

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

**IN THE DISTRICT REGISTRY OF SONGEA**

**AT SONGEA**

**CONSOLIDATED LABOUR APPLICATION NO .04, 05,06,07,08, AND 09 OF  
2020**

**(Originated from consolidated Disputes No. 2 CMA/RUV/SON/05/2019**

**PAULO MBANO..... APPLICANT**

**Versus**

**NAM ENTERPRISES LIMITED .....RESPONDENT**

**RULING**

**Date of Last Order: 25/05/2021.**

**Date of Judgment: 08/06/2021.**

**BEFORE: S.C. MOSHI, J.**

This application is for extension of time to file an application for revision out of time. The application is made under Rule 24(1), 24 (2) (a) (b) (c) (d) (e) (f), 24(3) (a) (b) (c) (d) and Rule 55(1), 56(1), (3) of the Labour Court Rules G.N 106 of 2007. The court consolidated Labour Application No. 4, 5, 6, 7, 8 and 9 of 2020 as all originate from CMA/RUV/SON/05/2019. The applications are supported by affidavits deposed by Paulo Mbano, Paul Nkwera, Job Mbawala, Abbas Gingo, Peter Mgaya, and Sunday Daudi, who are applicants in the consolidated applications.

During hearing of the application, the applicants were represented by Mr. Dickson Ndunguru learned advocate and the respondent was represented by Mr. Donald Phillip.

Briefly, Mr. Ndunguru submitted among other things that, the applicants pray for extension of time on two main grounds. First ground is stated on paragraph 4 and 5 of the affidavits, that is technical delay. He said that the applicant filed an application timely but it was struck out for legal reasons. They have attached the decision by Arufani, J as annexure NUMET -1 which narrates what transpired. The award was delivered on 30/1/2020, the applicant was supplied with a copy of the award on 7/2/2020 and application for revision in this court was filed on 19/3/2020, it was only 45 days from the date of the award. The respondent raised a Preliminary Objection which was decided on 29/9/2020. The applicant filed the present application because sixty days had already expired. He argued that, therefore the delay was technical. In support of his argument he cited the case of **Mustapha Athumani Nyoni vs. Issa Athumani Nyoni**, Civil APPLICATION No. 476/10/2019, Court of Appeal sitting at Iringa (Unreported), where it was held that a technical delay may be good ground for extension of time.

Finally, he contended that, there are irregularities which have been pointed out at paragraph five of the affidavit that a higher court need to consider. In this regard he cited the case of **Selina Chibago vs. Finihas Chibago**, Civil Application No. 182 A of 2007, Court of Appeal sitting at Dar es salaam (Unreported).

In reply, Mr. Phillip Donald submitted that, the applicant hasn't shown sufficient reasons for delay, likewise the cases cited are distinguishable. He said that, the applicant has not showed when the ruling which was delivered by Arufani, J was supplied to him, he has not explained the number of days he delayed after being supplied with the decision and he has not explained each and every day of delay.

He argued further that, he had asked to peruse through the file, he noted that the applicant was supplied with the decision on 5/10/2020 and he filed the present application on 1/12/2020, by that time 56 days had expired. In the affidavit, the applicant did not account for each single day. To support his argument, he cited the case of **Mvano Mandawa vs. DAWASA**, Miscellaneous Application No. 754/2019, HC Labour Division, Dar es salaam.

On the second ground which relates to irregularities, he said that the applicant didn't explain the irregularity. The irregularity is supposed to be apparent on the record. He made reference to the cases of **Finca**



**TZ ltd and another vs. Boniphase Mwalukisa**, Civil Application No. 589/12 of 2018, Court of Appeal sitting at Iringa (Unreported), **Wambura N.J. Waryuba vs. The Principal Secretary Ministry of Finance and The Attorney General**, Civil Application No. 225/01/2019, Court of Appeal sitting at Dar es salaam (Unreported).

He argued that, section 112 of the Law of Evidence Act, Cap. 6 R.E 2019 provides that the burden of proof lies on that person who wishes to believe in its existence. He said that, the applicant has not proved the existence of the irregularity. He didn't file the application for revision timely, the same was filed by NUMETS. The court struck out the application because the party who preferred the application was not a proper party and the representative was not chosen.

Lastly, he said that the applicant has not shown any sufficient reason for delay, hence the application should be dismissed.

In rejoinder, Mr. Dickson Ndunguru stated that they have explained good reasons as required by law. The fact that the applicant collected the documents on 5/10/2020 after perusing the file is not true, if that was so, then he was supposed to show the receipt for perusal fee. The ruling does not reflect the date which it was supplied. He also said that, the question of counting each and every day is not reflected in the affidavit.

Concerning the irregularity not being raised he said that, he pointed out the irregularities in paragraph five and seven. The application is brought by the applicant, there is notice of representation at page seven of the application. He said whatever the case, after the case was struck out by Arufani, J they were already out of time.

