section 91(3) of the Employment and Labour Relations Act, 2004 Act No. 6/2004 has applied for orders as hereunder: -

- (1) This honourable court be pleased to extend the time for the applicant to file a labour revision in respect of an award passed by the Commission for Mediation and Arbitrator (CMA) for Kilimanjaro at Moshi in Labour Dispute

Reference No. **CMA/KLM/HAI/ARB/26/2020** via
Application for Execution No. 15 of 2020 filed in this court.

- (2) Costs of this application to abide by the results of this application and in favour of the applicant.

The applicant has also filed a Corresponding Affidavit in support thereto. The rival side did file a Counter-Affidavit in respond thereto. When the application was called up for hearing and in view of the fact that the respondent is a layman, the court made an order, the same be argued by way of written submissions.

Mr. Engelberth Advocate representing the applicant, on the offset confined himself to the requirement of law while seeking for the like orders. He pegged his understanding on the common and well known principle that, one is to demonstrate a good cause/causes to be extended the extension so sought. Citing the case of **Godwin Ndewezi and Karol Ishengoma vs. Tanzania Audit Corporation [1995] TLR 2000**, factors to be considered are such as, the applicant to account for all the period of delay, the delay should not be inordinate, the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he/she intends to take and finally if the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as illegality of the decision sought to be challenged.

In light of the foregoing, the learnt counsel narrated at length what exactly they encountered resulting to the late filing of the revision before this court. He submitted, they had timely on 28th April, 2020 filed the documents for the intended revision before this court, which documents were well received by one Kimaro (Court Clerk). There was no further admission process done by the court, on the allegation that the Deputy Registrar had been admitted in hospital and they had to wait for his return in the office to have the same assigned to a Judge. Despite serious follow ups by the applicant's Human Resource Officer, still the documents were left pending for admission.

Upon the return of the Deputy Registrar, the applicant's counsel made it a point of meeting with him and it is when the Deputy Registrar discovered that the documents were filed on time but due to the court clerk's negligence these were not admitted. In the Deputy Registrar's wisdom, he advised the applicant's counsel on 13/7/2020 to file the present application seeking for extension of time. On 16th July 2020 they managed to file their application as advised. The counsel proceeded further to raise a glaring concern that, the documents previously filed were done so manually by Advocate Amon .C. Ndunguru and sealed with a court seal yet, the applicant's advocate later learnt that, the same ought to have been electronically filed. This would not

have been possible since not all Advocates had by April 2020 JSDS accounts. The applicant's counsel had tried to retrieve the same from the court clerk to be used as annexures in support of this application but the documents could not be found. Be as it may, **Order IV Rule 1(1) of the Civil Procedure Code (Cap 33 R.E. 2019)** does not envisage a mandatory requirement to file pleadings electronically, one is given an option to do so either electronically or manually.

To sum up, the applicant's counsel brought to the attention of the court that, the Arbitrator's award is tainted with irregularities and illegalities, which are to be looked into by this court for the sake of justice. The only way to do this, is to grant the applicant the extension sought. Moreso having moved the court to find that, the delay was not occasioned by their side but the court is to be blamed due to its clerk's negligence.

On the other side of the coin, the respondent straight away pinned down the applicant for failure to account for the all period of delay. He contended that, the applicant had allegedly knocked at the doors of this court in April 2020 but the application filed towards the end of August, 2020 (four months later). For any stretch of imagination, the delay was inordinate and there was no diligence demonstrated by the applicant in prosecution of the actions he intended to take.

It was further submitted that, the question of illegalities does not arise in the present matter, since initially the applicant enjoyed the able services of advocate Amon .C. Ndunguru. After the Award was procured, the applicant and his Advocate went into slumber only to be woken up by execution proceedings filed by the respondent against them.

The foregoing notwithstanding, the respondent questioned the applicant's failure to annex the alleged revision application documents filed on 28th April, 2020 or any complaint letter written to the Deputy Registrar regarding the delay occasioned by the court. The respondent invited the court to find, the applicant is a well-established entity with all the necessary knowledge and resources to attend to its litigations, as such is barred from raising questions on irregularities.

In conclusion, the respondent prayed, this court takes into account the fact that, he has spent all his life time and energy, labouring day and night for the applicant who does not have any appreciation. In the event the application is granted, it will defeat justice. In view thereof, the application should be dismissed for lack of merits.

