IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. LABOUR APPLICATION NO. 37 OF 2020

(Arising from a decision of the Minister of Labour, Employment and Youth Development)

ESSAU THOMAS CLEOFAS ..... APPLICANT

VERSUS

MINISTER OF LABOUR, EMPLOYMENT AND YOUTH DEVELOPMENT ..... RESPONDENT

RULING

30/12/2021 & 17/03/2022

F. K. MANYANDA, J.

This is a ruling in respect of an application for extension of time within which to apply for revision by the Applicant, Essau Thomas Cleofas in respect of a decision of the Minister of Labour, Employment and Youth Development. The application is made under section 94(1) of the Employment and Labour Relations Act, [Cap 366 R. E. 2019], Rules 24(1), (2)(a), (b), (c), (d), (e) and (f), and (3)(a), (b), (c) and (d), 55(1), and (2) and 56(1) of the Labour Court Rules, GN No. 106 of 2007 and any other enabling provisions of the law.

The application is made by way of a chamber summons and supported by an affidavit sworn by the Applicant, Essau Thomas Cleofas, it is resisted by a counter affidavit by one Kitandu P. Ugula and a supplementary counter affidavit sworn by Subira Mwandambo which together with other records give the following background.

Way back in 2017, the Applicant who was employed by Sandvik Mining and Construction (Tanzania) Limited was diagnosed with a diseased known as Early Degeneration Facetal Arthropathy which developed at his L4/5 and L5/S1 spinal code. Due to this disease, he was issued with an Exit Medical Examination Report by the Occupation Safety and Health Agency (OSHA) which alleged that he suffered from the disease as a result of the work he was performing at his employment with Sandvik Mining and Construction. With that report the Applicant unsuccessfully approached the Workers Compensation Fund for compensation as a result he appealed to the Minister for Labour, Employment and Youth Development where he was unsuccessful again. Undaunted he desired to challenge the decision of the Minister, but was out of time, hence he came up with the instant application.

The Respondent raised a preliminary objection to the hearing, however the same was struck out by this Court for want of prosecution. The Respondent also did not turn up for hearing when the application was scheduled for hearing on 22/11/2021. Hence this Court ordered the same to be argued by way of written submissions. The Applicant complied but the Respondent did not. The Applicant submissions were drawn and filed by Ms. Kundy Erica Nyenji, learned Advocate. As said above, there was no submissions from the Respondent.

In law, failure to lodge written submissions after being so ordered by the Court, is tantamount to failure to prosecute or defend one's case. See the cases of **Godfrey Kimbe vs. Peter Ngonyani,** Civil Appeal No. 41 of 2014, **National Insurance Corporation of (T) Ltd & another vs. Shengena Limited,** Civil Application No. 20 of 2007, **Patson Matonya v. The Registrar Industrial Court of Tanzania & another,** Civil Application No. 90 of 2011 and **Mohamed Ally & 35 Others v. Bora Industries Ltd & Another**, Miscellaneous Civil Cause No. 106 of 2003 (all unreported).

In all cases, among many others, the Court held that failure by a party to lodge written submissions after the Court has ordered a hearing by written submissions is tantamount to being absent without notice on the

date of hearing. In the **Shengena's** case, for instance, the Court of Appeal observed:

> *"The Applicant did not file submission on due date as ordered. Naturally, the court could not be made impotent by a party's inaction. It had to act. ...* ***it is trite law that failure to file submission(s) is tantamount to failure to prosecute one's case."***

In law, also a party to a case who fails to file submissions is taken to have waived his right to be heard. My brother Hon. A. Mohamed, J; (as he then was) in the case of **Lucy Kasoma vs. Zaina Abdallah Making'inda,** Miscellaneous Land Application No 72 of 2019, where he was confronted with a situation akin to this one, held that:

> *"failure to file written submissions as ordered is akin to failure to appear on a hearing date and bears similar consequences."*

In another case of **Famari Investment (T) Ltd vs. Abdallah Seleman Komba,** Miscellaneous Civil Application No. 41 of 2018 Hon. Mongella, J. stressed on court orders observance citing a case of **Olam Tanzania Limited vs. Halawa Kwilabya,** Civil Appeal No. 17 of 1999 in which it was held that:

"Now what is the effect of a court order that carrier instructions which are to be carried out within a pre-determined period? Obviously, such an order is binding. Court orders are made to be implemented; they must be obeyed. If orders made by courts are disregarded or if they are ignored, the system of justice will grind to a halt or it will be so chaotic that everyone will decide to do only that which is conversant to them. In addition, an order for filing submissions is part of hearing. So, if a party fails to act within the prescribed time he will be guilty of indiligence in like measure as if he defaulted to appear..... This should not be the allowed to occur. Courts of law should always control proceedings, to allow such an act is to create a bad precedent and in turn invite chaos."

