

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

AT ARUSHA

LABOUR APPLICATION NO 91 O 2019

JOSEPH NGAEJE APPLICANT

VERSUS

REGIONAL AIR SERVICES LTDRESPONDENT

RULING

24/2/2021 & 21/4/2021

ROBERT, J:-

This is an application for extension of time to file written notice of review against the Judgment and decree of this Court (Hon. Gwae, J) in Labour Revision No. 80 of 2017. The application is brought under Rules 24 (1), (2) (a) - (f), (3)(a) - (d) as well as Rules 55 (1) and 56 (1) of the Labour Court Rules, G.N No. 106 of 2007 and supported by the affidavit sworn by George Stephen Njooka, learned counsel for the Applicant.

Before dealing with the merits of this application, I find it convenient to set out the relevant details of this matter as obtained from the records. The Respondent filed Application for Revision No. 80/2017 in this Court inviting the Court to revise and set aside the Ruling of the CMA in Labour Dispute No. CMA/ARS/ARB141/2015 dated 24th November, 2016. The application was not contested by the Respondent herein. On 4th June, 2019 the Court made a finding that the learned Arbitrator had irregularly decided the matter and decided to revise the decision of the CMA in respect of the application for setting aside the ex-parte award as well as the ex-parte award. Further to that, the Court ordered application for condonation to be heard by another arbitrator. Aggrieved, the Applicant intended to apply for review of the court decision but being out of the prescribed time for review he decided to file this application seeking extension of time to file a written notice of review. The application was resisted by a counter affidavit sworn by Emmanuel Kinabo, learned counsel for the Respondent

When the matter came up for hearing the Applicant was represented by Mr. Alex Mbando, learned counsel whereas the Respondent was represented by Emmanuel Kinabo, learned counsel. At the request of parties, the court ordered the application to be argued by way of written

submissions whereby the Applicant's written submissions were drawn and filed by George Stephen Njooka, learned counsel while that of Respondent was drawn and filed by Mr. Emmanuel Kinabo.

Submitting on the reasons for seeking extension of time, Mr. Njooka argued that, one of the reasons is late supply of the copies of Judgment and decree. He maintained that the Judgment was delivered on 4th June, 2019. The Applicant made follow up on the copy of Judgment but he was told the case file was already sent back to CMA. He collected the copy of judgment on 11th October, 2019 and applied for the copy of decree on 21st October, 2019 which was issued on 4th November, 2019. He then prepared this application and filed the same on 8th November, 2019. The learned Counsel cited the case of **Stephen B.K. Mbauka vs. District Executive Director Morogoro District Council & 2 others, Civil Application No. 201 of 2019** to buttress the argument that delay of copies of judgment and decree is a good cause for extension of time.

He submitted that the other reason for seeking extension of time is irregularity and illegality in the decision of this court in Revision No. 80 of 2017 whereby the Court granted a prayer which was not sought by the party applying for revision. The Court was invited to revise the decision of

the CMA dismissing an application for setting aside ex-parte award but the Court having revised the said Ruling proceeded to decide on application for condonation which was not questioned by the parties.

In response to the first ground, counsel for the Respondent submitted that, the Applicant's submissions on the first ground is that he assumed that the decision of this Court in Revision No. 80/2017 ordered the matter to be heard from the stage of application to set aside ex-parte award. He argued that, this assumption has no basis because at paragraph 8 of the affidavit supporting this application the Applicant indicated that the judgment was delivered in the presence of the learned counsel for both parties and the Applicant. The Applicant cannot be heard saying that he did not understand that the judgment ordered retrial from the condonation stage and not from application for setting aside the ex-parte award.

He submitted further that, the Court while pronouncing Judgment on 4th June, 2019 addressed parties to the effect that a copy of the judgment was collectable immediately. The Applicant could obtain the copy of judgment and read it to see the orders made therein.

On the argument that the Applicant made follow up on the copy of judgment and was told that the file was moved to the CMA, he submitted that this is an admission by the Applicant that he delayed to collect the copy of judgment from 4th June, 2019 until so much later when the file was remitted to the CMA. The copy of judgment was available for delivery on the day of delivery of judgment and the Respondent obtained his copy on the day. He maintained that the Applicant could still obtain the copy of judgment from CMA or peruse the record to see the content of judgement.

He argued that, at paragraph 14 of the affidavit in support of the application, counsel for the Applicant stated that he requested for a copy of judgment on 11th October, 2019 and collected it on the same date though ~~he didn't attach a copy of the requesting letter.~~ He questioned the Applicant's decision to request for the copy of judgment four months from the date of delivery of the judgment on 4th June, 2019 and argued that the delay has not been explained.

