

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI**

MISC. LABOUR APPLICATION NO. 9 OF 2020

*(c/f Labour Revision No. 13 of 2018, High Court Moshi Registry, Originating from
Labour Revision No. 13 of 2018, Commission for Mediation and Arbitration at Moshi)*

JANETH DAVID HUMPHREY APPLICANT

VERSUS

MOSHI UNIVERSITY COLLEGE OF CO-OPERATIVE

AND BUSINESS STUDIES (MUCCOBS) RESPONDENT


8th April & 21st May, 2021

RULING

MKAPA, J.

This is an application for extension of time within which to file Revision out of time against the Award of the Commission for Mediation and Arbitration of Moshi (the Commission) in **Labour Dispute No. MOS/CMA/M/107/2014** delivered on the 8th June, 2018. It is lodged under **Rules 24 (1), (2) (a), (b), (c), (d), (f), 24(3) (a), (b), (c), (d) and Rule 56 (1) of the Labour Court Rules, GN No. 106 of 2007** (the Labour Court Rules).

The application is supported by applicant's sworn affidavit. The respondent opposed the application and filed a counter

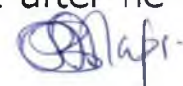


affidavit sworn by the Director for Human Resource Management and Administration, Mr. Daud Massambu.

The factual brief giving rise to this application is to the effect that in **Labour Dispute No. CMA/ARS/MOS/19/2015** the applicant challenged termination by the respondent for being unfair. The Commission's Award was in favour of the respondent. Aggrieved, the applicant filed **Labour Revision No. 13 of 2018** in this Court, Mwenempazi, J. However, the application was struck out for being incompetent hence this application.

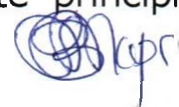
At the hearing of the application which was ordered to proceed by way of filing written submissions the applicant proceeded to file hers while the respondent did not file instead, prayed for this Court to adopt his counter affidavit in lieu of submissions. Mr. August Mramba learned counsel appeared for the applicant.

In his written submission Mr. Mramba narrated the sequence of events after the application for revision was struck out by this court on 4th May, 2020. That, the applicant promptly obtained copy of the ruling the following day and communicated with her counsel Mr. August Mramba who is based in Dar es Salaam. That, it was until the 7th May 2020 when the learned counsel instructed the applicant to deliver the ruling to Dar es Salaam via Kilimanjaro Bus. He went on submitting that after he had



received the ruling and having gone through the documents the following day on the 9th May 2020, he discovered that the Arbitrator did not re-issue corrected version of the Award in terms of Rule 30 (2) of the Labour Institutions (Mediation and Arbitration) Rules 2007, GN 64 of 2007 instead, he just wrote an explanation to the correction.

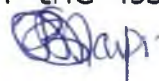
Learned counsel went on submitting that, on the 11th May 2020, he sent a letter to the Commission applying for re-issue of a proper arbitral Award. That, it was until the 18th May 2020, when the Applicant received from the Commission the corrected Award and on the same day the same was sent to applicant's counsel's offices in Dar-Es-Salaam through Dar Express bus. That, the parcel did not reach the counsel on the 20th May 2020 until the 23rd May, 2020. It was Mr. Mramba's further submission that on the 24th and 25th May 2020 it was a public holiday for Eid el Fitr. That, it took him two days to finalize the application till the 28th May 2020. Unfortunately, the applicant was unable to file the application until the 9th of June 2020 due to illness and she had to self-quarantine due to Corona outbreak. Submitting further, Mr. Mramba added that, apart from applicant's affidavit accounting for series of events which had occasioned the delay, he also filed his own affidavit narrating the same. That, additionally he raised the point of illegality of the Award. Submitting on the trite principle on



accounting for each day of delay, it was Mr. Mramba's argument that the reasons for the delay as narrated in this application amounted to good cause thus justifies granting of extension of time. To support his argument he made reference to the decision in the case of **Casmiry Bunyoga V African Explosives Lab. Misc. Application No. 2 of 2014**, High Court of Tanzania at Mwanza where Nyerere, J. (as she then was) referred the decision in the case of **Elias Msonde V Republic, Criminal Appeal No. 93 of 2005** where the court observed that;

"We need not belabor, the fact that it is now settled law that in application for extension of time to do an act required by law, all that is expected of the applicant is to show that he was prevented by sufficient or reasonable or good caused and that the delay was not caused or contributed by dilatory conduct or lack of diligence on his part"

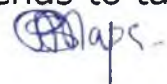
The learned counsel maintained that, the delay by the applicant was not caused by negligence as she had accounted for each day of delay. He finally prayed for this application to be allowed to enable the applicant address the Court on the issue of illegality in the intended revision.



In his counter affidavit, the respondent objected the application on the ground that, the applicant had failed to account for each day of delay. More so, the responded vehemently disputed the reason for Corona pandemic lock down as the same was not proven. Lastly, on the illegality of the revision the applicant challenged the applicant that, the same was not disclosed in her affidavit.

Having considered applicant's submission and respondent's counter affidavit the question which arises for consideration is; whether the applicant has shown sufficient cause to be granted extension of time.

To begin with I find it necessary to reiterate that, the decision to grant an application for extension of time is a discretionary power. This discretionary power however is judicial in nature and must be confined to the rules of reason and justice. It also requires all relevant factors to be considered. As per the principle laid down in **Eliakim Swai And Another V. Thobias Karawa Shoo, Civil application No. 2 of 2016 (CAT) at Arusha** (unreported), in determining good cause for granting extension of time the applicant has to account for all the period of the delay; the delay should not be inordinate; and the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that intends to take.

aps-

Additionally, for an application for extension of time to be considered by the court, the applicant has to show good cause. Applying the above principle to assess the applicant's reason for the delay it is clear that her initial application for revision was filed timely in this Court which tantamount to promptness on her side. More so, she had managed to account for each day of delay bearing in mind the fact that, the initial application was struck out on technicalities and not on merit. From the enumeration of series of steps taken by the applicant up until she lodged the application, there can be no doubt that the applicant has positively accounted for the delay. Shutting the door in the circumstances would cause injustice since the series of events offered some explanation for the delay thus.

In light of the above, I am satisfied with the merit worthiness of the application and proceed to grant the extension of time. The applicant is hereby granted 14 days to file the application with no order as to costs.

Dated and delivered at Moshi this 21st day of May, 2021.




S.B. MKAPA
JUDGE
21/05/2021