Other cases on this position include the cases of **Harold Maleko vs. Harry Mwasanjala,** Civil Appeal No. 16 of 2000 (unreported), the case of **Geofrey Chawe vs. Nathaniel Chawe,** Miscellaneous Civil Application No. 22 of 1998 and **Andrea Njumba vs. Trezia Mwigobene**, Civil Appeal No. 01 of 2006 to mention a few. In **Andrea Njumba's case** for example the High Court held that:

"If a party fails to act within the time prescribed, he will be guilty of indiligence in like manner as if he has defaulted to appear and submissions which were filed out of time will not be acted upon."

This Court is left with one option only which is to examine whether the Applicant has established sufficient cause for extending the time to file a revision.

The term "sufficient cause" is not yet defined; therefore, it depends on the circumstances of each case. The Court of Appeal in the case of **Salim Lakhani and Two Others vs. Ishfaque Shabir Yusufali *(as Administrator of the Estate of Late* Shabir Yusufali,** Civil Application No. 455 of 2019 (unreported) held that:

> *"What amounts to good cause is yet to be defined .....it depends on the circumstances of each case. The discretion under Rule 10 of the Rules has to be exercised according to the rules of reason and justice....."*

In another case of **The Registered Trustees of the Archdiocese of Dar es Salaam vs. Chairman of Bunju Village and 11 Others,** Civil Appeal No. 147 of 2006 (unreported); the Court of Appeal said: -

> *"It is difficult to attempt to define the meaning of the words "sufficient cause". It is generally accepted however, that the words should receive liberal construction in order to advance substantial justice, when no negligence, or inaction or want of bona fides, is imputable to the appellant."*

Factor for consideration were spelt out in the case of **Henry Leonard Maeda and Another vs. Ms. John Anael Mongi**, Civil Application No. 31 of 2013 CAT (unreported) at page 19;

> *"..... the courts may take into consideration such factors as the length of delay, the reason for the delay and the degree of prejudice that the respondent may suffer if the application is granted."*

In the instant matter it has been averred in paragraph 8 that a decision of the Minister was delayed as it reached the Applicant via E-mail on 11/05/2020, the Applicant been a lay person had to seek legal services and managed to file the instant application on 08/09/2020.

The Respondent countered this averment contending that the Minister has never gave any decision to date. However, my perusal of the affidavit and its annexures I came across an image of a letter from the Ministry of Labour, Youth, Employment and Disabled addressed to the Applicant Essau Thomas Cleofas with reference number HC 82/394/01B/57 dated 06/04/2020 signed by Festo L. Fute which was printed on 11/05/2020 a day on which the Applicant sworn to be the date the latter was e-mailed to him.

The said letter categorically dismissed his appeal. The relevant part reads as follows: -

"Baada ya kikao kupitia rufaa yako kwa Waziri Mwenye Dhamana ilibainika kuwa WCF na OSHA waliunda jopo la Pamoja (Joint Medical Review Panel) lililo kaa tarehe 9 na 10 Septemba 2019 ..... Matokeo ya jopo hilo yalionesha kuwa tatizo la Bw. Essau T. Cleofas halitokani na kazi ..... kikao kiliamua utaarifiwe matokeo ya jopo hilo la madaktari .... Kama hutaridhika na maamuzi ya kikao ambayo yamezingatia matokeo ya jopo la madaktari ..... unashuriwa kupeleka shauri lako mahakamani ...."

Literally means that after a meeting going through your appeal to the Minister it was found that a joint medical review panel convened on 09th and 10th September, 2019 it was found that the disease of Mr. Essau T. Cleofas was not a result of work at his employment. It was decided that he be notified and if is not satisfied he may file a case in court of law. Hence, the Applicant filed the instant application.

In my considered opinion, the Applicant has established sufficient cause for this Court to extend the time. I am increasingly of the opinion that extension of time will avail the Applicant with opportunity to be heard by a court of law as advised by the Minister.

In the result, for reasons stated above, I find the application is meritorious.

Consequently, I grant extension of time for 30 days from the date of this ruling. This being a labour matter I make no order as to costs. It is so ordered.

F. K. MANYANDA

JUDGE

17/03/2022