

**IN THE HIGH COURT OF TANZANIA**

**LABOUR COURT DIVISION**

**AT MTWARA**

**MISC. LABOUR APPLICATION NO. 2 OF 2021**

(Originating from Labour Dispute No. CMA/MTW/LD/47/2018)

**MUSA AMBALI.....APPLICANT**

**VERSUS**

**DANGOTE INDUSTRIES LIMITED (TZ).....RESPONDENT**

**RULING**

**26 August & 15 October, 2021**

**DYANSOBERA, J.:**

The applicant, Musa Ambali, has filed this application in this Court seeking for extension of time to file an application for revision out of time and any other order(s) that this Honourable Court may deem fit and just to grant. The application is made under rule 24(1)(2), (a), (b), (c), (d), (e), (f), 24(3)(a)(b)(c) and (d) and Rule 55(1) and 56(1)(2)(3) of the Labour Court Rules G.N. No.106 of 2007 and any enabling provisions. This court has been moved by the Notice of Application accompanied with a Chamber Summons supported by the affidavit affirmed by Musa Ambali. The application has, however, been resisted by the respondent by a Notice of Opposition and a Counter Affidavit sworn by Ms Clara Hamadi Koshuma, the Principal Officer of the Respondent.

Before I determine this application, a brief background of the matter is apposite. The applicant was employed by the respondent on 5<sup>th</sup> day of August, 2015 in the capacity of the Senior Sales Officer. On 25<sup>th</sup> day of April, 2018 he was served with a thirty days' notice of termination of his contract of employment. He was aggrieved and filed a labour dispute before the Commission for Mediation and Arbitration (CMA) Mtwara vide Dispute No. CMA/MTW/LD/47/2018 whereby the applicant was awarded a compensation of the remained sixteen months in his contract of employment which is equivalent to Tshs. 19,200,000/=. He was dissatisfied with the Award thus, on 6<sup>th</sup> day of December, 2019 he filed in this Court Labour Revision No.19 of 2019. The revision was not, however, heard as on 24<sup>th</sup> day of November, 2020 it was struck out on the ground that it had a defective affidavit. Undaunted, the applicant has preferred this application.

On 26<sup>th</sup> day of August, 2021 when this application was called on for hearing, Ms Mwanakombo Chaponda, learned Counsel, represented the applicant whereas Mr. Stephene Lekey assisted by Ms Lightness Kikao, both learned Advocates from Zion Attorneys, stood for the respondent. The application was heard orally.

In support of the application, learned Counsel for the applicant, adopting the affidavit affirmed by the applicant to form part of her submission, first briefed the court on the historical background of the matter. She then argued

that before the Commission for Mediation and Arbitration, the Arbitrator failed to consider other rights to which the applicant was entitled which included transportation from the place of recruitment and payment of the subsistence allowance from the date of termination. Ms Mwanakombo said that this is the irregularity which the applicant intends to challenge if this court grants leave to file the application for labour revision out of time. She clarified that the applicant had filed his application for revision challenging the said Award but the same encountered preliminary objection leading it to be struck out. It is her contention that since time for filing an application has elapsed, the applicant has decided to apply for extension of time to file the application for labour revision out of time so as to challenge the CMA Award. To buttress her argument, Ms Mwanakombo referred this court to the case of **R V. Yona Kaponda and 9 others** [1985] TLR 84 on the circumstances under which extension of time can be granted, that is whether or not there is sufficient reason not only for the delay but also sufficient reason for extending the time during which to entertain the appeal. Learned Counsel believes that the applicant has demonstrated sufficient reason to be granted an extension of time. To fortify her argument, she cited the case of **Selina Chibago v. Finihas Chibago**, Civil Application No.182 "A" of 2007 on the authority that no particular reason or reasons have been set out as standard sufficient reasons as it all depends on the particular circumstances of each application.

Counsel for the applicant maintained that after the CMA Award the applicant came to this court on time to challenge the Award though the application was not heard on merit due to existence of illegality and was consequently, struck out. She pressed that the CMA Award contained illegality which can only be rectified by way of revision after the court is pleased to grant extension of time.

In response, Mr. Lekey contended that the submission by the applicant's advocate does not resemble what is contained in the affidavit and therefore, the ground she is advancing from the bar which is not contained in the affidavit should be refused.

