

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

AT ARUSHA

LABOUR APPLICATION NO 45 OF 2017

(Originating from CMA Dispute No. CMA/ARS/MED/523/2016)

JOSIA YONA LYANGA APPLICANT

VERSUS

TPRI RESPONDENT

RULING

4/11/2020 & 24/3/2021

ROBERT, J:-

The applicant, Josia Yona Lyanga, seek extension of time to lodge an application for revision against the Ruling of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/ARS/MED/523/2016. The application is made under the provisions of the Labour Court Rules, G.N. No. 106/2007 and supported by an affidavit sworn by the applicant.

Briefly stated, the applicant was employed by the respondent on 01/02/1998 and terminated on 01/11/2014. Aggrieved with the employer's decision, he referred his complaints at the Commission for

Mediation and Arbitration (CMA) and filed an application for condonation on grounds that his delay was caused by his follow up on the matter at the Ministry of Labour and Employment. The CMA decided that there was no sufficient reasons to grant the prayer sought and proceeded to dismiss the application. Aggrieved, the applicant who had the intent of filing an application for revision against the CMA Ruling but was out of the prescribed time for revision preferred this application seeking enlargement of time to institute revision proceedings against the decision of the CMA.

When this application came up for hearing the applicant was present in person without representation whereas the respondent was under the services of Mr. Peter Musseti, Senior State Attorney. At the request of parties, the Court ordered parties to argue the application by way of written submissions.

Submitting in support of the application, the applicant who had stated in his affidavit that his delay was caused by sickness submitted that, he was denied the right to be heard by the CMA that's why he preferred revision to this court in order to claim for his benefits during the time he was working with TPRI. Based on that, he prayed for this application to be allowed.

Resisting the application, Mr. Mussetti cited the case of **Loswaki Village Council and Another vs Shibesh Abebe** (2000) TLR 214, where the Court stated that:-

"Those who seek the aid of the law by instituting proceedings in a court of justice must file such proceedings within the period prescribed by the law, or where no such period is prescribed, within a reasonable time."

Submitting further, he made reference to the case of **Lyamuya Construction Company vs Board of registered Trustees of Young Women's Association of Tanzania**, Civil Application No. 2 of 2010 (CAT-unreported) where the Court prescribed the following conditions to be considered before granting an application for extension of time:-

- 1. the applicant must account for all days of delay.*
- 2. the delay should not be inordinatethe applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- 3. if the court feels that there are other reasons, such as the existence of point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

He maintained that, in the present case, although the applicant was late for a period of two months, he did not account for each day

of delay. He made reference to the case of **Bharya Engineering & Contracting Co. Ltd vs Hamoud Ahmed Nassor**, Civil Application No. 34/01 of 2017 (unreported) at page 14 where the court held that:-

"...Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

He faulted the applicant for making a follow up of the matter at the Ministry of Labour and Employment while the decision of the CMA can only be challenged through judicial process and not the Ministry.

Submitting against the applicant's alleged sickness as the ground for the delay, he argued that there is nothing to support the applicant's sickness allegations since there is no any documentary evidence to prove the same. Thus, he maintained that there is no sufficient cause for the delay and prayed for this application to be dismissed.

From the submissions made by the parties and records of this matter, the central issue for determination by this Court is whether the applicant has shown sufficient cause to warrant extension of time.

According to Rule 56(1) of the **Labour Court Rules**, G.N No. 106 of 2007 this Court may extend any period prescribed by the rules on

application and on good cause shown, unless the court is precluded from doing so by any written law.

In the case of **Blue Line Enterprises Ltd vs East African Development Bank** Misc. Civil Cause No. 135/95, cited in the case of **Miss Emerenciana T. Chrysostom vs The bank of Tanzania**, Misc. Civil Application No. 401 of 2017, it was held that:

"It is trite law that extension of time must be for sufficient cause and that extension of time cannot be claimed as of right, that the power to grant this concession is discretionary, which discretionary is to be exercised judiciously. Upon sufficient cause being shown which has to be objectively assessed by court."


In the present application, the only reason adduced by the applicant for the delay can be seen at paragraph 6 of his sworn affidavit. The applicant alleged that he was sick. However, no documentary evidence was tendered to prove the alleged sickness. In the case of **Shembilu Ally vs Omary Ally** (1992) T.L.R 245, it was held that:

"For court work we need something more than excuses."

On the foregoing, this Court finds and holds that, the applicant has demonstrated nothing to prove his delay. Consequently, this application is hereby dismissed for want of merit.

It is so ordered.




K.N. ROBERT
JUDGE
24/3/2021