

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT ARUSHA

MISC. LABOUR APPLICATION NO. 41 OF 2022

**(C/F Labour Revision No. 17 of 2020 in the High Court of Tanzania at Arusha, Originating
from Labour Dispute No. CMA/ ARS/MED/85/2019)**

MWANAIIDI SHABANI DUE.....APPLICANT

VERSUS

LEOPARD TOURS LTD.....RESPONDENT

RULING

10/10/2022 & 7/11/2022

GWAE, J

Applicant, Mwanaidi Shabani Due has filed this application in this court by way of chamber summons supported by her affirmed affidavit. The prayer envisaged in the chamber summons is extension of time to file revision application against the award of the Commission for Mediation and Arbitration in Labour dispute No. CMA/ARS/MED/85/2019 out of the prescribed period.

This court is moved under the provisions of Rule 56 (1) and 24 (i) (2) (a) (b) (c) (d) (e) (f) & (3) of the Labour Court Rules, GN 106 of 2007

(Rules). It is in the applicant's affidavit where the delay is stated that at the time of delivery of the award, the applicant was on maternity leave and that she was not receiving information about the case from her personal representative until 2nd June 2022 when she came to be aware of this court's ruling. She therefore argued that, the delay was out of her control as it was the negligence of her representative who had earlier filed an application for revision out of time and the same was struck out by this court on 20th October 2021.

Opposing this application, the respondent through a sworn counter affidavit sworn by one Lilian Robert Mtaju, an assistant human resources manager of the respondent, who stated that, the Commission delivered its award on 27th January 2020 and the applicant personally received the copy of the award on 30th January 2020 while the respondent received the same on 06th February 2020. To support her assertion the respondent attached a dispatch register of the Commission. The respondent went further to state that the application for revision filed in this court was struck out on 20th October 2021 in the presence of both the applicant's personal representative and the respondent's representative. She therefore concluded that the applicant has not given any sufficient grounds for this honourable court to grant the reliefs sought.

At the hearing of this application, the applicant was represented by Mr. Herode, the applicant's Representative of her own choice whilst Mr. Innocent Warioba assisted by Mr. Alex Marco Human Resource Officers appeared for the respondent. The parties' representatives orally argued this application.

Seeking an indulgence of the court, Mr. Herode submitted that, the reason for the applicant's delay is due to the representative who was not notifying the applicant about the process especially when the applicant's application for revision was struck out on 20th October 2021 via Revision No. 17 of 2020.

On the other hand, Mr. Warioba argued that, this application is baseless for the reason that, the applicant was aware of the ruling through Revision Application No. 17 of 20220. He added that, the applicant and her former representative, participated in the hearing and the applicant was present on the date the ruling was delivered by this court on 20th October 2020. According to the respondent's representative, the applicant's assertion that, she was absent when her Application for revision was struck out for being filed out of time is therefore unfounded. To buttress his argument, Mr. Warioba cited judicial precedents in Misc. Civil Application No. 155 of 2021 between

S. Kahamba v. Siriri Augustino (Unreported), **Lim Han vs. Lucy**, Civil Appeal No. 219 of 2019 where it was emphasized that, the parties who have engaged advocates have the duty to follow ups progress of their cases.

Having scrutinized the application together with court's records as well as the rival submissions of the parties' representatives, I therefore find the issue for the court's determination is, whether the applicant has adduced sufficient cause for the delay to file the intended application for revision out of time.

It is also settled principle by our courts, that, sufficient reason is a pre-condition for the court to enlarge time under Rule 56 (1) of the Labour Court Rules. It is therefore expectation of our courts from the applicant to account for each day of delay by giving sufficiently good reason for the delay (See a judicial decisoon in the case of **Benedict Mumello vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (Unreported)).

The applicant among others has stated that at the time of delivery of the award at the CMA she was on maternity leave and that she had no idea of what has been transpiring with regard to her Complaint pending the Commission. She went further to state that, Mr. Frank Maganga whom she acknowledges to be her representative took a step and filed a revision

to this court but unfortunately, the same was struck out for being filed out of time. At her averments the applicant appears to shift the fault to Mr. Maganga for not considering the law of limitation in filing the revision and therefore according to her the failure to file the revision in time was caused by the negligence of her former representative, therefore, her delay was beyond her control.

