

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

MISC. LABOUR APPLICATION NO 24 OF 2021

(Originating from CMA/MUS/104 at the Commission for Mediation and Arbitration Musoma)

HAMIS JUMA 1ST APPLICANT

NYANTITO ROCKET 2ND APPLICANT

VERSUS

MT. KILIMANJARO SAFARI CLUB RESPONDENT

RULING

9th and 29th March, 2022

F. H. MAHIMBALI, J.:

This ruling is in respect of the application by the applicants seeking extension of the Court so that they can file revision out of time. As to why the said application is sought, the applicants have deponed as hereunder:

2. That the applicants commenced labour dispute before the Commission for Mediation and Arbitration at Musoma against the Respondent where they lost the suit.

3. That the applicants lodged the application for revision No.9 of 2021 in the High Court of Tanzania at Musoma against the decision of the Commission for Mediation and Arbitration of Musoma.

4. That, the application was struck out for being defective, copy of the ruling is attached and marked exhibit "A" and crave for leave of the Court to refer to it as part of this affidavit

5. That, time to lodge the revision has lapsed, hence the applicants are seeking extension of time to enable them lodge application for Revision out of time.

Despite this being a labour matter, the applicants filed their application without there being notice of application and notice of representation. Interestingly, the application has been preferred under section 14(1) of the Law of Limitation Act, Cap 89 R.E arguing that it is just a specie of civil suit. The question posed by the Court prior to the commencement of hearing of the application was whether this application is properly before the Court, it having no notice of application, notice of representation and the enabling provision of the law. I tasked each counsel to respond these issues in the course of their submission in support or against the application.

During the hearing of the application, the applicants enjoyed the legal services of Mr. Thomas Makongo, learned advocate whereas the respondent enjoyed the legal services of Ms. Bertha also learned advocate.

In support of the application, Mr. Makongo submitted strongly that this an application for extension of time to file a revision out of time is rightly filed under section 14 (1) of the LLA. The application is supported by an affidavit of the applicant in which he prayed that it be adopted to form part of his submission.

That as to why this application is sought before the Court, he submitted that the sworn affidavit, explains how the applicants delayed filing the said revision application and why now extension of time is necessarily sought.

He added further that, his clients had first filed their dispute at CMA but they were denied an award. They filed Revision Application no 9 of 2021 which was struck out for defectiveness on 20/10/2021. After being struck out, as time had gone had thought of retuning back to court but they were out of time. Thus, the basis of the current application.

He argued further that, the application before this court is just an extension of time only. This is the basis why they have invoked only the provision of section 14 of the law of limitation of Act. Elaborating his position, he referred section 2 of the law of Limitation Act defining an application as any proceeding of Civil nature. Therefore this being not a criminal application, then section 14 (1) of the Law of Limitation is the appropriate legal provision for the application. He therefore, humbly prayed that this application be allowed as prayed for the interests of justice.

Resisting the application, Ms Bertha learned counsel first prayed that the counter affidavit be adopted by the court to form part of this submission.

On the competence of the application as observed by the court, she submitted that the application is filed under the wrong law. This being a Labour matter, there are specific labour laws governing them. These are Employment Labour relations Act, Labour Institutions Act, Labour Court Rules of 2007. She added that all applications are governed under rule 24 of the Labour Court Rules (GN 106 of 2007) which requires that there must be filed notice of Application, Notice of Representation and affidavit. The contents of the said applications are

stated in rule 24 (2) and the contents of the affidavit are stated in rule 24 (3). She Observed that the current application, lacks all these legal requirements. The affidavit filed does not meet any of those requirements. She referred this Court to the case of **Dar es Salaam University College of Education vs Veronica Jacob Urasa**, Revision No 72/2018 (HC – Labour Division – Dar es Salaam,) at page 6. With this case, the Hon. Justice Muruke at page 6 stated

"an affidavit in Labour and Employment matters is governed by rules and requirements as spelt out in rule 24 (3) (a) (b) (c) and (d) of the Labour Court rules GN 106 of 2007. Therefore the deponent must follow the same since the applicant did not follow the rules the affidavit is defective"

It is her submission that the chamber application (and its accompanying affidavit) is defective for failure to comply with the mandatory legal requirements under rule 24 (3) (a) (b) (c) of the Labours Court Rules.

