IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF MWANZA)

AT MWANZA

MISC. LABOUR APPLICATION NO. 03 OF 2021

MAJID GWASA
SADICK ISRAEL ..... **APPLICANTS**

VERSUS

SAID KAPIGA ..... **RESPONDENT**

RULING

1st April & 8th June, 2021

ISMAIL, J

This is an application for extension of time within which to institute an application for revision. The revision is intended to challenge the ruling issued by the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/MZ/NYAM/66/2020, issued on 29th May, 2020. In the said ruling, the applicants' prayer for extension of time for filing a labour dispute against the respondent, their alleged erstwhile employer, was dismissed on the ground that no sufficient cause was adduced to support the prayer for such extension.

Feeling hard done, the applicants have knocked on the doors of this Court. However, noting that they are out of time, they have applied for extension of time, through the instant application. The application is supported by an affidavit sworn by a certain Mr. Mathias Mwilwa, whose designation is not disclosed by but he alleges to be the applicants' representative in the matter. Grounds for the prayers sought are set out in the said affidavit. The application has been opposed by the respondent, through a counter-affidavit, sworn by Mr. Constantine Mutalemwa, learned counsel for the respondent. The view taken by the respondent's counsel is that the delay is unjustified and that the period of delay isn't accounted for.

When the matter came up for hearing on 1st April, 2021, one of the applicant's and Mr. Mutalemwa, the respondent's counsel, were in virtual attendance. With the parties' concurrence, the matter was set for disposal by way of written submissions, which were to be preferred consistent with the schedule of filing that required the applicants to prefer their submissions on 15th April, 2021. The respondent was scheduled to file his submission on or before 22nd April, 2021, while rejoinder, if any, was to be filed on 29th April, 2021. By the close of business on 15th April, 2021, and until now, nothing has been submitted by the applicants. This fact what brought to the Court's attention by the counsel for the respondent, vide a letter dated 21st

April, 2021, in which the said counsel informed the Court of the respondent's inability to file his reply in conformity with the schedule.

The position being as stated above, the question that follows is what is the next course of action.

The trite position is that a party's failure to file written submissions, when ordered to do so, constitutes a relinquishment of his right to be heard and prosecute his matter. If the defaulting party is an applicant, petitioner or plaintiff, the consequence is to let the matter that he instituted face a dismissal. This position has been underscored in a number of court decisions. In the case of ***National Insurance Corporation of (T) Ltd & Another v. Shengena Ltd***, CAT-Civil Application No. 20 of 2007 (DSM-unreported), the Court of Appeal observed as follows:

> *"The applicant did not file submission on the due date as ordered. Naturally, the Court could not be made impotent by the party's inaction. It had to act. ... it is trite law that failure to file submission(s) is tantamount to failure to prosecute one's case."*

The stance taken in the just cited case is consistent with an earlier position, taken by this Court in ***P3525 LT Idahya Maganga Gregory v. Judge Advocate General***, Court Martial Criminal Appeal No. 2 of 2002 (unreported). It was held thus:

"It is now settled in our jurisprudence that the practice of filing written submissions is tantamount to a hearing and; therefore, failure to file the submission as ordered is equivalent to non-appearance at a hearing or want of prosecution. The attendant consequence of failure to file written submissions are similar to those of failure to appear and prosecute or defend, as the case may be. The Court decision on the subject matter is bound .... Similarly, courts have not been soft with the litigants who fail to comply with court orders, including failure to file written submissions within the time frame ordered."

Noteworthy, the decision in ***P3525 LT Idahya Maganga Gregory v. Judge Advocate General*** (supra) took a cue from the Court's earlier view in ***Olam Tanzania Limited v. Halawa Kwilabya***, HC-(DC.) Civil Appeal No. 17 of 1999 (unreported). The Court emphasized as follows:

"Now what is the effect of a court order that carries instructions which are to be carried out within a pre-determined period? Obviously, such an order is binding. Court orders are made in order to be implemented; they must be obeyed. If orders made by courts are disregarded or if they are ignored, the system of justice will grind to halt or it will be so chaotic that everyone will decide to do only that which is conversant to them. In addition, an order for filing

submission is part of hearing. So, if a party fails to act within prescribed time he will be guilty of in-diligence in like measure as if he defaulted to appear .... This should not be allowed to occur. Courts of law should always control proceedings, to allow such an act is to create a bad precedent and in turn invite chaos."

See also: ***Tanzania Harbours Authority v. Mohamed R. Mohamed*** [2002] TLR 76; ***Patson Matonya v. Registrar Industrial Court of Tanzania & Another***, CAT-Civil Application No. 90 of 2011; and ***Geofrey Kimbe v. Peter Ngonyani***, CAT-Civil Appeal No. 41 of 2014 (DSM-unreported).

Inspired by the cited decisions, I take the view that the instant application must suffer from the same fate. It must fail. Accordingly, the same is hereby dismissed. No order as to costs.

It is so ordered.

DATED at **MWANZA** this 8th day of June, 2021.

THE HIGH COURT OF TANZANIA MWANZA

M.K. ISMAIL

JUDGE