From the outset, this court wishes to state that, the reasons for the delay advanced by the applicant are inconvincible. Basically, reading from the applicant's affidavit, the applicant is blaming Mr. Maganga who was her personal representative for not filing the former application for revision on time while on the other hand the applicant alleges that at the time of delivery of the award she was on maternity leave. A carefully scrutiny of the records shows that the applicant gave birth on 5/6/2021 while the award of the CMA was delivered on 27/01/2020 four months after her delivery. Even if this court is to assume that, perhaps the applicant was indeed still in her maternity yet, she has acknowledged the representation of Mr. Maganga as her personal representative in the said matter and it is the view of this court that the applicant at this stage cannot blame the acts or omissions of her representative. In the case of

Yusufu Same & another vs Hadija Yusufu, Civil Appeal No. 1 of 2002

(Unreported) the Court of Appeal of Tanzania held that;

"Generally speaking, an error made by an advocate through negligence or lack of diligence is not sufficient cause for extension of time."

A party's act of throwing the blame to an advocate or personal representative in a judicial or quasi-judicial proceeding has consistently been dealt with by the Court of Appeal of Tanzania in a numerous decisions for instance, in the case of **Elias Masija Nyangoro & 2 others vs. Mwananchi Insurance Company Limited**, Civil Appeal No. 278 of 2019 and in the case of **Lim Han Yung and another vs. Lucy Treseas Kristensen**, Civil Appeal No. 219 of 2019 (Unreported). In the latter case the Court stated;

"We think that a party to a case who engages the services of an advocate, has a duty to closely follow up the progress and status of his case. A party who dumps his case to an advocate and does not make any follow ups of his case, cannot be heard complaining that he did not know and was not informed by his advocate the progress and status of his case. Such a party cannot raise such complaints as a ground for setting aside an ex parte judgment passed against him."

The above position of the law subscribes the circumstances surrounding this case. It is a further view of this court that the applicant at the time of delivery of the award she was in a position to make a follow up of her case as she had seven months from the time of delivery of her baby. More so, it is very unconvincing to believe that Mr. Maganga acted on his own in filing the said revision application without consulting the applicant.

The respondent in opposing this application stated that the applicant has not accounted for the days of delay. This court has observed that, the attached copy of the register for collection of the copies of the award attached in the respondent's counter affidavit, shows that the applicant received the same on 30/01/2020. I have also read the judgment of this court which strike out the application. In the said ruling a preliminary objection was raised by the respondent that the court had no jurisdiction to entertain the matter as the same was filed out of time, it was observed that the delay was of three days. Consequently, the matter was struck out. The delay of three days was, in my considered view, not inordinate delay.

Moreover, it has been lucidly observed that, the ruling of this court was delivered on 20/10/2021 whereas the present application has been

filed 28/06/2022 (eight months later). The applicant has not given an account of each day of delay leave alone the time when the application filed in this was struck out to the time of filling the present application but also the time from when the CMA delivered its award.

Moreover, I have observed that, the applicant's assertion that she was absent during delivery of the ruling by the court (Robert, J) on 20th October 2021 is unfounded if not misleading since the records patently reveals that she was present. Had it been not true, Mr. Herode would have started otherwise in his rejoinder when this point was raised during hearing of this application.

I further hold the view that, If this court was to be convinced, which is not the case, that, the applicant did not enter her appearance when the ruling of the court was delivered on the 20th October 2021. Still in law, she was duty bound to make necessary follow ups of the progress of her case instead of dumping it to her personal representative, Mr. Frank Maganga as was instructively stressed in **Elias Masija Nyangóro & 2 others vs. Mwananchi Insurance Co. Ltd** (supra).

Similarly, if I were to assume that, the applicant became aware of the ruling of this court on 2nd day of June 2021 yet, I still hold the applicant answerable for not accounting for the days of delay from 2nd June 2021

when she became aware to 28th June 2021 (26 days when she filed this application. It has been held in a number of cases that, an applicant must satisfy the court that, since becoming aware of the fact that she is out of time, acted very expeditiously (See a judicial jurisprudence in **Royal Insurance Tanzania Ltd vs. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008)

In the light of the above deliberations, this court is of the considered view that, the applicant has failed to give sufficient cause to warrant grant of the sought extension of time. The application is therefore dismissed for lack of merit. Given the fact that the dispute between the parties is labour, I shall give no order as to costs of this application.

It is so ordered.

DATED at **ARUSHA** this 7th day of November, 2022


M. R. GWAE
JUDGE

