

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT BUKOBA

MISCELLANEOUS LABOUR APPLICATION NO. 08 OF 2020

BETWEEN

EDITH NABABI.....APPLICANT

AND

KEMEBOS ENGLISH MEDIUM BOARDING SCHOOL.....RESPONDENT

RULING

Date of Last Order: 20/09/2021

Date of Ruling: 05/10/2021

A. E. MWIPOPO, J.

This is an application for extension of time to file application for revision against the award delivered by Commission for Mediation and Arbitration (CMA) at Bukoba dated 25th May, 2018. The Applicant namely Edith Nababi is praying for the order of the Court to extend the time for application to file revision against the award of the Commission.

The application is made by Chamber Summons supported by affidavit sworn by the Applicant. The affidavit contains statement of legal issues in paragraph 9. The said legal issues allegedly occasioned by the Commission are as follows:-

1. Failure to consider legal aspect related to termination of employment contract, terminal benefit and certificate of service.
2. Failure to properly record the hearing proceedings particularly on cross examination by the Applicant to the Respondent which resulted into missing some relevant information supporting oral termination of employment contract.
3. The Arbitrator condemned the Applicant alone to suffer loss of her terminal benefit on the ground that she worked without a working permit.

In opposition, the Respondent namely Kemebos English Medium Boarding Primary School filed counter affidavit sworn by Frank Kalory John, Advocate.

In order to understand the present application, a background of the application will suffice. In brief, the Applicant filed Labour Revision No. 16 of 2018 in this Court after she was aggrieved by the award of the Commission for Mediation and Arbitration dated 14th December, 2016 in Labour Dispute No. CMA/BU/7/72 of 2017. The Revision was dismissed on 27th October, 2020 by this Court for being hopelessly time bared following the act of the Applicant to concede to the P.O. raised. Then, the Applicant filed the present application for extension on 23rd November, 2020.

The Applicant who was not represented submitted in support of the application that she failed to file the revision application within time since she was

sick from 04.06.2018 up to 27.06. 2018. After she was discharged from hospital and became better, she started looking for person to help her with the case. It was difficult to find a person to help her as she have no money to pay them. The Applicant filed her first Revision application in this Court which was dismissed for being filed out of time on 27.10.2020. Thereafter, she filed the present application for extension of time on 23.11.2020. She prays for the Court to allow her application for extension of time.

In reply, Mr. Frank John who is the Advocate representing the Respondent submitted in opposition that it is the duty of the Applicant in an application for extension of time to provide sufficient cause to the court. He said that the Applicant was present when the commission delivered the award on 25.05.2018 and she received the award on the same date. He said that the Applicant submitted that she was sick and was admitted to the hospital from 04-27.06.2018, but she did not provide explanation for the each day of the delay. There is no explanation as from 26.05.2020 up to 04.06.2018 what he was doing before she became sick. For that reason, he said, the Applicant was negligent and prayed for the application be dismissed.

In her rejoinder, the Applicant emphasized that the delay was caused by failure to get somebody to help her to prepare the Revision as she have no money to pay to lawyers.

From the submissions, pleadings and available evidence in record, the main issue for determination is whether or not the application has merits.

It is a settled principle that the Court has discretion to grant an application for extension of time upon a good or sufficient cause shown. [See. **Tanga Cement Company vs. Jumanne D. Masangwa and Another**, (supra); **Abdallah Salanga & 63 Others v. Tanzania Harbours Authority**, Civil Reference No. 08 of 2003, Court of Appeal of Tanzania,(Unreported); and **Praygod Mbagu V. Government of Kenya Criminal Investigation Department and Another**, Civil Reference No 4 of 2019, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported)].

The reasonable or good cause is determined after taking into account all circumstances of each particular case. The Court of Appeal observed in **Dar Es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported), that:

"What amounts to sufficient cause has not been defined. From decided cases a number of factors have to be taken into account including whether or not the application has been brought promptly. The absence of any explanation for delay lack of diligence on the part of the applicant."

The Court of appeal had similar position the case of **Tanga Cement Company V. Jumanne D. Masangwa and Another**, (supra), where it held that:

".....an application for extension of time is entirely in the discretion of the Court to grant or refuse it. This unfettered discretion of the Court however has to be exercised judicially, and overriding consideration is that there must be sufficient cause for doing so. What amount to sufficient cause has not been defined. From decided cases a number of factors has been taken into account, including whether or not the application was brought promptly; the absence of any valid explanation for the delay; lack of diligence on the part of the applicant."

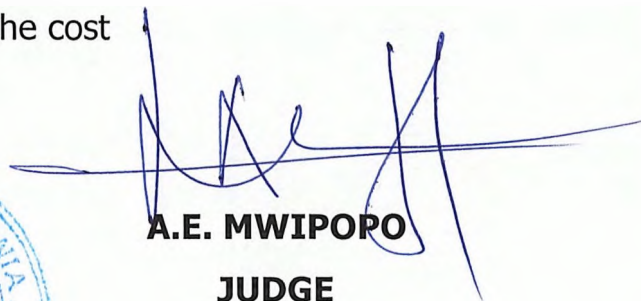
Now turning to the present case, the Applicant submitted that the delay in filing the application was for a reason she was sick from 04-27.06.2018. That, after she became better it took sometime for her to find a lawyers to assist her in preparing her revision and she was able to file her first revision application which was struck out for incompetence on 27.10.2020. She then filed the present application for extension of time on 23.11.2020. The Applicant assertion was contested by the Respondent who stated that there is no explanation from the Applicant on each day delayed.

Looking at the evidence available in record it reveals that the Commission award was delivered on 25.05.2018 and was served to the parties on the same date. The Applicant explained that she got sick and was admitted in hospital on 04.06.2018 to 27.06.2018. After she got better from sickness on 27.06.2018 she looked for lawyers to help her in the preparation of application and she was able to file it on 05.07.2018. This means that within 8 days from the date she was

discharged from hospital the Applicant filed revision application in this Court. The time she took to file the revision application is reasonable time.

The Respondent Counsel argued that the Applicant failed to provide explanation for the delay from 26.05.2018 to 03.06.2018, but by this time the Applicant was still within time so that she need not to provide explanation. The settled principle is that the Applicant in application for extension of time is required to provide explanation for each day delayed and between 26.05.2018 to 03.06.2018 the Applicant was within time hence she need not to provide any explanation.

Therefore, I find the Applicant has to provide sufficient cause for the Court to extend time to file the intended revision application out of time and her application is hereby granted. The Applicant has to file her intended revision application in this court within 30 days from today. This being labour matter, there will be no order as to the cost



A.E. MWIPOPO
JUDGE

05.10.2021

Court: The ruling was delivery today this 05.10.2021 in chamber under the seal of this court in the presence of the Applicant and in the absence of the Respondent.



A. E. MWIPOPO

JUDGE

05.10.2021