On the argument that the Applicant applied for a copy of the decree on 21st October, 2019 and received the same on 4th November, 2019, he argued that the Applicant did not have to do that in order to apply for review or extension of time for review of the Court judgment because Rule

27 of the Labour Court Rules, 2007 do not require a copy of decree to be attached for such applications. Thus, the time for obtaining a copy of the decree cannot be excluded in computing time for filing application for review or extension of time. In the circumstances, he maintained that, the decision in the case of **Stephen B.K. Mbauka** cited by the Applicant is inapplicable to this case.

On the second ground, he maintained that, there is no irregularity and illegality in respect of Revision No. 80 of 2017. He argued that the basis of this argument is the Applicant's wrongful assertion that the learned counsel for the Respondent had conceded specifically to the application for revision stated in the notice of application and chamber summons as exhibited at paragraph 7 of the affidavit in support of this application. He maintained that, the truth as reflected in proceedings of 21/5/2019 is that the learned counsel had conceded to a number of irregularities.

In his brief rejoinder, the Applicant's counsel maintained that, the Applicant managed to explain why he did not collect the copies of judgment and decree timely. He maintained that the Applicant became aware that the matter was required to start afresh from the condonation stage when the file was remitted back at the CMA that is why he was late

in filing application for review. He reiterated his argument that there is illegality and irregularity in the decision of this Court in Revision No. 80 of 2017 which needs to be reviewed and prayed for this application to be allowed under rule 56 (1) of the Labour Court Rules, 2007.

Having examined the records and submissions of this matter I will pose here and make a determination on the merit of this matter.

It is not disputed that the decision intended by the Applicant to be reviewed was delivered by this Court on 4/6/2021. Rule 27 of the Labour Court Rules, G.N No. 106/2007 requires an application for review to be instituted within fifteen days from the date of delivery of the decision to be reviewed. However, Rule 56(1) of the same Rules allows the Court to extend any period prescribed by the Rules on good cause shown by the Applicant. Thus, the question for determination in the present matter is whether the Applicant has shown good cause for extension of time prescribed by law to file an application for review.

The Applicant applied for extension of time on two grounds; the first ground is late supply of the copies of Judgment and decree. He alleged that he made follow up on the copy of Judgment and got informed that the

case file was already sent back to the CMA. However, he didn't provide any proof to substantiate the alleged follow up or indicate exactly when he started making the said follow up. He also alleged that he requested and collected the copy of judgment on 11th October, 2019 yet he didn't provide any proof of the request letter or explain the reason for making such a late request. More importantly, the fact that he requested and received the copy of judgment on the same day, i.e. 11th October, 2019 is a proof that copies for judgment were ready collection from the date of delivery of judgment as alleged by the Respondent but the Applicant, for unknown reasons, failed to make a request on time.

Further to that, the Applicant maintained that, he found out that the Court had ordered the matter to start from condonation after receiving the copy of judgment on 11th October, 2019. However, upon perusal of the records I have observed that the impugned judgment was delivered on 4/6/2019 in the presence of both parties which means parties were aware of the decision of this Court from the date of delivery of the judgment and not otherwise.

Further to that, counsel for the Applicant informed this Court that after receiving the copy of Judgment, the Applicant applied for the copy of

decree on 21st October, 2019 which was issued on 4th November, 2019. He then prepared this application and filed the same on 8th November, 2019. As rightly argued by the learned counsel for the Respondent, the Applicant did not have to apply for the copy of decree in order to apply for review of the Court judgment since that is not a requirement of Rule 27 of the Labour Court Rules, 2007. Even if the copy of decree was required for the said application, there is no explanation as to why the Applicant after receiving the copy of Judgment on 11th October, 2019 had to wait until 21st October, 2019 to apply for the copy of decree. Accordingly, this court finds that this ground does not establish a good cause for the delay.

Coming to the second ground, counsel for the Applicant invited this Court to extend the time for review on the basis that there is irregularity and illegality in the impugned decision of this court which needs to be reviewed. He maintained that, the Court having revised and set aside the decision of the CMA was supposed to order the CMA to hear afresh the application to set aside ex-parte decision not to start from the application for condonation.

In my view, when considering illegality or irregularity as a reason for extension of time for review, the alleged illegality or irregularity sought to

be reviewed need to be apparent on the face of it and sufficient to establish a substantial wrong to the Applicant. My views are fortified by the principle expressed by the Court of Appeal in the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania (unreported)** where the court of Appeal of Tanzania observed that,


"Since every party intending to appeal seeks to challenge either on points of law or facts, it cannot in my view, be said that in VALAMBIA's case, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. The Court there emphasized that such point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process."

Relating the principle in the statement above to the present case, this Court is not swayed that the alleged illegality or irregularity in the impugned decision is apparent on the face of it as to establish a good cause for the Court to grant the prayers sought in this application.

In the circumstances, this court finds and holds that the Applicant has failed to demonstrate good cause that would entitle him to be granted extension of time as sought. Consequently, this application is dismissed.

It is so ordered.




K.N.ROBERT
JUDGE
21/4/2021
