IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

TANGA DISTRICT REGISTRY

AT TANGA

LABOUR REVISION NO. 21 OF 2020

(ORIGINAL CMA/TAN/140/2018 AND MISCELLENEOUS APPLICATION NO. CMA/TAN/MISC/01/2020)

HATIBU RAMADHANI ..... 1ST APPLICANT

ABASS IDD ..... 2ND APPLICANT

VERSUS

RASKAZONE ENGLISH MEDIUM

PRIMARY SCHOOL..... RESPONDENT

JUDGEMENT

L. MANSOOR, J

The applicants filed a claim before the Commission for Mediation and Arbitration (to be referred as the CMA) claiming for unfair termination by the respondent. The application (CMA/TAN/140/2018) was however dismissed under section 87(3) of the ELRA for want of prosecution.

Dissatisfied by the dismissal order, the applicants unsuccessful applied for extension of time to apply for setting aside the dismissal order hence this instant application pegged on two grounds;

1. That the Hon. CMA Mediator erred in law for considering the Respondent's submission in reply to the Applicant's submission while the same were not from sworn statements.
2. That the CMA Mediator erred in law for not granting the extension of time.

The applicants, therefore, prayed before this Court to revise the Ruling and Proceedings in Miscellaneous Civil Application No. CMA/TAN/MISC/01/2020 delivered on 23/3/2020.

The matter was disposed of by way of written submissions and each party dully complied to the scheduled time for filing the submissions. The applicants were represented by Mr. Yona

Lucas whereas the respondent was represented by Mr. Abubakary Omary, both Learned Advocates.

Submitting on the first ground of revision Mr. Yona challenges the findings of the CMA. That since the respondent never raised the issue of negligence in paragraph 5 of the counter affidavit, then the CMA Mediator erred in according its weight while knowing that the issue emanated from unsworn statement. To buttress his argument, he cited the case of **Rashidi Abiki Nguwa V. Ramadhan Hassan Kuteya and Another Civil Application No.431 of 2021 (unreported)** where the Court of Appeal sitting at Dodoma held that.

> ***"..... the court has times and again stated that factual matter deposed in the affidavit must be controverted by a counter affidavit, short of it, the averment countering the deposed facts remain to be mere statements from the bar which the Court cannot act upon"***

Submitting on the second ground of appeal the learned counsel attacks the CMA that the Mediator erred in relying on the ground of negligence while knowing that negligence was committed by their personal representative thus the appellants ought not to be punished for the mistake they never committed. He referred the Court to the case of **Kambona Charles (as administrator of the estate of the late Charles Pangani) Vs. Elizabeth Charles Civil Application No.529/17 of 2019 (unreported) HC at Dar es Salaam**.

He also says TLS Legal Aid being a process, only offered to qualified persons, which cannot be ascertained in a single day, then the Arbitrator erred by holding that the period of about two months looking for Legal Aid was not convincing.

In response, the counsel for the respondent has submitted that application for restoration or setting aside a dismissal order is 14 days and not 30 days as submitted by the counsel for the applicant. The applicant must show good reason for

the delay. To back up his argument, he cited the case of **Salame General Trading Vs. Asha Mohamed and 6 others Labour Revision No. 137 of 2013 at Tanga.**

The counsel therefore insists that the finding of the CMA was correct as the applicants failed to furnish sufficient reasons to convince the commission condoning their application.

As to the issue of Tanganyika Law Society (TLS) the counsel argues that the applicants failed to prove that they were seeking Legal Aid or whether they are qualified, nor a perusal letter annexed requesting the CMA to peruse the file.

The learned counsel further says that the negligence, omission or wrongs by the personal representative does not amount to good and sufficient cause for condonation. Citing the case of **Lim Han Yung and Another Vs. Lucy Trasea Kristensen Civil Appeal No. 219 of 2019** the counsel says the party to

a case has a duty to closely follow up the process and status of his case.

He finally prays this court to disregard the authorities cited by the applicants for being irrelevant and subsequently dismiss the application as the applicants neither counted for each day of delay nor provided sufficient cause.

