

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT ARUSHA**

MISC. LABOUR APPLICATION NO. 48 OF 2020

(Original CMA/ARS/ARB/30/2016 and Revision Application No. 2013 of 2017)

LEOPARD TOURS LIMITED APPLICANT

VERSUS

SILVER JUSTINE RESPONDENT

RULING

~~19/04/2021 & 26/05/2021~~

~~GWAE, J~~

This application is brought under the provisions of Labour Court Rules, 2007 and section 14 (1) of the Law of Limitation, Cap 89, R. E, 2002 in which the applicant is seeking for indulgence of this court to extend time within which to set aside ex-parte judgment of this court pronounced on the 16th September 2019 and an order setting aside the said ex-parte judgment.

This applicant's chamber summons is accompanied with an affidavit of one Valentine Nyalu, the learned advocate from Maro and Company, Advocates representing the applicant. The affidavit of the said Nyalu is to the effect that; on the 17th June 2019 when the revision application was called on for hearing, the record could not be traced in the registry and that; on the 13th September 2019,

the applicant's advocate was informed of the date for pronouncement of the ex-parte judgment but he sensed no reason to attend except to collect a copy of the ex-parte judgment on the following day (17.09.2019) but he was not availed with the same till on the 24th September 2019 when he wrote the letter requesting for the same and eventually he was supplied with the copy on the 18th October 2019.

Through the affidavit of the applicant's advocate, the applicant went on stating that the rescheduling of hearing date from 17th June 2019 to 30th May 2019 was without his notice and that the court wrongly observed that the respondent had not filed his counter affidavit while in fact he filed the same. That, as the applicant was availed the copy on 18.01.2019, he subsequently filed an application of this nature which was registered as Misc. Application No. 63 of 2019 which was withdrawn with leave to refile on the 6th May 2020 however on the 6th May 2020, the applicant's advocate tested positive for the current and fearful pandemic disease (Corona) and he subsequently quarantined himself till on the 3rd July 2020. The applicant's advocate further stated that the ex-parte judgment is oppressive since he was condemned unheard.

Contesting this application, **Mr. Shedrack**, the learned counsel for the respondent argued that, the hearing was not rescheduled as alleged by the applicant and that both parties' advocates were present during delivery of the

impugned ex-parte judgment however the respondent's counsel never disputed the alleged sickness.

When this application was called on for hearing before me, the parties' advocates namely; **Mr. Nyalu** and **Mr. Shedrack** had nothing to verbally add to their respective affidavits.

Having diligently examined the parties' affidavits and the annexures appended in the applicant's application particularly, the application No. 63 of 2020, medical receipts, ex-parte judgment. I am alive of the legal principle that ~~sickness on the part of a litigant or an advocate with an instruction to proceed with a certain case is always considered as a sufficient ground for extension of time, if established so.~~ This position was correctly stressed by the Court of Appeal of Tanzania in **Kijiji Cha Ujamaa Manolo v. Hote** (1990–1994) 1 EA 240 where it was stated:

"Sickness has been accepted by courts as a good cause to account for dilatoriness in allowing a party to pursue his appeal out of time. **Range Chacha v. Elifas Nyirabu** [1967] HCD 115 followed".

In our application, to my view, the applicant's advocate has been able to elaborate in his affidavit before this court that; he was infected of the corona

virus immediately after the delivery of the ex-parte judgment the fact which went unopposed.

Furthermore, I have also observed that; when the matter was called on the 24th April 2019 before Chitanda-RM who sat as Ag-Registrar and she vividly adjourned the hearing of revision application till on 17th June 2019 however it evidently clear that the matter was rescheduled as rightly complained by the applicant's advocate. Here the applicant has, in my view, a good cause unless it is established to the contrary that he was served with notice of change of date of hearing date. I say so simply because the revision application was heard on the 39th May 2019.

Nevertheless, the applicant's advocate was palpably present during the pronouncement of the exparte judgment on the 16th September 2019 contrary to his contention that, he abstained from entering appearance despite the fact that he was notified of the same as according to him his appearance was useless. More so, issue of being supplied with copies of the ex-parte judgment on the 18th October does not arise and if so, that is because of negligence either on the part of the judicial staff or applicant's advocate as I personal indicated that; the parties' advocates were at liberty of collecting copies of the expate judgment effectively from the date of its delivery. For the sake of the clarity, the order to that effect is reproduced herein

"Court: Parties' advocates are entitled to copies of judgment, decree and proceedings from today

**M. R. Gwae
JUDGE
16/09/2019**

Considering the fact that, the applicant's advocate was sick and taking into account that, the complained court's rescheduling of the date of hearing of the respondent's revision application, though might pertain with a good intention of the court to expeditiously hear and determine the dispute and get rid of the back-log cases without evidence as to notice to the applicant, the application is thus found to be grantable.

Basing on the reasons above, this application is consequently granted as prayed. The applicant is granted extension of time within which to file an application to set aside the exparte judgment, equally, the exparte judgment is hereby set aside. No order as to costs is made for an obvious reason that, this matter is a labour dispute where ordinarily costs are exceptionally granted.

It is ordered.

**M.R. GWAE
JUDGE
26/05/2021**

Order: Hearing on 31/5/2021 as the case so readmitted is one of the oldest cases that is of 2017, the record of the CMA and of this court to timely traced




M.R. GWAE
JUDGE
26/05/2021