

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT MWANZA

MISC. LABOUR APPLICATION No. 05 OF 2021

*(Originating from Labour Dispute No. CMA/GTA/126/2018, CMA Geita Dated
16/09/2020)*

GEITA GOLD MINE LIMITED..... APPLICANT

VERSUS

ELIUDY GICHAINÉRESPONDENT

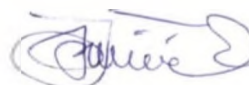
RULING

19th May & 18th June, 2021

TIGANGA, J

In this application the court is moved by the applicant under Rule 24 (1) 24 (2) (a) (b), (c), (d),(e) and (f), 24 (3) (a) (b) (c) and (d) and Rule 55 (1) and (2), 56 (1) and (3) of the Labour Court Rules GN, No. 106 of 2007. The Court is moved by the applicant by filing three documents namely, the notice of application, Notice of representation and chamber summons which is supported by the affidavit sworn and filed by Ernest Masanga Makene, an Advocate dully instructed to represent the applicant.

In the chamber summons, the orders sought are an order for extension of time within which the applicant can file application for revision



against the decision of the commission for Mediation and Arbitration of Geita from the award of Labour Dispute CMA/GTA/126/2018 and, any other order/further relief (s) as this honourable court may deem just and fit to grant under the circumstances.

The affidavit narrates the background of the application and the reasons for the application. Briefly the facts are that, on 16/09/2020 the CMA Geita decided by delivering the judgment in CMA/GTA/126/2018 in which the CMA ordered the reinstatement of the respondent in his former position of work without loss of remuneration.

That decision aggrieved the applicant who decided to challenge it against it, and through the service of Rafiki Attorney Company Advocates filed application for Revision against the said the said decision to the High Court.

According to the deponent on 05/11/2020 at 09:46 the application was filed through Judiciary Statistical Dashboard System JSDS - e case filing system. However, after submitting the said application the same was not immediately admitted. Following that delay, the deponent made several follow up to the office of the Deputy Registrar High Court Mwanza Registry,



but he either found the Deputy Registrar occupied or out of office for other official duties.

On 27/01/2021, during the law week 2021, he met the Deputy Registrar; it was when he was informed that the system failed to perform a desired action specifically receiving his client application for revision. He deposed further that such delay based on technical hindrance and interruption thus interfering their intention to file the application on timely, although in his account the system show that the application was submitted pending admission, but the Deputy Registrar did not see it, therefore he was advised to refile. He proposed two issues for determination by this court.

- i. Whether the applicant filed Labour Revision on time but due to the technical interruption resulted to the delay.
- ii. Whether the Judiciary Statistical Dashboard System (JSDS) e - case filing system interface will display the application on the side of the applicant.

The applicant asked the court the following reliefs;

- a) To extend time within which to file an application for Revision out of time.
- b) The applicant be given the right to address the illegalities on the award before this honourable court.

The application was countered by the respondent, who through Mr. Erick Rutehanga (Advocate) from Kamba and Associate Law Attorney Advocate, filed the notice of opposition, notice of representation and the counter affidavit.

In the counter affidavit, which was sworn by the respondent he denoted most of the facts and put the applicant to the strictest proof thereof as the applicant is not the court officer. He added one issue which is whether the applicant has genuine reason to move the court to extended time to file revision. He asked the court to dismiss the application at hand, and grant any other relief as this court may deem fit and just to grant.

With leave of this court the application was argued by way of written submissions. Parties filed their respective submission in time and according to the schedule.

In submission in chief filed by the applicant, most of information were just the repetition of the affidavit filed in support of the applicant, therefore for purposes of brevity, I will not reproduce the said submissions. The applicant reminded the court that, this court has powers under Rule 56(1) of the Labour Court Rule GN. 106/2007 to extend or abridge any period prescribed by these rules on application and good cause shown, unless the court is precluded from doing so by any written law.

He submitted that the application was submitted in time but it was not admitted by the Deputy Registrar due to technological setback in the system. He cited the case of **Fortunatus Masha vs William Shija & Another** [1997] T.L.R 154 and asked the court to distinguish, actual or real delay and technical delays, he submitted that the case at hand involves technical delay, in the sense that, the original revision was lodged in time but unfortunately it was not attended due to technical error in the system which was the fault of the applicant.

He submitted that, generally speaking, the court should grant extension of time when the applicant shows sufficient cause of delay he cited the case of **Ratna vs Cumarasamy and Another** [1964] 3 All E. R 933 in which Lord Guest was of the opinion that,

"sufficient reason must be determined by reference to all circumstance of the particular case which will move the court to exercise its judicial discretion in order to extend the time limited by rules"

He in essence submitted that, the e-filing process is relatively new, the setbacks in the system are bound to occur and some inefficiency as well, which are beyond control of the user and these are good cause which entitles the applicant for extension of time. He in the end prayed that the reasons he has given are sufficient, he prayed for the court to allow the application as prayed.

