IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LABOUR APPLICATION NO. 13 OF 2021

(Originating from Labour Dispute No. CMA/ARS/MNR/496/170/18 and LAbour Revision No. 58 of 2019)

BAYPORT FINANCIAL SERVICES (T) LTD.....APPLICANT

VERSUS

KENETH STEVEN KAAYA.....RESPONDENT

RULING

25/10/2021 & 6/12/2021

GWAE, J

Applicant, Bayport Finance Services (T) Ltd has filed this application in this court by way of chamber summons supported by an affidavit solemnly affirmed by one Hassan Mussa the applicant's Chief Legal Counsel. The prayer envisaged in the chamber summons is extension of time within which to file revision application against the award of the Commission for Mediation and Arbitration of Arusha in Labour dispute No. CMA/ARS/MNR/496/170/18 out of the prescribed time.

The court is moved into this application under the provisions of Rule 24 (1), (2), (3), 55 (1) & 56 (1), (2) & (3) of the Labour Court Rules, GN 106

of 2007. It is in the applicant's affidavit where the period of the delay is stated to be two (2) days and that the cause of the delay was due to transportation logistics of the documents intended to be filed from the applicant's main office in Dar es Salaam to its branch in Arusha.

According to the affidavit, the award was delivered on 21st June 2019 however the applicant was issued with the award on 3rd July 2019 and the same was pronounced in favor of the respondent. Aggrieved by the award, the applicant preferred to challenge it through Revision Application No. 58 of 2019 filed on the 16th August 2019. Following an objection raised by the respondent, the application was struck out on reasons that, the same was filed out of time for two days.

The respondent initially appeared to be represented by the learned counsel Mr. Salvasia Kimario who sought for leave to file counter affidavit however the same was not filed. Neither the counsel nor the respondent appeared to defend the case. Hence, the hearing of this application was ordered to proceed ex-parte.

Mr. Hassan Mussa appeared as the counsel for the applicant, and the when application was called upon by the court for hearing, it was Mr.

Morimbo who appeared for the applicant adopting the contents of the applicant's affidavit.

Having prudently considered the applicant's affidavit together with CMA' records, I find the issue for determination is whether the applicant adduced sufficient cause for the delay to file the intended application for revision out of the prescribed period (42 days) from the date of the award procured by the Commission.

It is an established principle in law that sufficient reason is a pre-condition for the court to grant extension of time under Rule 56 (1) of the Labour Rules, GN. No. 106 of 2007. It is also settled principle by this court and the Court of Appeal of Tanzania in a number of decisions amongst, the case of **Benedict Mumello vs. Bank of Tanzania,** Civil Appeal No. 12 of 2002 (Unreported) where it was emphasized that, in deciding the aspect of condonation of time the applicant is expected to account for each day of delay by giving sufficient reason for the same.

The applicant adduced one reason for the delay as reflected in the affidavit, paragraphs 13 and 14 that, the delay was as a result of

transportation of the documents intended to be filed which took two days to get to the applicant's branch office in Arusha.

I am a bit unconvinced as to the applicant's reason since he had not established as to how the transportation of the said documents led to the delay in filing of his application. For example, whether the courier got problems on the way while transporting the said documents, I am saying so because I am well aware that there are several ways of sending/transporting documents from Dar es Salaam and the same would get to Arusha on the same date such as DHL and EMS. Therefore, the applicant ought to have sufficiently demonstrated as to how the transportation has led to the delay of two days.

Nevertheless, it should be borne in mind that, grant of extension of time is in the discretion of the court whether to grant or refuse. In the case of **Lyamuya Construction Company Ltd vs. The Board of Registered Trustees of Young Women's Christian Association of Tanzania,** Civil Application No. 2 of 2012 the Court of Appeal of Tanzania reiterated the following guidelines for the grant of extension of time;

a) The applicant must account for all the period of delay
b) The delay should not be inordinate

c) The applicant must show diligence and not apathy negligence or 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.

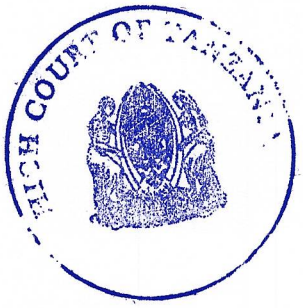
Considering the above guidelines in relation to the matter at hand where the delay is of two days only this court is justifiably convinced that the delay is not an inordinate one. Similarly, I have also considered the time from when the applicant's application for revision was struck out on the 25th February 2021 by this court (**Mzuna, J)** to the time of filling this application that is on the 30th March 2021 which is almost 33 days. It has been held in a number of cases that the applicant must satisfy the court that since becoming aware of the fact that, he was out of time, he subsequently acted very expeditiously. See the case of **Royal Insurance Tanzania Ltd vs. Kiwengwa Strand Hotel Limited,** Civil Application No. 116 of 2008.

In the matter at hand the applicant filed this application after the lapse of 33 nonetheless she had stated that, she became aware of the delivery of the court's ruling on the 12th March 2021 and thereafter she applied to the

court requesting for supply of a copy of the same. However, the applicant did not account for the delay from 15th March to 30th March 2021 if truly she became aware of the date on which the ruling was delivered, as she failed to state when she was exactly supplied with certified copy of the ruling. That, omission constitutes failure to account each day of delay of not less than 14 days.

Without further ado, in the light of the above explanations this court is of the considered view that, the applicant has failed to give sufficient cause to enable this court to grant extension of time as sought. This application is therefore devoid of merit. No order as to costs is made.

It is so ordered.



M. R. GWAE
JUDGE
06/12/2021