IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT ARUSHA

MISC. APPLICATION NO. 35 OF 2021

KCB BANK LIMITED.....APPLICANT

VS

PHINA MUNISHI.....RESPONDENT

(C/f Revision No. 164 of 2017 at the High Court of the United Republic of Tanzania, Labour Division , at Arusha)

RULING

Date of last order: 26/10/2021

Date of ruling: 16/11/2021

B.K.PHILLIP, J

The applicant lodged this application under the provisions of Rule 24 (1) (2) (a) (b) (c), (d), (e) (f) , (3) (a), (b),(c) (d), 11 (b),55 (1), (2) ,56 (1) of the Labour Court Rules 2007, GN.No. 106 of 2007, praying for the following order;

-That this honourable Court may be pleased to grant an extension of time to file an application for review.

application is supported by an affidavit sworn by applicant's ion manager, Mr Damas Mwagange. The respondent filed a ter affidavit in opposition to the application. I ordered the

application to be disposed of by way of written submissions. The learned advocates Elipidius Philemon and Edwin Silayo filed the written submission for the applicant and the respondent respectively.

A brief background to this application is as follows; That the respondent was employed by the applicant as a customer services supervisor. On her appointment she was placed at Dar es Salaam office. Later on she was transferred to Arusha .In 2016 , the respondent's employment was terminated on the ground of gross negligence after having authorized a fraudulent electronic transaction to a tune of USD 6850. Being aggrieved by the termination of her employment, she lodged her complaints at the Commission for Mediation and Arbitration ("CMA") at Arusha, vide Labour Dispute No. CMA/ ARS/ ARB/162/2016.The same was decided in her favour. She was awarded a total sum of Tshs 43,450,065/= which included payment of repatriation costs to Dar es Salaam to a tune of Tshs 20,450,235/= among others. The applicant was not amused with the aforesaid decision of the CMA. He filed an application for revision to challenge it vide Labour Revision No. 164 of 2017. In its decision this Court set aside the award for severance pay and statutory compensation of twelve (12) months remuneration on the ground that the termination was both substantively and procedurally

fair. The award for repatriation costs and certificate of service were left intact.

The applicant was contented with the Ruling of this Court. He did not prefer further Appeal to the Court of Appeal of Tanzania. Consequently, the respondent started to move the wheels of execution into motion for the payment of the repatriation costs awarded unto her as per the decision of the CMA and this Court. According to what is deponed in the affidavit in support of this application, on 14th July 2021 the applicant 's litigation manager while perusing the respondent's file , following respondent's application for execution, he discovered a letter written by the respondent which shows that while working in Dar es Salaam, the respondent requested to be transferred to Arusha which is her place of domicile and wanted to join her husband who had relocated to Arusha. So, since the time for review had already expired, the applicant lodged the instant application seeking for extension of the time for filing an application for review on the ground that he has found new evidence which was not in his knowledge during the hearing of the matter at the CMA and this Court .The applicant believes that the aforesaid new evidence is important in this matter as far as the issue pertaining to the award of repatriation costs is concerned.

The task of this court is to determine whether or not the applicant has adduced sufficient reason for the delay in lodging his application for review.

As pointed out by the learned advocate Phillemon, in his written submission, according to Rule 27 (1) of the Labour Court Rules, GN.No. 106 of 2007, a time limit for filing an application for review is fifteen (15) days. It is a common ground that extension of time for filing an application for review can be granted by the court upon adducing sufficient cause for the delay and the grant or refusal to grant the same is within the court's discretion.

In his submissions Mr Phillemon cited the case of **Benedict Mumello Vs Bank of Tanzania, Civil Appeal No.12 of 2002** (unreported) in which the court the Court said the following;

" it is a trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."

And the case of **Yusufu Same and Hawa Dada Vs Hadija Yusufu, Civil Appeal No. 1 of 2002** (unreported) , in which the Court of Appeal held that term sufficient cause should be given wide

interpretation to encompass all reasons or causes outside the applicant's power or control resulting in delay in taking the necessary steps.

Relying on the case **of Pastory Henry Kaboya (as an administrator of Mwalami Seif Zigo) Vs Evarist Shiyo , Misc Land Application No. 936 of 2016,** (unreported), Mr. Phillemon submitted that discovery of new evidence is a sufficient reason for granting extension of time. He was of the view that since the applicant deponed that he discovered new evidence on 14th July 2021, that is a sufficient reason to move this Court to grant this application.

