

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

MISC. LABOUR APPLICATION NO. 01 OF 2020

**(Arising from the Labour dispute Decision No. CMA/SHY/271/2016 by the
Commission for Mediation & Arbitration of Shinyanga)**

ABUU TUNGAYEAPPLICANT

VERSUS

ORICA TANZANIA LIMITED.....RESPONDENT

RULING

12th & 30th April, 2021

MKWIZU,J.:

This is an application for extension of time to file Revision made under the provisions of section 94(1), (e) of the Employment and Labour Relations Act, No. 6 of 2004, Rule 24 (1), 24(2) (a)(b)(c)(d)(e)(f), 24(3)(a)(b)(c)(d), Rule 24(11)(a), Rule 55(1) and Rule 56(1) of the labour Court Rules 2007 (G.N No.16 of 2007 and any other enabling provisions of the law). It is supported by applicant's own affidavit sworn on 17 day of January, 2020.

At the hearing, Mr. Gervas Geneya advocate represented the Applicant while the Respondent had the service of Mr. Kassimu Gilla, Learned Advocate. Submitting for the application, Mr. Geneya first adopted the affidavit and the

notice of application to form part of his submissions. He added that, the reason for the delay is the striking out of the applicant's previous application for want of personal representative. He said, on 18/11/2019 this court struck out applicants' application and the applicant was supplied with the ruling a month later that is on 18/12/2019 followed by the filing of this application on 17/1/2020. In support of his submissions, Mr. Geneya cited the cases of **Zawadi Msema Kweli V NMB PLC** Civil Application No. 221/18/2018, **Sebastian Ndaula V Grace Rwamafa**, Civil Application No 4 of 2014 (All unreported) insisting that applicant's application has met all the criteria's announced in the cited cases and urged the court to grant the application.

In reply, Mr Gilla as well adopted his counter affidavit in opposition of the application. He said, the Revision application was struck out on 18/11/2019 while this application was filed on 17/1/2020. In an application for extension of time stated Mr. Gilla, applicant is required to account for each day of the delay. In this application applicant received the copy of the ruling on 18/12/2019 which is contrary to the averments in the affidavit in support of the application where applicant deposed that he was supplied with the ruling in 2019, on 19th without mentioning the date. Mr. Gilla was however of the

view that even assuming that, the said ruling was supplied to the applicant on 18/12/2020, still there is a month time from 18/12/2019 to 17/1/2020 when this application was filed which needs clarification. He cited to the court the case of **Rutunda Masore Vs Moraf Motors LTD**, 2015, Labour Court Digest, Vol. 2 case no 119 and **Elifazi Nyatega V Caspian Mining Ltd**, Civil application No. 44/08/2017 (unreported). He prayed for the dismissal of the application for lacking in merit.

In his rejoinder submissions, Mr. Geneya agreed that the affidavit did not account for each day of the delay but he was quick to add that, the issue of accounting for each day of the delay does not arise here for the one-month delay is not inordinate. He clarified that, the need to account for each day of the delay, arises only when the delay is inordinate, which is not the case here. He Cited to the court Rule 17 of the Labour Court rules saying that this is a court of equity where technicalities are to be avoided. He invited the court to find that the delay is not inordinate and grant the prayer.

I have carefully considered the application, supporting affidavit as well as the applicants' oral submissions made during the hearing in court. The issue for determination is only whether the applicant had adduced sufficient

reason to allow the court to grant the prayer sought in the application. This application is governed by **Rule 56 (1) of the Labour Court Rules, 2007** which states:

*56(1) the court may extend or abridge any period of prescribed by these Rules on application an **on good cause** shown, unless the court is precluded from doing so by any written law. "*

The court is as per the provision above, required to extend time only on good cause. It is on the applicant's affidavit that, CMA's award in Labour Dispute No CMA/SHY/271 of 2016 was delivered on 13/6/2017 and it is also on the record that immediately thereafter, applicant filed revision No. 16 of 2017 challenging the CMA's decision. This application was however struck out by this court (Mkeha J) on 18/11/2019 on technical ground. According to the applicant's counsel submissions, applicant was supplied with the ruling on 18/12/2019 followed by the present application filed on 17th January, 2020.

The sole reason advanced by the applicant for the delay is the striking out of his revision application on 18/11/2019. It is now settled that in an

application for extension of time each day of the delay must be accounted for. In his rejoinder submissions, applicants counsel admitted that the affidavit does not account for each day of the delay, he was however of the view that one month delay is not inordinate to require an account of each day. With due respect to the learned counsel, it is a settled principle that in an application for extension of time, each day of the delay must be accounted for. This principle is not of decorative in nature, its existence is grounded on the reason that limitation is material point in the speedy administration of justice. Limitation is therefore to ensure that a party does not come to court as and when he wishes. See for instance the case of **Tanzania Fish Processors Ltd v. Christopher Luhanga**, Civil Appeal No. 11 of 1994(Unreported). In the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) the court said:



***"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 have to be taken."** (emphasis added)*

As admitted by the applicant's counsel, the applicant has failed to account for 30 days delay from 18th December, 2019 when the ruling was supplied to him to 17th January, 2020 when he filed this application.

In the upshot, this application is devoid of merit. It is accordingly dismissed with no order as to costs.

It is so ordered.

DATED at SHINYANGA this 30th day of April, 2021

E.Y. MKWIZU
JUDGE
30/04/2021