

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT MTWARA

MISC. LABOUR APPLICATION NO. 26 OF 2019

(From the Original Decision No. CMA/MT/LD/166 of the year 2019 of the Commission for Mediation and Arbitration delivered by Hon. Mwajeka, R.A (Arbitrator) on 31st July, 2017 at Mtwara.

ABILAH J. SONGA & 164 OTHERS.....APPLICANTS

VERSUS

SINOMA INTERNATIONAL ENGINEERING.....RESPONDENT

RULING

5th Oct. & 19th Nov.2021

DYANSOBERA, J.:

The applicants herein are seeking extension of time within which to lodge revision against the Award of the Commission for Mediation and Arbitration in Labour Dispute No. CMA/MTW/LD/166/2016 delivered by Hon. R.A. Mwajeka, Arbitrator dated 31st day of July, 2017. The application has been made by way of notice of application and a chamber summons under rule 24 (1), 24 (2) (a), (b), (c), (d), (e) and (f) and 24 (3) (a), (b), (c) and (d) and rule 56 (1) of the Labour Court Rules, 2007, GN. No. 106 of 2007. An affidavit affirmed by Abilahi J. Songa has been filed in support of the application.

The respondents have opposed the application through a notice of opposition filed under rule 24 (4) of the Labour Court Rules, GN. No. 106 of 2007. Their opposition is underpinned by the counter affidavit deposed to by Chen Qing, the respondent's Acting Manager, civil department.

The brief factual background of the matter is the following. The applicants were employees of the respondent working in different capacities. In 2016, their

employment contracts were terminated. They unsuccessfully instituted labour dispute No. CMA/MTW/LD/166/2016 before the Commission for Mediation and Arbitration at Mtwara as their claims were dismissed on 31st day of July, 2017.

Dissatisfied, the applicants filed before this court Labour Revision No. 11 of 2017. The matter was, however, struck out for lack of proper enabling provisions. Their further application for labour revision which was registered as Labour Revision No. 13 of 2019 was dismissed for being barred by limitation. Undaunted, the same applicants have filed this Miscellaneous Labour Application No. 26 of 2019 seeking for extension of time to file the labour revision.

The hearing of this application was conducted in writing.

In their joint written submission in support of the application for extension of time, the applicants admitted that the court can extend time when it satisfied that there is sufficient reason to do so and that this depends on the prevailing circumstances.

It was their submission that after the delivery of the Award by the CMA, they filed an application for labour revision in time. The application was, however, struck out on technical grounds. The second labour application was not heard as well as it was dismissed for being time barred. They, therefore, decided to file this application for extension of time. The applicants argued that after losing their case at the CMA, they have been frequently knocking at the door of this court so that they get access to the justice and that the chain in making the follow ups has not been broken. They further argued that the delay was due to technical issues and not due to inadvertence or lack of diligence. They prayed this application to be allowed and time be granted.

Submitting in opposition, Ms Happiness Sabatho, learned Counsel for the respondent, addressed the court on the competence of the application. She contended that the application for extension of time has been filed as a result of

Labour Revision No. 13 of 2019 being dismissed for being time barred on 17 October, 2019 before Hon. Ngwembe, J.

Learned Counsel for the respondent argued that once the matter has been dismissed for being time barred under section 3 (1) of the Law of Limitation Act [CAP 89 R.E.2019], it cannot be brought back by way of extension of time, and the only remedy for the applicants was to appeal against the dismissal order to the Court of Appeal. Reliance was placed on the cases of **Mwanahawa Nassoro v. Esha Ahmad Mwenda (Administratrix of the Estate of the late Sharifa Issa Mshangani)**, HC at Mwarra, Misc. Land Application No. 29 of 2020, **Hashim Madongo and 2 others v. Minister for Industry and Trade and 2 others**, Civil Appeal No. 27 of 2003, CAT, Dar es Salaam (unreported) and **East African Development Bank v. Blueline Enterprises Ltd**, Civil Appeal No. 101 of 2009, CAT Dar es Salaam at pp 11-12.

This application has also been attacked on another front. According to the respondent, the application is **res judicata** since the issue of time limitation has been determined in Labour Revision No. 13 of 2019 as was elaborated in the case of **East African Development Bank v. Blueline Enterprises Ltd** (supra). It was stressed that due to the incompetence of the matter, it should be struck out.

