

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT ARUSHA

MISC. APPLICATION NO. 28 OF 2021

(C/F Commission for Mediation and Arbitration Application No. CMA/ARB/111/2020)

JOSIAH ZEPHANIA WARIOBA.....APPLICANT

VERSUS

BOUYGUES ENERGIES& SERVICES.....RESPONDENT

RULING

22/11/2021 &24/01/2022

GWAE, J

Apparently, the applicant was not pleased with the arbitration award procured on the 16th April 2021 by the Commission for Mediation and Arbitration of Arusha at Arusha (hereinafter 'Commission') however efforts to have his grievances referred to the court were striped with the law of limitation. Hence, this application for extension of time brought under Rule 24 (1) (2) (a), (b), (c), and (f), (3) (a) (b) (c) and (d) of the Labour Court Rules, 2007.

On the 14th June 2021, this application was filed and accompanied by an affidavit of advocate Asubuhi Yoyo was filed. Reason given as per the sworn affidavit for delay to file the intended application for revision to the court being that the learned counsel for the applicant, Mr. Yoyo did timely submit the application for revision through JSDS system on the 24th

May 2021 however admission process faced technical error, beyond the control of either the applicant or his advocate.

This application went on unopposed as the record reveals that the respondent did not file his counter affidavit nor did he enter appearance as a result the hearing proceeded ex-parte. Mr. Yoyo, when invited to argue his client's application, merely reiterated what is contained in his sworn affidavit.

Examining the affidavit of the said Yoyo and documents annexed thereto, I am quite satisfied that the applicant's application for revision was duly submitted for admission by the Deputy Registrar of the court on the 24th May 2021 at about 11: 37:54. According to the Electronic filing Rule 10 of the GN. 148 of 2018 (the Judicature and Application of Laws (Electronic Filing) Rules, 2018), a document is deemed to have been filed when it is submitted and admitted.

More so, a party cannot be condemned due to technical error caused by the judicial staff, be it due to laxity or negligence on the part of the court's staff or technical error in the filing system. The applicant's advocate relied on the technical error on the part of the Judiciary Electronic filing System, that being the case, it is apposite therefore to have the relevant rule that is Rule 24 of the Rules reproduced as herein under;

"24 (1) The period during which electronic filing system is not in operation, for any reason, shall be excluded from the computation of time for filing.

(2) Problems on the user's end, such as problems with the user's Service Provider (SP), hardware, or software problems, shall not constitute a sufficient reason for an untimely filing.

In our case as explained herein above, reason given by the applicant is covered by rule 24 (1) of the Rules, as stated at paragraph 10 of the applicant's application by asserting that his advocate submitted the application timely and thereafter kept on waiting for admission but his patience yielded a delay as result, he was compelled to consult the Deputy Registrar. In the absence of the evidence to the contrary the applicant's assertion constitutes exclusion of the period within which the document was submitted but due to mechanical error the same was not timely admitted. Therefore, the present applicant cannot be condemned under Rule 24 (2) of the Rules unless the contrary is evidently established.

Basing on the reasons given above, this application is therefore granted. The applicant is given **seven (7)** days from the date of this order within which to file an application for revision to the court. No order as to costs is made.

Ordered accordingly




M. R. GWAE
JUDGE
24/01/2022