In rebuttal, the learned advocate Janipher John, submitted that no sufficient cause has been adduced by the applicant to move this court to grant this application. Relying on the case **of Lyamuya Construction Company Ltd Vs Board of Registered Trustee of Young Women's Christian Association of Tanzania, Civil Application No. 2/2010** (unreported) , Ms. John argued that the applicant has failed to meet the required factors which are normally considered by the court in an application of this nature to wit ;

a) The applicant must account for all period of delay.

b) The delay should not be inordinate .

c) The applicant must show diligence and not apathy negligence or sloppiness in prosecution of the action that intends to take

d) Other sufficient reasons on point of law such as illegality of the decision ought to be challenged.

Ms. John insisted that the court's discretion in granting an extension of time should be exercised judiciously. She contended that the document alleged to have been discovered by the applicant is a kind of a document which this court is not obliged to take judicial notice of the same as per the provisions of section 58 and 59 of the Tanzania Evidence Act. It is a document which needs to be tendered in evidence and subjected to cross examination by the other party to the case. Under the circumstances, this court cannot receive that document in evidence in an application for review since it is not a trial court. She distinguished the case of **Pastory Henry Kaboya** (supra) from this application on the ground that the documents which were considered in that case to be necessary were the ones stipulated in law as necessary documents for the applicant to have before taking the required legal steps.

Let me say outright here that I am in agreement with Ms. John that the case of **Pastory Henry Kaboya** (supra) is distinguishable from the facts of this case. The documents which were being referred to in that

case were not in the custody of the applicant and had to be supplied to the applicant by the court. Not only that, they were necessary documents for the applicant to take the required legal steps. The document alleged to have been discovered by the applicant on 14th July 2021 was in the custody of the applicant .The applicant failed to explain what prevented him from perusing the respondent's file during the hearing of the case at the CMA and the application for Revision before this Court. It is evident that what pushed the applicant to peruse the respondent's file and consequently, discovery of the allegedly new evidence as explained by the applicant was due to the respondent's move to execute the Court orders.

I entirely agree with the views held by Ms. John that the applicant's arguments on discovery of new document is a pure afterthought aimed at frustrating the execution of the Court orders. The scenario explained by the applicant in his affidavit depicts nothing than gross negligence and abuse of the court's process.

In addition to what I have said herein above, I noted that the time of delay in this matter is inordinate. The ruling of this Court the subject of this application was delivered on 11th June 2020 and this application was filed on 15th July 2021, that is after a lapse of one year. The applicant has failed to account for each day of delay as required by

the law. The position of the law is that a party seeking for extension of time has to account for each day of delay. [See the case of **Bushiri Hassan Vs Latifa Lukio Mashayo, Civil Application No.3 of 2007,** (unreported) and **Mabibo Beer Wines and Spirits Ltd Vs Fair Competition Commission and three others (Civil Application No. 583/20 of 2018** (unreported)] .

Also, I join hands with Ms. John that the applicant's assertion that the application for review has a high chance of success cannot be a sufficient reason to move this court to grant this application, under the circumstances of this matter. The applicant was required to adduce sufficient reasons for failure to file the application for review on time. I entirely associate myself with the position held by Hon Kahyoza, J in the case of **John Sebastian Cosmas and Fred Aman Madala Vs Consolidated Tourists & Hotels, Investment Limited,Labour Application No. 15 of 2020, High Court of Tanzania, Labour Division at Musoma.** (unreported) , that is, the fact that there are high chances of success in the main case is not a good ground to support the application for extension of time.

Last but not least, the instant application intends to reopen a case which was finally determined one year ago and the respondent has already applied for the execution of the judgment .It is important for the parties

in a case to understand that it is in the interest of justice that cases should come to an end and the winner is entitled to enjoy the fruits of the judgment. The law does not envisage having endless litigations. In the case of **Issa Hassani Uki Vs The Republic, Criminal No.122/07 of 2018** the Court of Appeal said the following;

"Discouraging litigants from resorting to review as disguised appeals and underscoring the end of litigation , in ***Partick Sanga Vs The Republic , Criminal Application No. 8 of 2011 the Court stressed****: " the review process should never be allowed to be used as an appeal in disguise.There must be an end to litigation, be it Civil or Criminal proceedings.."*

As alluded to earlier, the application does nothing less than asking the Court to hear the appeal afresh which is contrary to the much cherished public policy that litigation must come to an end like life. The application is simply misconceived...."

In the upshot, it is the finding of this Court that this application has no merits and I hereby dismiss it.

Dated this 16th day of November 2021

B.K.PHILLIP

JUDGE