The argument by Mr. Makongo that the Law of Limitation Act caters for all Civil Application as per section 2 of the LLA, she differed with him that though this is an application of civil nature but being Labour matter, has specific legal regime. Compliance to it is mandatory. The learned counsel made reference of her submission in reliance to the

legal requirements set out under rule 24 (3) a, b, c of the Labour Court Rules.

On the merit of the application, it has been her submission that the applicant has failed to ground the factors warranting extension of time. It is pre judicial that any application for extension of time, there must be stated if there are good reasons for delay, account for each time of delay and that the delay should not be inordinate. These factors are well stated in the case of **Ngao Godwin Losero vs Julius Mwarabu**, Civil Application no 19 of 2015, CAT at page 4, where the Court of Appeal made reference to the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania** where it said that;

- a) The applicant must account for all the period of delay*
- b) The delay should not be inordinate*
- c) The applicant must show due diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- d) If there are sufficient reasons such as existence of point of law of sufficient importance; such as the illegality of the decision sought to be challenged.*

She submitted therefore that there must be account for all period of delay, as the said application was dismissed on 4th January, 2021 by the CMA, the current application for extension of time has been filed on 5/11/2021. She clarified that from the disputed award dated January 2021 to filing this application in November 2021, there is a lapse of eleven months. All this time must be accounted for. The argument that there was earlier filed revision but struck out, that shows negligence and not diligence. As they were not diligent, presupposes that they were negligent, sloppy and apathy. The struck-out revision, then is an exhibition of negligence. As it was inordinate delay, it has no qualification of being considered at all she insisted.

Whether there are sufficient reasons, such as existence of point of law of sufficient importance, she submitted that in the current application, there is nothing of sufficient reason stated into the applicant's affidavit. There is also no any point of law of sufficient importance explained such as illegality.

She bitterly argued that this application is baseless as all the procedure of terminating the applicant's employment were dully followed and complied with.

She concluded her submission by urging this Court to consider the applicants as have legally failed to exercise their legal right due to their negligence. Thus, they are making the respondent incurring unreasonable costs in prosecuting the frivolous claims. She invited this Court to dismiss this application in its entirety.

Reacting to the respondent's counsel, Mr. Makongo replied in his rejoinder submission that on the defectiveness of the application, he submitted the learned counsel is misleading. This is because the cited provision, governs provision in respect of Labour revision and does not cover applications for extension of time. In the cited case of **University of Dar es Salaam Collage of Education** it is distinguishable as it dealt with revision application and not extension of time. It is therefore not applicable. Rule 24 (3) of the LCR, does not talk of extension of time.

The notice of application and notice of representation covers for situations at Labour Revision. When the leave is granted, then the cited provisions will be taken into board. As there has not been cited any alternative provision (rule) in the Labour court Rules that specifically govern on applications for extension of time, he argued that the submission by the respondent's counsel is misguided.

On the merit of the application, he reiterated the sworn affidavit at paragraphs 3,4, and 5 as spelling out reasons why this application is sought and necessary. He insisted that those are the reasons why this application is sought out of time. As the Labour Revision no 9 of 2021 was filed on time, then the subsequent application its account must exclude the time in which the previous application was in time. He called for clarification that there must be drawn a line of demarcation between the applicant who first lodged the application within time but struck out and subsequently refiled and on the other hand the application that has never been filed before.

In consideration of the same authority given (the case of Ngao Godwin Losero) at page 6, he submitted that it is stated that:

"all relevant factors must be taken into account in deciding how to exercise the discretion to extend time".

On the requirement of point of law/illegality, he differed with the learned advocate that has missed a legal point. Such a ground would only be relevant had it been for an extension of time to CAT from this Court. This application is not one.

He concluded his rejoinder application by urging this Court to allow this application as other matters will be sufficiently dealt with during the revision application itself not at this stage. He considers the counsel for the respondent having jumped a step ahead. At this stage, the application is only for extension of time and not the revision application.

For the reasons stated into the affidavit, he prays that this application be granted.

I have digested the parties' submissions via their respective counsel. The vital question here remains only one, whether this application is competent before the Court and whether there exists sufficient reasons warranting grant of the application as prayed and submitted.