In reply, the respondent having read the submission by the applicant, he invited the court to rely on the Judicature and application of Laws Electronic filing) Rule, 2018 especially Rule 24 (1) which provide that the period during which electronic filing system is not operation for any reason, shall be excluded from the computation of time for filing. He also referred Rule 24 (5) of the said Rule which provides that,

"Where a party misses a filing deadline due to technical problem referred to in sub rule (1) the party shall move in formally and exparte the Registrar or the Magistrate in charge

not later than 15.00hrs of the following working day for appropriate relief"

He submitted that after missing the system on 05/11/2020, the rule required him to visit the office of the registrar before or not beyond at 15.00hrs of 06/11/2020 which was Friday, but did not do so.

According to him, the allegations that, the applicant was looking the Registrar in vain, has no truth, as it is impossible for the office of the Registrar to be closed or in operative from 06/11/2020 up to 27/01/2021 when the applicant counsel alleges to have met the Registrar.

Now that he had seen the registrar, had it been true that the office of the Registrar was closed or inoperative, then the Registrar would have taken that, to be a good cause and under Rule 24 (6) of the same Rules, granted the request under sub rule (5).

He submitted that counting days of delay from 05/11/2020 to 17/02/2021 when this application was filed is about 104 days, while section 91 (1) (a) of the Employment and Labour Relations Act [Cap 366 R. E 2019] provides for six week which is equivalent to 42 days for filing

revision, therefore days to be excluded are about 63 days from the limited time.

Further to that, the counsel submitted that he met the Deputy Registrar on 27/01/2021 but his application was filed on 17/02/2021, about 21 days later. He submitted therefore that in the affidavit the applicant did not account the 21 days. He cited the authority in the case of **Constantine Victor John vs Muhimbili National Hospital**, the Court of Appeal of Tanzania Civil Appeal No. 214/18 of 2020.

"that the applicant must show good cause by accounting each and every day of delay"

He submitted that the applicant acted negligently, and that negligence can not be good cause.

Furthermore, he submitted that, the authority in, **Ngao Godwin Losero vs Julius Mwarabu**, Civil Application No. 10/2015 CAT - Arusha, in which it was held that;

"when all is said with respect to the guiding principles, I will right away reject the explanation of ignorance of the legal procedure given by the applicant to account for the delay. As

has been held times out of numbers, Ignorance of law has never featured as a good cause for extension of time"

He submitted that the applicant would have obtained either a letter or an affidavit from the system operator.

He submitted that for the time to be extended even Rule 56 (1) of the Labour Court Rules (supra) requires good cause to be shown, and this court in terms of Rule 24 (3) of the Electronic Filing Rules, 2018 is precluded to extend time since the days asked is more than 42 days. He prayed for the application to be dismissed with costs.

In rejoinder, the counsel for the applicant, submitted that the counsel for the responded was misconceived for basing his submission on the question of missing the filing date and its remedies and consequences under the JSDS system as established under the Judicature and application of the laws (Electronic filing) Rules 2018.

He insisted that he did not miss the deadline, he met the dead line but de to technical issued the submitted application was not admitted. He therefore submitted that the law which was relied upon is misconceived.

He reiterated on how he managed to file the application on 05/11/2020, and how the Deputy Registrar could not see it.

He also submitted that, even where the Registrar saw the technological fault of the system but it was out of his mandate to extend time. He submitted further that Rule 21 (1) of the Judicature and Application of the Laws Act, (Electronic Filing) Rules, 2018 provides that the document is considered to have been dully filed if it is submitted through electronic filing system before midnight, on the date it is submitted, unless a specific time is set by the court or it is rejected.

He submitted that the document was submitted on time, but the Deputy Registrar was prevented by the technical fault in the system to view and admit it, the error which the Deputy Registrar acknowledged. Submitting on whether the applicant has established good cause or not. He cited the case of **Constantine Victor John vs Muhimbili National Hospital** (supra) in which the court considering the reason given in that case it granted extension of time. He equally urged the court to find that, the reasons given for delay in this application are good cause for they were out of control of the applicant and his advocate.

He submitted that, rule 24 (3) of the Judicature and Application of the Laws (Electronic Filing) Rules, 2018 is misleading, he asked the court to be guided by Rule 56 (1) of the Labour Court Rules, GN. 106/2007 which provides that, this court has jurisdiction to extend time on the application and good cause shown.

He submitted that, the applicant had provided evidence on account of the day of the filing the applications, as the days from 27/01/2021 to 17/02/2021 were used to prepare the documents, filing and waiting the same to be admitted.

Last but one he submitted that the applicant did not only end up showing a good cause to more this honourable to grant extension on time but also counted every day of delay as required through the affidavit of the counsel for the applicant.

He submitted that, the counsel for the respondent wrongly computed the days delayed, as the applicant filed an application for extension of time on 05/02/2021 as signified in the document before this court, he said there was the days for waiting for admission after submitting it electronically

through JSDS, and that the application was therefore admitted on 17/02/2021. He asked for an application to be granted as prayed.