Adopting the counter affidavit, learned Advocate for the respondent admitted that the former application for labour revision was struck out and, therefore, nothing remained in court. He further admitted that that the time the applicant spent in pursuing Labour Revision No.19 of 2019 up to 24.11.2020 contained technical delay and should be excluded in the computation. Mr. Lekey, however, pointed out that the application was struck out on 24.11.2020 and by the time, the advocate for the applicant Mr. Kassian Mkali was in court. This application for extension of time bears a court seal dated on 4.2.2021 which means it is the date the application was filed in court. It is his argument that by computation, from 24.11.2020 to 4.2.2021, the degree of lateness is not less than 70 days. Referring this court to rule 56(1) of the Labour Court Rules of

2007 which empowers this court to extend time, learned Counsel for the applicant argued that the extension of time may be granted by this court under those provisions upon applicant showing good cause. He admitted that no definition of good cause has been given as a yardstick but he sought inspiration from the decision in the case of **Lyamuya Construction Co. Ltd. v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 CAT at Arusha whereby the Court interpreted its powers under rule 10 of the Labour Court Rules and gave the guidelines.

As far as this case is concerned, Mr. Lekey contended that in the present case the applicant has not touched the issue of illegality of the decision of the CMA in the affidavit as stated in the **Lyamuya's** case in which it was insisted that the ground of illegality has to be in the affidavit, should not require a long drawn process but must be apparent on the face of the record. This court was referred to the case of the **Principal Secretary Minister of Defence and National Service v. Devram Valambia** [1992] TLR387.

It was the further contention of Counsel for the respondent that that the point of law must be of sufficient importance which should have been reflected in the affidavit, otherwise, the court will be forced to assess the evidence and see if the applicant was employed at employer's working place and during termination whether the applicant was transported or not and that the subsistence allowance

arises from employer's failure to transport the employee from his place of recruitment. Reliance was placed on the case of **Fatuma Mohamed v. Chausiku Selema**, Misc. Land Application No.71 of 2019 HC- Mwanza at page 12. He clarified that the factors discussed in the case of **Lyamuya Construction** were not met by the applicant and this explains their failure to submit on what is contained in the affidavit.

On the argument that the applicant was given a copy of the decision on 10.12.2020, Counsel for the respondent dismissed it as being baseless contending that no letter was attached to the affidavit applying for such a document in order to show his accounting for the delay. He was emphatic that the affidavit does not account for the delay from 10<sup>th</sup> December, 2020 to 4<sup>th</sup> February, 2021 when the applicant filed this application. Mr. Lekey was of the view that the copy the applicant was waiting for was not a mandatory document to be attached and supported his argument by citing the case of **Masumbuko Roman Mahunga Lamwai v. Majembe Auction Mart Ltd and Another**, Miscellaneous Civil Application No.60 of 2017, High Court of Tanzania sitting at Dar es Salaam where at page 7, the court rejected the applicant's application for extension of time as there was no prompt measures to apply for extension of time and that waiting for the copies of judgment was not suggested to be a legal requirement.

Mr. Lekey sought to impress the court that the applicant has not accounted for the delay arguing that a delay is delay even a single day and it must be accounted for. He contended that it was upon the applicant to tell the court in the affidavit that from the time he discovered that he was late then acted expeditiously and the application has been brought in good faith. The case of **Stephen B.K. Mhauka v. The District Executive Director Morogoro District Council and 2 Others**, Civil Application No.68 of 2019 was cited to support this argument.

In a short rejoinder, Ms Mwanakombo referred this court to paragraph 3 (iv) of the affidavit in which it is stated that after the Award the applicant sought to challenge it and this contain a point of law but that since the main application was not heard on merit, the proper forum to challenge it is by way of filing a revision after the extension is granted. She further argued that the notice of application is also clear on other grounds and reasons to be retired during hearing.

I have perused the documents on hand. I have also taken into account the submissions of Counsel for the parties.

There is no dispute that the first application for revision which had been filed in time was struck out for being defective. Not disputed also is the fact that the time the applicant spent in pursuing Labour Revision No.19 of 2019 up to 24.11.2020 amounted to technical delay and should be excluded in the

computation. Parties are at one that in order for the court to grant extension of time, the applicant must show good and sufficient cause. Admittedly, what amounts to sufficient cause has not been defined but as rightly submitted by Mr. Stephen Lekey, learned Counsel for the respondent, the case of **Lyamuya Construction Co. Ltd. v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 has offered a good guidance.