Honestly speaking, I find none of the reasons advanced as embodying sufficient legal cause to warrant grant of this application as wished and prayed. I say so because, the applicants via their counsel have not been able to establish as when was their suit first dismissed at the CMA and also at the High Court. Assuming that it was struck out on 20th October, 2021 then what were they doing between 21st October, 2021 to 5th November, 2021 when they refiled their application in which

they purport to be effective. The time in between, is not accounted for. The law is, there must be an account of each day of delay. Delay even of a single day, has to be accounted for (See **Charles Pantaleo Kingoka Vs. Abasa Musa Kitoi** – Civil Application no.71/76 of 2019), where the Court of Appeal said:

"There must be an account of each day of delay. Delay even of a single day, has to be accounted for"

In the case of **Selemani Juma Massala Vs. Sylvester Paul Masha & Japhet Matiku Lyoba** – Civil Application no. 210 of/01 of 2017 – un reported, the Court of Appeal stated at page 11.

"The settled position of the law is that, if there is a delay of any act, then each day of the delay has to be accounted for. Otherwise, there was no need of having such rules"

All in all, guided by the minimal guidelines set by the court of Appeal in the case of **Ngao Godwin Losero** (supra) making reference to the case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (Civil Application No. 2/2010 – unreported) the Court of Appeal 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 is intending to take.
- d) If the court feels that there are other sufficient reasons such as existence of a point of law of sufficient importance; such as the illegality of the decisions ought to be challenged.

In reaching this verdict, I have dispassionately considered and weighed the rival arguments from parties through their respective counsel. For sure I am mindful that to refuse or grant this application is the court's discretion. However, to do so there must accounted reasons for that. In **Mbogo Vs. Shah** (1968) EA the defunct Court of Appeal for Eastern Africa held:

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time....."

In this application, the reason why this application should be granted is mainly premised on trivial ground of ignorance of the law.

- This has been held times out of number, that ignorance of law has never featured as a good cause for extension of time (see Ngao Godwin Losero – supra). In this case it was held that, a party who is not properly seized of the applicable procedure will always ask to be apprised of it, for otherwise he/she will have nothing to offer as an excuse for sloppiness.

All this said and done, what has been deposed and argued by the applicant's counsel is legally speaking nothing but exhibiting the party's apathy, negligence and sloppiness in which I am not in a position to condone any.

On competence of the application, it is clear that this being a labour matter, it is only competent when the application properly apprehends the labour laws in place. The law is, for any labour application to be competent, amongst other things there must be compliance to Notice of Application and Notice of Representation in the event a party engages an advocate or recognized agent as per law. On requirement of Notice of Application, Rule 24(1), 24(2)(a) (b) (c) (d) (e) (f) and 24 (3) (a) (b) (c) (d) of the Labour Court Rules, 2007, GN. 106 of 2007 is applicable plus the provision of the law that gives powers to the Court to entertain the application. For example Application for

Revision, the Notice of Application will be made under Rule 24(1), 24(2)(a) (b) (c) (d) (e) (f) and 24 (3) (a) (b) (c) (d) of the Labour Court Rules, 2007, GN. 106 of 2007 read together with Section 91 (1) (a) or (b) and 91 (2) (a) or (b) or (c) of the Employment and Labour Relations Act, No.6 of 2004.

For an application of extension of time, the relevant provision must be Rule 24(1), 24(2)(a) (b) (c) (d) (e) (f) and 24 (3) (a) (b) (c) (d), Rule 55 (1) or (2) or (3) of the Labour Court Rules, 2007, GN. 106 of 2007.

As regards the requirement of Notice of Representation which is also missing in the current application, Section 56 (a) (b) and (c) of the Labour Institutions Act, 2004, Rule 43 (1) of the Labour Court Rules. 2007 (GN 106 of 2007) comes into play.

The position of the law is, failure to initiate an application with Notice as required by under Rule 24 is fatal. The irregularity can not be cured and therefore incompetent before the Court. (See **Barclays Bank Tanzania LTD V. Kombo Ally Singoma**, Misc. Application No. 14 of 2011.

The present application misses all these legal requirements. In the end result, the application is dismissed for want of merit, otherwise was liable for being struck out on incompetence. This being a Labour matter, each party shall bear own costs

DATED at MUSOMA this 29th day of March, 2022.



F.H. Mahimbali

Judge

Court: Ruling delivered this 29th day of March, 2022 in the presence of the Applicant, Mr. Gidion Mugo, RMA and the respondent being absent.

F.H. Mahimbali

Judge

29/03/2022