

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
LABOUR DIVISION

MISC. LABOUR APPLICATION NO. 05 OF 2020

(Originating from labour Dispute No. CMA/ SHY/90/2018 and Labour Revision No. 51 of 2018.)

YUSUPH DANIEL POLIAPPLICANT

VERSUS

PANGEA MINERALS LIMITEDRESPONDENT

RULING

5th & 6th August, 2021

MKWIZU, J.:

This is a ruling in respect to an application by the applicant for extension of time to file an application for Revision against the CMA award in Labour Dispute No. CMA/SHY/90/2018 dated 15/5/2018. The application is made under section 94 (1) (e) of the ELRA, No 6 of 2004, Rule 24, (1), (2), (3) and (11)(a); Rule 55 (1) and 56 of the labour Court Rules 2007 (GN No. 106 of 2007). It is supported by the affidavit of Yusufu Daniel Poli, the applicant sworn on 6th March 2020.

The application was vehemently opposed by the respondent who filed a counter affidavit deposited by Geoffrey Kange respondent's then advocate on 4th April, 2020.

The historical account of the matter as gathered from the records go thus: On 3/4/2018 applicant, Yusufu Daniel Poli filed at the CMA a labour dispute against the respondent with a condonation application. He however on the process, defaulted appearance hence dismissal of his condonation application on 15/5/2018. Dissatisfied with the said dismissal, applicant, within time filed in this court revision application No 51 of 2018. Unfortunately, on 26/2/2020 this court struck out the revision on technical grounds hence this application for extension of time.

Generally, this application raises one ground for the delay, technical delay. It is stated by the applicant's counsel, Mr. Chubwa Muheza and agreed by the respondent counsel, Mr. Faustine Malongo that the period between 15/5/2018 to 26/2/2020 falls within a technical delay which is acceptable as a ground for extending time. The dispute is on the actual delay, the period of 14 days from 26/2/2020 when this court struck out the incompetent application to 10/3/2020 when applicant filed this application in court.

Respondent's counsel was of the view that, this period is not accounted for. He relied upon the decision of the court of Appeal in **Dan O'bambe Iko (By William Dan Iko as administrator of estate) V Public Service Social Security Fund and Another**, Civil Application No. 182 of 2005.

On his side, the applicant's counsel explained that the fourteen days period was used by the applicant for the preparation of the documents in respect of this application as well as filing the same. He insisted that, 14 days were reasonable time for that activity. He relied on the decision of **Emmanuel Rurihafi & Another V Janas Mrema**, Civil appeal No 314 of 2019.

I have read the cited decisions. In **Dan O'Bambe 's case** (Supra), the Court of Appeal stressed on the need to give a full detailed and accurate account of the cause of the delay and its effect. I have evaluated the whole of that decision in relation to the facts of the application at hand, I am convinced that the facts of these two cases are dissimilar. In that case, the applicant was applying for extension of time to file an appeal whose decision was rendered in more that fourteen years. And the applicant failed to give accurate detailed account as to when his first application was filed in Court. In this present application, applicant details are accurate. He was able to

state in his affidavit the date when the CMA decision was delivered, the date he filed his first application and the date the application was struck out. The issue for discussion therefore is only whether the 14 days actual delay was accounted for or not.

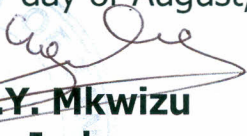
I have evaluated the sequence of events from when the parties were at the CMA to when this application was filed, I do not find any sloppiness on the part of the applicant. In **Emmanuel Rurihifi's Case** (Supra) the appellant's appeal was struck out for being incompetent, he thereafter filed an application for extension of time within 22 days. In determining whether 22 days period was reasonable, Court of Appeal applied the "**Promptness test**" Borrowing a leaf from the decision of **Samwell Musa Ng'omango (as a legal representative of the Estate of late Masumbuko Mussa) V A.I.C(T) Ufundi**, Civil appeal No 26 of 2015 and **Hamis Mohamed (as administrator of the estate of the Late RISASI NGWALE) V. Mtumwa Moshi (as administrator of the Estate of the Late MOSHI ABDALLAH)**, civil application No. 407/17 of 2019 (all unreported) where 20 days and less than 30 days period was regarded as reasonable, the court said

"We think that 22 days was reasonable time for collecting copies of the ruling and drawn order in a struck -out appeal and for preparation of a meaningful application for extension of time. It seems to us that applicant acted promptly and without negligence in applying for extension of time within which to lodge a fresh appeal"

Given the above authoritative decisions I am of the view that, applicant in this case acted promptly. The 14 days period was reasonable for the preparation of the meaningful application for extension of time. The delay period was for that period accounted for.

The application is thus granted as prayed for. Applicant to file his revision application within 30 days from the date of this order. Order accordingly.

DATED at **SHINYANGA**, this 6th day of August, 2021.


E.Y. Mkwizu
Judge
6/8/2021