The issue for determination, in light of the applicant's chamber summons, affidavit in support of the application, counter affidavit and oral submissions of the parties is whether the applicant has advanced good cause to convince the court to extend time within which he can lodge an application for revision out of time.

The law requires a party who seeks an extension of time to advance good cause for the court to exercise its discretionary power for extending time or otherwise. It is essential to reiterate that court's power for extending time is both wide ranging and discretionary but it is exercisable judiciously upon good cause being shown. It may not be possible to lay down an invariable or constant definition of the phrase good cause but however invariably the court consistently looks at factors such as the length of delay involved; the reasons for delay; degree of prejudice, if any that each party stands to suffer depending on how the court exercises its discretion and the conduct of the parties. See the case of **Wambura N.J. Waryuba vs. the Principal Secretary of Finance and another**



(supra). The other thing to be considered is whether there is a point of law of sufficient importance such as the illegality of the decision sought to be challenged. See the case of **Principal Secretary, Ministry of Defense and National Service vs. Devram Valambhia** [1992] TLR 185 and **Lyamuya Construction Company vs. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 02 of 2010 (Unreported). Again, it is a settled principle that delay of even a single day has to be accounted for, as it was held in the case of **Interchick Company Limited vs. Mwaitende Ahobokile**, Civil Application No. 218 of 2016 (Unreported), where it was held thus: -

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

The applicant's reasons for the delay are three-fold and they are shown in paragraph four to seven. In paragraphs four to seven he averred that;

*4. that we filed the application for Revision No. 2/2020 before this court whereby the court on 29<sup>th</sup> September 2020 struck out our application for want of representative leave. A copy of the said Ruling is hereby annexed and marked as NUMET 1*

*5. That I decided to file my own case independently so as to pursue the Revision case aiming at moving the court to quash and set aside the C.M.A award which is tainted with a lot of irregularities whereby the C.M.A failed to properly interpret the law basically on illegal strike.*

*6. That, the reason for delay is that the matter was filed within time but it was strike out by this court on technicalities.*

*7. that, I have great chance of succeeding in revision because the honourable arbitrator failed totally to evaluate the evidence before him.*

The above paragraphs together with the annexures which the applicant attached in his application shows that, the applicant was diligent but the initial application for Revision was struck out on technical ground. The applicant filed the application for revision on 19<sup>th</sup> March 2020 challenging the award in Labour Dispute No. CMA/RUV/SON/05/2019 issued on 30<sup>th</sup> January 2020 and that they were served with the award on 7<sup>th</sup> February 2020 up to 19<sup>th</sup> March 2020, when the application was filed in this court it was within 42 days, within time prescribed by law. The ruling striking out the revision was delivered on 29/10/2020 following a preliminary objection raised by the respondent against the applicants' application. Thereafter on 01/12/2020 the applicant filed this application; therefore, the applicant filed the present application in 32 days from the



date of the delivery of ruling. However, the period from 29/10/2020 to 1/12/2020 is not accounted for. In an application for extension of time, each day passed beyond prescribed time, has to be accounted for. This was discussed in the case of **Interchick Company Limited vs. Mwaitende Ahobokile** (Supra). Therefore, despite the fact that the application which was before Arufani, was struck out for technical reasons, yet the applicant was duty bound to account for each and every day of delay from the date when the ruling was delivered to the time of filing the present application; hence, I find that the applicants have failed to show and explain reasons for delay.

Secondly, the applicant is alleging illegalities in the award. It is settled law that where an issue of illegality is raised as a reason for applying for extension of time, such reason may amount to good cause. This position was stated in the case of **The Principal Secretary, Ministry of Defence and National Service vs. Devram Valambia** (1992) TLR 182, Where it was held thus: -

*"in our view when the point at issue is one alleging illegality be challenged, the court has a duty, even if it means extending the time for the purpose to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record right".*

Back to the case at hand, the illegalities were indicated in the applicant's affidavit at paragraph 5, I am satisfied that the alleged




illegalities that is, the C.M.A failed to properly interpret the law basically on illegal strike suffices to be a good reason for the grant of extension of time

Lastly another reason as seen in paragraph seven is that the intended application for revision has overwhelming chances of success. The position of law is well set that, chance of success is not relevant factor by itself because the court in an application for extension of time is not concerned with the merits of the intended application or appeal rather on whether the applicant has shown good cause for the order sought. See the case of **Aziz Mohamed vs. R**, Criminal Application No. 84/07 of 2019 Court of Appeal sitting at Mtwara. Therefore, discussing chances of success at this stage will be beyond the powers of the court.

In the event, I find that this application is meritorious taking into account the complaint that the award is tainted with irregularities. I hereby grant it. The applicant should file the intended application for revision within fourteen days from the date of delivery of this ruling.

It is so ordered

Right of Appeal Explained.

  
**S.C. MOSHI**  
**JUDGE**  
**25/05/2021**

