

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(LABOUR COURT)

IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

LABOUR REVISION No. 39 OF 2020

(Originating from CMA/SHY/144/2017)

BAKARI HAMIS ALLY.....APPLICANT

VERSUS

BULYANHULU GOLD MINE LIMITED.....RESPONDENT

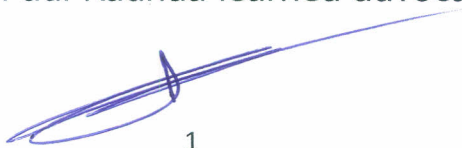
RULING

The applicant faced objections in his attempt to lodge a labour dispute at the commission for mediation and Arbitration against his former employer.

At two times he was blasted on technicalities for having filed defective documents. But he was allowed to re-institute his application afresh. On the third time he repeated the same wrong by filing defective documents (affidavits) in support of his applications. They were applications for condonations.

This third time the arbitrator was tired and decided to dismiss his application without having heard it on merit.

The applicant as he was fighting alone, he decided to seek and obtained legal aid of Mr. Paul Kaunda learned advocate.



Mr. Kaunda having reviewed the facts thought that since his client's matter was not heard on merit, he could re-institute a proper application. He did so but faced an objection that the matter was re-judicata. His application was this dismissed on that ground.

Aggrieved with such decision, they came to this Court vide **Labour Revision no. 12 of 2018** in which Madame justice Mkwizu confirmed that indeed the application of the applicant at CMA was re-judicata.

It is from this back ground the Applicant is now before me seeking for extension of time to apply for Revision against the order of CMA which dismissed his application for condonation because he filed such application three times without drawing it competently.

At the hearing of this application the applicant was present in person and was represented by advocate Paul Kaunda while the respondent had the services of M/S Caroline Kivuyo and Mr. Imani Mfuru learned advocates.

Mr. Kaunda advanced two grounds for this application to be granted.

He argued that the applicant since the denial of his first application to CMA he did not sleep on his rights. He has always been pursuing his rights to date.

The second ground Mr. Kaunda advanced is that the CMA decision which is impugned bears illegalities because it dismissed the applicant's application instead of striking it out after it was found incompetent.

M/S Caroline learned advocate being armed with a chain of authorities argued that the applicant has not established any diligence

because at all times he was filing incompetent applications and that such negligence in filing incompetent applications has never been a good cause for extension of time.

She also argued on the 38 days uncounted by the applicant from the date this Court delivered its judgment to the date when this instant application was filed.

Without wasting time I am of the view that this application must be granted on both advanced grounds.

In the first ground of due diligence, it is on record that the applicant a lay person struggled a lot to apply in Court for condonation but at all times he was kicked out on technical issues for having accompanied his application with defective affidavits.

Even though the two first applications are none-issue because the remedy thereof was the third application. In the third application the arbitrator decided to dismiss it all together as he could not tolerate further the incompetence.

In that regard and in view of the current position of the law that disputes should be determined on substantive justice without due regard to technicalities, I find it imperative to allow this application so that the applicant files his Revision for this Court to see whether the law was dully complied when the dismissal order was made by CMA, particularly on the simplified rules of labour disputes.

But again the applicant has been a victim of legal practitioners who assisted him to draft documents which he filed thinking they were properly drafted.

Even in this matter M/S Caroline blamed Mr. Paul Kaunda for having taken the applicant's time through a wrong route.

In the case of **Judith Emmanuel Lusohoka versus Pastrory Binywa Mlekule and 2 others, Misc. Land Case no. 74/2018 (HC) at Tabora**, the applicant had engaged various advocates at various stages and times but at all times she lost at early stages on incompetence of her documents filed.

She at the end of the day found herself out of time to pursue her claim. She started another route of engaging advocates to draft applications for extensions of time which fell into the same consequences as they were poorly drafted and at all times struck out.

Finally she filed the herein above named application which came into my hand and in granting her extension of time I ruled out;

"I have formed an opinion that the applicant has shown good cause because she entrusted her advocates and therefore was not to blame for negligence acts or incompetence of those lawyers whom she believed to be legal practitioners.

I still stand with such observations that all the defective affidavits were in fact prepared by lawyers and not the applicant in person.

What the applicant did was to retake steps after the realization that the documents he had filed were incompetent.

In the case of **Aram Similingwa and 6 others versus Jumuiya ya Waislam Kitahana, Misc. Land Application no. 24/2018 (HC) at Tabora** I ruled;

"We should stop punishing the innocent litigants for incompetence and lack of care of their advocates who have already taken and consumed instruction fees from their clients but not acting diligently and in accordance to the law."

I still stand with this observation. The applicant should not be punished because of the wrongs of his advocate or legal practitioners. In any case the opponent party can be remedied by costs.

In the instant matter if advocate Kaunda wrongly advised the applicant I cannot tell as it is not the matter before me.

But again, even if I had to ignore all what I have stated herein, I would still allow the ground of illegality for extending time to the applicant.

The applicant is alleging that his application ought to be struck out and not dismissed.

The respondent's advocate argues that in the circumstances that this was a third time wrong, the dismissal was a justified order.

In essence both parties are agreeing that the matter which has not been heard on merit would only be struck out and not dismissed.

Therefore the dismissal order was exercised in this matter because the arbitrator was tired to condone incompetent applications.

Whether in the circumstances of this matter the dismissal order was justified or not, that requires scrutiny of the original records of the trial CMA and we cannot have such access unless we grant this application. Also at this time I cannot rule out that it was wrong or not for CMA to dismiss the applicant's application as by doing so would amount to pre-empting the intended application.

This application is therefore granted and the applicant is given 14 days from today within which his application for Revision should be filed.

He should understand that if he won't use the granted time, no further extension shall be granted.

It is so ordered.


A. MATUMA
JUDGE
31/05/2022

Court:

Ruling delivered in the presence of the applicant in person and in the presence of M/S Caroline Kivuyo and Imani Mfuru learned advocates for the respondent.




A. MATUMA
JUDGE
31/05/2022