In rejoinder, the applicant submitted that, after the former advocate who left unceremoniously had filed the intended

revision, they knew all was well, only to learn from the current advocate that, after receipt of the documents by the court were left lying idle in the registry. There were instructions that, they were to be electronically filed which in the applicant's knowledge was not a mandatory legal requirement.

The applicant's counsel further reiterated that, he had accounted for the whole period of delay and ought not to be punished for the wrongs of his former advocate if any.

In the upshot, the applicant's counsel was of the opinion that, the Arbitrator ought to have considered the evidence tendered and not otherwise and this should be the guiding factor in the court extending time to the applicant to file the desired revision and justice be done.

The court in this application is guided by the laid down requirements in extending time, that one applying should show good cause **as per Rule 56 (1) of the labour law court Rules, 2007 G.N 106 of 2007**. The section states: -

"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."

The court is further alive of the noble duty placed before it as per the authority in the case of **Berthat Bwire vs. Alex Maganga, Civil Reference No. 7 of 2016 (CAT)** that: -

"...It is trite that extension of time is a matter of discretion on the part of the Court and that such discretion must be exercised judiciously and flexibly with regard to the relevant facts of the particular case. Whilst it may not be possible to lay down an invariable definition of good cause so as to guide the exercise of the court's discretion, the court is enjoined to consider, inter-alia, the reasons for the delay, the length of delay, whether the applicant was diligent and the degree of prejudice to the respondent if time is extended."

See also the cases of **Dar es Salaam City Council vs. Jayantilal P. Rajani, Civil Application No. 27 of 1987**; and **Tanga Cement Company Ltd. vs. Jumanne .D. Masangwa and Amos .A. Mwalwanda, Civil Appeal No. 6 of 2001 (unreported)**.

What then are the purportedly good causes demonstrated by the applicant. These are not hard to find, since they are stated in the Corresponding Affidavit to the application deposed by one Engelberth Boniphace (the applicant's advocate). The reasons are to be found in paragraphs 5, 6, 7, 8 and 9.

In a nutshell, the counsel avers that on 28th day of April, 2020 the applicant's revision application through his former advocate (one Amon .C. Ndunguru) was filed with the court and the same was admitted. All was silent until the deponent made a follow up with the court only to learn that, in actual fact the same were not admitted on the reason, they had to be filled electronically. No such information was given to the former counsel nor the applicant. At the same time the former advocate had already left for Dar es Salaam for good without a word to the applicant.

As much as the above narration sounds good and pleasant to hear but no sufficient evidence has been adduced before the court. The deponent was expected to prove that the documents purportedly filed by the former advocate **first**, exist and **second**, they were admitted and stamped. The least he would have done is to attach the photocopies of the same. In paragraph 6, he states the same were sealed by the court and are still in the High Court, Moshi Registry. Failure to attach the same, one is left to assume that these do not exist. This being a court of law is not guided by assumptions but facts and law.

Further the question will be how did the deponent know that, the same were admitted and sealed yet he has no copy to show to the court. The court has further taken note that, the deponent seems to know a lot about the former applicant's advocate and

in the verification clause he reveals that he got some information which was supplied to him by the same counsel but did not bother to attach an Affidavit from the said counsel to ascertain the information he got to be true and authentic.

The foregoing notwithstanding, though the applicant's counsel did not mention at all the story about the court clerk in his Affidavit who attended the former counsel, but tried to do so in his written submission. It was expected of him to at least have made the clerk swear an Affidavit to that effect.


The court has observed keenly that in his written submission the applicant's counsel had tried to impress that, the Deputy Registrar's absence from duty was one of the causes for delay but he did not make any mention of this fact in his supporting Affidavit. The court finds these facts are an afterthought.

Having analyzed as above, the court finds the reasons advanced by the applicant's counsel without sufficient proof are as well as not good enough to move the court to do that which he wants it to do. On the same footing the application is dismissed for lack of merits.



B. R. MUTUNGI
JUDGE
11/3/2021

Judgment read this day of 11/3/2021 in presence of Mr. Engelberth Boniphace for the Applicant and the Respondent in person.


B. R. MUTUNGI
JUDGE
11/3/2021

RIGHT OF APPEAL EXPLAINED.


B. R. MUTUNGI
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