Now having considered the reasons given in the affidavit filed in support of the application, the counter affidavit as well as the submissions made, by the counsel for the parties in support of the application and against it, looking at the nature of the application, only one main issue as to whether the applicant gave out good cause for extension of time.

This is because the provision upon which this application was preferred that is section 56 (1) of the Labour Court Rules GN No. 106 of 2007 provides that,

*"The court may extend or abridge any period prescribed by these rules on **application and on good cause shown** unless the court is precluded from doing so by any written law"[Emphasis added].*

This requirement of showing good cause is a conditional precedent for a person to be entitled to the extension of time, is the general principle at all level of courts and almost in every circumstances where an application for extension of time is made.

That being the general principle the Court of Appeal, having noted that, it has not been defined by the statutes, it defined it in the case of **Lyamuya Construction Company Limited vs The Board of Registered Trustees, of Young Women's Christian Association of Tanzania**, Civil Application No. 02 of 2010 unreported (CAT) and formulated the following guideline which is acceptably considered as good cause.

- a) That the applicant must account for all days of delay.*
- b) The applicant must show diligence and not apathy, negligence or sloppiness in prosecuting the action that he intends to take.*
- c) If the court feels that there are other reasons such as the existence of a point of law of sufficient importance such as illegality of the decision sought to be challenged"*

In order to ascertain in the first and second ingredients, one must first establish the period delayed before first ascertaining that the delay was normal or in ordinate, and secondly to account each day of delay.

In this case, there is no dispute that the applicant delayed to file the application for revision that is why he has filed this application asking for time to be extended for him to file an application for Revision.

To ascertain the period delayed we look at the date on which the Judgment was delivered, and the date when the application at hand was filed. From the record, which has not been disputed, the award which is the subject of this application was delivered on 16/09/2020.

The record shows that, on 23/09/2020 the respondent collected the copy of award, while on the next day that is on 24/09/2020, the counsel for the applicant collected the copy of the award which means counting days, should start from 24/09/2020 when the applicant was supplied with the copy of the award. Therefore six weeks which is provided by section 91 (1) (9) of the Employment and Labour Relations Act [Cap 366 R.E 2019] computed from the 24/09/2020 was ending on 05/11/2020.

The applicant said in his arguments and affidavit that he filed an application for revision 05/11/2020 electronically, but the same was but due to technical fault in the JSDS - (electronic case filing system) the Deputy Registrar did not see it for admission and other registry processes.

Therefore he kept making follow up to the office of the Registrar, and he attached a number of receipts which he used in transport from Geita to Mwanza and vice versa. However, those receipts do not show that he was

coming to Mwanza to visit the office of the Deputy Registrar or other businesses.

From his submissions, he said he had been making follow up from 05/11/2020 up to 27/01/2021, the days which when arithmetically computed is about 82 days. Knowing how the office of the Registrar operate, I was shocked to here that during these days the office of the Registrar with two Deputy Registrars at this station was either closed, or was open but without an officer inside it, to attend the applicant.

Anyway, even if we assume for the sake of arguments that all Deputy Registry were not in office and the acting Deputy Registrar as well, which I do not believe, yet still after the applicant's counsel had seen the Deputy Registrar on 27/01/2020, he did not immediately file the application for extension of time. The record shows that, he filed the application on 17/02/2021, approximately 21 days from the date when he met the Deputy Registry.

The counsel complained that the counsel for the respondent misconceived and miscalculated the date, because he filed the application on 05/02/2021 the eight days being used for preparation of the application.

He further contended that, the alleged 17/02/2021 is so reflected because there were some days for waiting, preparation and admission. Those allegations however have no any back up of any proof. There is no even a letter from either the Deputy Registrar or the affidavit from the System Administrator, proving that the case was filed on 05/02/2021 but it was not admitted until on 17/02/2021.

Even if we exclude the first 82 days which we have no ground to do, yet there are 21 days which stands unaccounted. In my considered views, that is inordinate delay and cannot be ignore. The same could have been cured by just accounting those delayed days, which the applicant has not done.

That said, I find the applicant to have failed to account the days delayed, the delay being as in ordinate as I have indicated, impute no any other attribute on the part of the applicant, but, that he did not show diligence in prosecuting the action to challenge the award.

Further to that although the authority in **Lyamuya Construction Company Limited vs YWCA of Tanzania** (supra), made illegality as one of the good cause. Although the same has been pleaded at page 3 of the

affidavit, at item 4.2 the same has not been proved to exist in the award which is sought to be challenged. It should be noted that, not every allegation of illegality constitutes good cause, the same must be of sufficient importance, and apparent on the face of the record in the decision sought to be challenged. In this application, the applicant has failed to vividly show the alleged illegality and show its jurisprudential importance to him the extension of time.

That said, I find the application to have no merits, it is hereby dismissed for the reasons given.

It is so ordered.

DATED at MWANZA, this 18th day of June, 2021




J. C. TIGANGA

JUDGE

18/06/2021