As per the case of **Selina Chibago v. Finihas Chibago**, Civil Application No.182 "A" of 2007 cited to this court by learned Counsel for the applicant, no particular reason or reasons have been set out as standard sufficient reasons as it all depends on the particular circumstances of each application.

Admittedly, what amounts to sufficient cause has not, to date, been established. It all depends on the circumstances of a particular application. This position was also echoed by the Court of Appeal in the case of **Abdallah Salanga and Others v. Tanzania Harbours Authority**, Civil Application No. 4 of 2001 when it observed:-

"No particular reason have been set out as standard sufficient reasons. It all depends on the particular circumstances of each application."

However, as rightly pointed out by Mr. Lekey, the Court of Appeal in the case of **Lyamuya Construction Company Ltd versus Board of Registered**



**Trustee of Young Women's Christian Association of Tanzania** (supra), setting out some guidelines had this to say at pages 6-7:-

'As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice and not according to private opinion or arbitrary. On the authorities however, the following guidelines may be formulated (a) the applicant must account for all period of delay (b) the delay should not be inordinate (c) the applicant should show diligence, and not apathy, negligence, sloppiness in the prosecution of the action that he intends to take (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.'

The question for calling for determination is whether the grounds adduced by the applicant in his affidavit in support of the application constitute sufficient cause for extension of time to file the Labour Revision out of the prescribed time.

According to the applicant's affidavit in support of the application for extension of time, there are two grounds advanced by the applicant and these grounds are contained under paragraph 3 (vii) and (viii) of the Statement of Material Facts which the Application is based and are the following:

3.-

(vii) That, the applicant filed his Labour Revision within time, but the application was struck out for defective affidavit. However, from the time when the application for revision number 19 of 2019 was filed to the time

when it was struck out, he was in court to pursue the application for revision.

(viii) That, the applicant got a copy of the proceedings and ruling of this Honourable Court on 10<sup>th</sup> December, 2020'.

Respecting the first ground, it has been amply proved that the first application for revision, that is Labour Revision No.19 of 2019, which had been filed in time was struck out for being defective, the time the applicant spent in pursuing it up to 24.11.2020, as rightly pointed out by Mr. Lekey, amounted to technical delay and should be excluded in the computation.

As far as the second ground is concerned, apart from the fact that the applicant failed to establish when he applied for copies of proceeding and ruling of this court in respect of that former application, there was no suggestion that such documents were legal requirements for filing the second application for revision. Besides, the record is clear that the applicant was supplied with copies of proceeding and ruling on 10.12.2020 but it is not until on 4.2.2021 when he filed the present application. There is no explanation why he did not file this application promptly, that is after he was supplied with the said documents. The Court of Appeal was clear in the case of **Lyamuya** that the applicant must account for all period of delay. The applicant failed to make such account.

In her further submission, Counsel for the applicant stated that there is an illegality in the Award of the Commission for Mediation and Arbitration the applicant wants to be cured in the application for labour revision if the extension

of time is granted and the main application is filed and heard. This assertion is, with unfeigned respect, wanting in merit. It is the statement of the Advocate from the bar, did not feature in the applicant's affidavit and, therefore, is an afterthought. This court accedes to the invitation of Counsel for the respondent and declines to entertain it.

It is also to be observed that in a case like this, the applicant must explain every single day of delay. This principle was also elaborated by the Court in the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No.3 of 2007, when underlining the need to explain away every day of the delay in the following words:-

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

Here, what counts is, in my view, not the length of the delay but sufficiency of a cause in the sense that the applicant must demonstrate that the cause was just and adequate lest the provisions be used to prolong incessantly litigation. This, the applicant has failed.

For the foregoing reasons, I am satisfied that the applicant has miserably failed to show good cause to warrant this court invoke its discretionary powers and grant the extension of time for him to file an application for labour revision out of time.

The application fails and is dismissed. No costs.

It so ordered.



A handwritten signature in blue ink, appearing to read "W.P. Dyansobera".

**W.P. Dyansobera**

**Judge**

**15.10.2021**

This ruling is delivered under my hand and the seal of this Court this 15<sup>th</sup> day of October, 2021 in the presence of Mr. Emmanuel Ngongi, learned Advocate holding briefs for Ms Mwanakombo Chaponda and Mr. Charles Magai, learned Counsel for the applicant and in the presence of Mr. Stephen Lekey, learned Advocate for the respondent.

Rights of appeal to the Court of Appeal explained.



A handwritten signature in blue ink, appearing to read "W.P. Dyansobera".

**W.P. Dyansobera**

**Judge**