

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT ARUSHA

MISC. APPLICATION NO. 45 OF 2022

(Originating from Labour Dispute No. CMA/ARS/ARS/207/20/238/20)

TANALEC LIMITED.....APPLICANT

VERSUS

RICHARD SEBASTIAN BOYA.....RESPONDENT

RULING

31/10/2022 & 28/11/2022

GWAE, J

This ruling emanates from an application for extension of time within which to file an application for revision to the court. The application is brought under provisions of Rule 24, 25 and Rule 56 of the Labour Court Rules, 2007. The applicant, TANALEC Limited desires to apply for revision of the award of the Commission for Mediation and Arbitration of Arusha at Arusha procured on 21st January 2022 in favour of the respondent, Richard Sebastian Boya. However, she found herself to have been out of the prescribed period (42 days).

Initially, the applicant filed her application for revision timely via Revision Application No. 32 of 2022 but the same was accordingly struck out on 5th day of July 2022 by this court (**Phillip, J**) for her failure to file a notice of intention to apply for revision to the court pursuant to Regulation 34 (1) of GN. 47 of 2017. As the applicant's application was struck out without leave to re-file. Hence, this application physically filed on 15th day of July 2022 for extension of time.

The applicant's application is supported by an affidavit of one Anna Nyahonyo, a Human Resource Officer. The reasons for delay contained in the applicant's affidavit are; her pursuance of the former application for revision and her compliance with filing of the requisite notice of intention to apply for revision of the award in the Commission. On the other hand, the respondent strongly resisted this application through his counter affidavit by stating that the applicant has not given sufficient grounds for the sought enlargement of time

During hearing of the application, the applicant and respondent were represented by Ms. Mra, the learned advocate and Mr. Alex Michael, personal representative respectively. Ms. Mra argued that the applicant's delay of 10 days includes the day of being availed with copy of the order striking out the

former application and public holiday commonly known as Sabasaba Public Holiday. She then invited this court to make reference to the following decisions; **Fotunatus Shija and another** (1997) TLR 154, **Lyamuya Construction Company LTD v. Board of registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported-CAT), **TAZARA vs. Eng. Gisbert Sambala and four others**, Misc. Application No. 207 of 2022.

In his response, the respondent's representative of his own choice, argued that the applicant has failed to account for each day of delay and that the reason of public holiday was not stated in the sworn affidavit. He supported his argument by citing the case of **Yazid vs. CRDB and another**, Civil Application No. 412/04/2018.

As both parties are not in dispute as to the day during pendency of the applicant's former application for revision since such delay is considered to be a technical delay, excusable in law. I am now duty bound to determine whether the applicant's has demonstrated good cause for her delay of ten (10) days.

Having considered the following; **firstly**, that, the applicant's former application was struck on the ground that, the same was preferred without the requisite notice of intention to apply for revision to the court being filed in the Commission. **Secondly**, the applicant's assertion, that, the applicant was to comply with the requirement of filing the notice and **thirdly**, that the applicant waited to be supplied with the order of the court striking the application. In my view, the applicant has been able to account for his delay of ten days. The respondent's contention that, the applicant has not accounted for each day of delay, in the circumstance of this matter, such contention is not acceptable since to account for each day of delay should not be considered like mathematical calculations. Of course, the applicant's delay was certainly not contributed by lack of due diligence and above all the same is not inordinate.

The applicant ought to have re-organized in filing the notice and the application. The Court of Appeal of Tanzania when faced the similar situation in the case of **Loshilu Karaine and three others vs. Abraham Melkizedeck Kaaya** (Suing as a legal representative of Gladness Kaaya Civil Application No. 140/02/ of 2018 (unreported) at page 12 held that;

"That, unexpected and unforeseen event definitely needed re-organization and, to be fair, period of eleven days cannot be said to be inordinate in preparing and lodging the present application".


In the instant application, the applicant initially filed her application timely however the same came to suffer from incompetence. More so, the delay from when the order striking out his application was made to when she filed this application constitutes the delay of only ten days. Hence, not long time since the order was issued. I am live of the importance of accounting for each day of delay as has been consistently emphasized by our courts (See **Sebastian Ndaula vs. Grace Rwamafe**, Civil Application No. 4 of 2014 (Unreported-CAT). However, in this present application the delay is not too long taking into account she was to file the notice to the Commission for Mediation and Arbitration followed by need to get the copy of the order dated 5th day of July 2022 as well as her acts of filing this application both electronic and physical filing. The decision in **Loshilu Karaine and three others** (supra) is thus found binding upon this court in the circumstances that, led to the delay of ten days.

In the event, I grant this application. The applicant is given **fourteen (14)** days within which to file her intended application for revision to the court. Each party shall bear his or her own costs.

It is so ordered.

DATED at **ARUSHA** this 28th day of November, 2022




M.R. GWAE
JUDGE