

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA
MISC. LABOUR APPLICATION NO. 98 OF 2020**

(Original CMA/ARS/ARS/37/2019)

THERESIA SHANGAI APPLICANT

Versus

HODI (HOTEL MANAGEMENT) COMPANY LTD. MT. MERU HOTEL) RESPONDENT

RULING

25/10/2021 & 13/12/2021

GWAE, J

I am asked to condone time within which the applicant can be able to file an application for revision against the arbitration award procured by the Commission for Mediation and Arbitration of Arusha at Arusha on the 9th October 2020. The court is moved under Rule 24 (1), (2), (3) & Rule 56 (1) & (3) of Labour Court Rules, GN. No. 106 of 2007 (Rules).

Reasons for the applicant's inability to file the intended revision are provided under the applicant's affidavit and her supplementary affidavit with effect that, the applicant was searching for legal aid providers as she was financially unable to hire an advocate and that the applicant was not negligent in her right as she was taking care of her sister in-law alleged to

have been seriously sick from July 2020 and died while under her care on the 6th March 2021.

Resisting this application, the applicant filed his counter affidavit as well as supplementary counter affidavit where she hotly disputed stated that, the reasons given by the applicant for the sought extension are not sufficient nor are they justifiable and that the applicant had failed to disclose the relationship with the person whom she alleged to be sick and that the documents annexed in the supplementary are not indicative to the effect that the patient was under the intensive care unit and under the care of the applicant.

At the hearing of this application, the applicant and respondent were duly represented by Mr. Richard Manyota, the learned counsel from Legal and Human Rights Centre at Arusha and Mr. Erick Stanhslaus, the learned advocate from the Association of Employers (ATE).

Mr. Manyota sought for adoption of their affidavit and supplementary affidavit however he urged this court to make a reference to the decision of the Court of Appeal in **Hawa issa Nchirwa vs. Ramadhani Idd Nchirwa and two others** Misc. Civil Application No. 27 of 2021 (2021) TZCA 9th

September 2021. The counsel admittedly stated that though the applicant was late for 30 days to file her revision application but she was busy looking for an advocate and meanwhile attending her patient.

Opposing the application, Mr. Erick argued that the ignorance of the law does not constitute any good cause. He cemented his argument by a decision in **Wambele Mtumwa v. Mohamed Hamis**, Civil Reference No. 8 of 2016 (2018) TZCA 9th August 2018 where it was held by the Court of Appeal that, ignorance of the law has been a good cause. The applicant's advocate had nothing to rejoin to the submission of the respondent's counsel except his reliance of the submission in chief.

Examining the impugned award, parties' affidavits and annextures thereto as well as their respective oral submissions, it is plainly clear that the applicant's delay to file her application is of 31 days as rightly argued by her counsel since the award was delivered on the 9th October 2020 whereas this application was filed on the 21st December 2020 excluding 42 days on which the applicant would file her revision application.

The issue for consideration by the court is, whether the applicant has advanced good or sufficient cause for her delay of 31 days to warrant the

sought grant of extension of time within which to file an application for revision to this court.

As to the 1st reason given by the applicant at paragraph 7 of the affidavit pertaining to the alleged applicant's financial constraint to engage and advocate and time taken searching for legal aids providers. It is trite law that ignorance of the law does not constitute good cause to justify this court to exercise its discretion granting extension of time as was rightly stressed in the case of **Ngao Godwin Lazaro vs. Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported), the Court of Appeal held;

"As has been held times out of number, ignorance of the law has never featured as a good cause for extension of time. See for instance, the unreported ARS. Criminal Application No. 4 of 2011 **Bariki Israel vs. the Republic** and MZA, Criminal Application No. 3 of 2011-**Charles Machota Salugi vs. Republic**".

(See also the decision of the Court of Appeal in **Hadija Adamu vs. Gobless Tumba**, Civil Application No. 14 of 2013 (unreported))

In our instant application, the applicant never averred such excuse save the assertion by the respondent's advocate. Had it been the case on the part of the applicant, this reason would not be considered as a good or

sufficient cause as rightly demonstrated here in the **Ngao's** case. Nevertheless, the applicant has plainly sought extension of time basing her reason that she was financially incapable of hiring an advocate and that she was looking for a legal aid provider. Generally, financial incapacity to hire an advocate cannot warrant grant of extension of time save to pecuniary circumstances where Courts extend time basing on financial handicapped as sufficient reasons as was stated in the case of **Salim Kipetero and 26 Others v. University of Dar es Salaam**, Labour Division No. 180, DSM, Misc. Application No. 181 of 2014, 22/09/15 where the application was dismissed on this reason that, the applicants were seen to have engaged several advocates, thus, issue of the financial constraint was found not to be significant nor has the applicant has documentarily substantiated her assertion that she was searching for legal aid providers since the legal aid providers are available throughout the country including but not limited to representatives of the parties' own choice.

In the 2nd applicant's reason, that she was attending her patient, her sister in-law as opposed to the contention by the respondent's counsel that the applicant has not disclosed the relationship that existed between her and the patient now deceased. The delay to file an appeal, revision or an

application if attributed with proven illness, is always considered by our court to be a sufficient reason for exercising discretionary power to enlarge time (See **Kijiji Cha Ujamaa Manolo vs. Hote** (1990–1994) 1 EA 240 and **Range Chacha v. Elifas Nyirabu** [1967] HCD 115).

Equally, attending a patient can constitute a good cause to warrant the court to condone a dispute or an application for extension of time provided that there is evidence that, the patient required close care and attention.


That being the case, I am now duty bound to ascertain if the alleged attendance of the patient by the applicant is sufficiently proven. Examining the applicant's documents annexed in his supplementary affidavit especially medical chits, it is evident that, there was a patient known by name of Rosemary Ngurumo who was sick, attended by Arusha Lutheran Medical Centre since 5th September 2020, she was referred to KCMC where she regrettably discharged on 7th March 2017 due to her death died. The applicant is found has demonstrated that, the illness followed by death of her relative contributed to her delay as opposed to the case of **Juto Ally vs. Lukas Komba and another**, Civil Application No. 484/17 of 2017 (unreported) where general statement as to the assertion that the delay was caused by sickness was discouraged. Though the name of applicant is not indicated as kin name

but one Regina Ngurumwa except under normal circumstances, let her enjoy benefits of doubts since standard of proof is on the balance of probabilities. I have also taken into account she has been able to produce documents relating to the deceased's illness and her death.

In the light of the above reasons, this application is consequently granted as prayed. The applicant is granted extension of time within which to file an application for revision. She is given fifteen (15) from the date of this order days within which to file the intended application for revision.

It is ordered.




M.R. GWAE
JUDGE
13/12/2021