In the alternative, it was submitted on part of the respondent that the application has no merit. According to learned Counsel for the respondent, an application for Labour Revision No. 13 of 2019 was dismissed on the 17th day of October, 2019 before Hon. Ngwembe, J. which was termed a real or actual delay. The current application was filed on 12th day of December, 2019. In that respect, counting from 17.10.2019 when the Labour Revision was dismissed by this court to 12. 12.2019 when this application was filed, there is more than 55 days which were not accounted for by the applicants. Ms Sabatho pressed that in

an application for extension of time, the applicant has to account for every day of the delay. This court was referred to the cases of **Dar es Salaam City Council v. Group Security Co. Ltd**, Civil Application Non. 234 of 2015 CAT Dar es Salaam (unreported) and **Tanzania Fish Processors Ltd v. Eusto K. Ntagalinda**, Civil Application No. 41/08 of 2018 CAT Mwanza (unreported) on the authority that in application for extension of time, the applicant should account for each day of a delay.

Counsel also argued that it is quite clear that the applicants did not account for almost fifty five (55) days of the delay, the first limb of the precondition for the extension of time. She concluded that the applicants have failed to show good cause for the court to exercise its discretion to grant the application and therefore, the application is unmeritorious and should be dismissed with costs.

This application has been preferred under, *inter alia*, rule 56 (1) of the Labour Court Rules, GN No. 106 of 2007 which provides as hereunder:-

“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 written law”.

The question for calling for determination is whether the grounds adduced by the applicant in their joint affidavit and amplified in the submission in support of the application constitute good cause for extension of time to file the Labour Revision out of the prescribed time.

It has been amply demonstrated by the applicants both in the affidavit and their submission that the first application for revision which had been filed in time to challenge the Award of the Commission for Mediation and Arbitration was

struck out for being defective, and in the words of the applicants, 'legal technicality'. Likewise, it is not disputed that second Labour Application the applicants filed in court was dismissed for being time barred. That being the case the time the applicants spent in pursuing Labour Revisions Nos.11 of 2017 and 13 of 2019 amounted to technical delay and should, therefore, be excluded in the computation.

Ms Sabatho, learned Counsel for the respondent urged the court to find this application incompetent. She submitted that this application has been filed as a result of Labour Revision No. 13 of 2019 being dismissed before Hon. Ngwembe, J. for being time barred. It is her argument that once the matter has been dismissed for being time barred under section 3 (1) of the Law of Limitation Act [CAP 89 R.E.2019], it cannot be brought back by way of extension of time, and the only remedy for the applicants was to appeal against the dismissal order to the Court of Appeal. To buttress her argument, she cited the cases of **Mwanahawa Nassoro v. Esha Ahmad Mwenda (Administratrix of the Estate of the late Sharifa Issa Mshangani)**, (supra), **Hashim Madongo and 2 others v. Minister for Industry and Trade and 2 others** (supra) and **East African Development Bank v. Blueline Enterprises Ltd** (supra).

With due respect to the learned Advocate, I agree that that is the established legal position that once an order of dismissal is made under section 3 (1) of the Law of Limitation Act, it is not open to an aggrieved party to go back

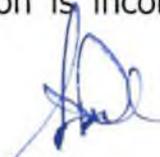
to the same court and institute an application for extension of time. This is so because, under section 3 of the Law of Limitation Act, a proceeding which is instituted after the prescribed period has to be dismissed.

In the case under consideration, although it was not clearly stated under which provision of the law the Labour Revision No. 13 of 2019 was dismissed as this court was not availed with the said order, the established legal position remains as stated by learned Counsel for the respondent and supported by the case laws she has cited as shown above.

Since the said decisions are binding on this court, I am duty bound to apply them as the facts in those cases are the same as in the application under consideration.

For those reasons, this application is incompetent and is, consequently, struck out with no order as to costs.




W. P. Dyansobera

Judge

19.11.2021

This ruling is delivered under my hand and the seal of this Court this 19th day of November, 2021 in the presence of the applicants and Ms Happiness Sabatho, learned Counsel for the respondent.




W. P. Dyansobera

Judge