In rejoinder the counsel for the applicants vehemently contends that the case of **Lim Han Yung (supra)** is distinguishable. First in Lim case negligence was proved while in the instant case, negligence was not proved. The respondent, at CMA, just submitted from the bar. Second the negligence was committed by an advocate whereas in present case it was the personal representative. The age of the applicants in the instant case being too high as well as their appearance on awareness of court process while the situation in Lim case is unknown. He therefore beseeches this application be allowed.

I have read and examined the affidavits and the submission of both parties. Therefore, from the records, and the arguments raised by both learned counsels, I find only one issue to determine; whether the CMA was correct in law by holding that there was no good cause warranting extension of time prayed for.

At first, I wish to state that extension of time is a discretion of the court exercised judiciously upon a party disclosing good cause. What amounts to sufficient cause has not been defined. A court of law must consider among other factors, the cause for the delay, the length of the delay, diligence, and the degree of prejudice each party may suffer.

It is evident from records that the dismissal order was issued on 15/11/2019. Applicants came into knowledge on 16/1/2020. They applied for copy of the order and obtained on 23/1/2020. They applied to set a side on 13/2/2020.

It is undisputable that the applicants never complied with the provisions of the law. They applied for extension of time after the expiration of 89 days from the date the dismissal order was issued.

I now turn to examine as to whether the applicants furnished sufficient reasons and as to whether they accounted for each day of delay.

It is the applicants' contention that the CMA erred by relying on the reason of negligence while the same was not raised in the counter affidavit. As said above, factors of diligence and negligence are among the reasons that the court should consider before granting extension of time. The applicants have categorically analysed that the delay was caused by their personal representative. They believed him and left everything to him. As a result, they were not aware when their matter was dismissed until when they sought consultation from TLS.

As I understand under section 56 of the Labour Institution Act CAP 366 [RE 2019], a party, before the labour court may appear in person or be represented by an official of a registered trade union or employers' organisation or a personal representative of the party's own choice, or an advocate. From the wording of the cited section of the law it is the position of the court that all the mentioned persons, though distinguishable, performs and discharges the same duty of representation as an advocate does in ordinary cases. Therefore, taking this into account the applicants were under duty to make follow ups in every progress of the proceedings, and as a settled position of law set in **Yusufu Same and Another V. Hadija Yusufu Civil Appeal No. 1 of 2002 (unreported),** that a mistake made by a party's advocate through negligence or lack of diligence cannot constitute a ground for condonation of delay, but a minor lapse committed in good faith can be ignored.

May I say that the mistake by the applicants' representative was not a minor one therefore, the trial CMA was correct in according to weight the factor of negligence.

It is also trite law that one has to account for each day of the delay, See **Civil Application No. 218 of 2016 Interchik Company Limited v Mwaitenda Ahobokile Michael (unreported)** delivered by Hon. Ndika, Justice of Appeal, where he had these to say at page 12:

> ***"It is this Court's firmly entrenched position that any applicant seeking extension of time under Rule 10 of the Rules is required to account for each day of delay"***

From the records the applicants miserably failed to account for each day of the delay. Even upon being aware of the dismissal order on 16/1/2020 or upon receiving a copy of the order on 23/1/2020, the applicants failed to act diligently and promptly.

For instance, after receiving a copy of the dismissal order it took them 20 days to file the application on ground that they were preparing the necessary documents of the court. Since litigation must come to an end, allowing the application basing on this mere flimsy reason will prejudice the respondent. I, therefore, find the arbitrator being right in ruling out that the applicants failed to account for each day. As reasoned, neither good cause nor account for each day has been assigned by the applicants for this court to grant extension of time within which to file an application for setting aside the dismissal order of CMA. Consequently, the application is dismissed and the decision the CMA is upheld.

DATED AND DELIVERED AT TANGA THIS 27TH DAY OF JULY 2022

LATIFA MANSOOR

JUDGE

27TH JULY 2022