

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA DISTRICT REGISTRY
AT ARUSHA

MISC. LABOUR APPLICATION No. 25 of 2023

(C/f Labour Dispute No. CMA/ARS/ARS/ARB/268/79/2020)

FIBREBOARD (2000) LTD APPLICANT

VERSUS

OTIENO KAMBRUSI RESPONDENT

RULING

31st August & 3rd November, 2023

TIGANGA, J.

In this application, the applicant seeks for extension of time so that he can appeal out of time against the whole Award from the Commission for Mediation and Arbitration of Arusha (CMA) in Labour Dispute No. CMA/ARS/ARS/ARB/268/2018/79/2020 dated 17th July, 2020 (Stanslaus, H. Arbitrator).

The application is brought under section 14 (1) of the **Law of Limitation Act**, [Cap 89, R.E. 2019] (the LMA) and is supported by the affidavit duly sworn and filed by Ms. Upendo Msuya, the applicant's Advocate. In her affidavit, she deponed that, the death of the former Advocate Elkana Mollel who died in a road accident was the main reason for the delay. Following the death of the Advocate, the applicant lost track of

the case as she could not find any record concerning the case. Therefore, failure to file an appeal within time was completely beyond the control of the applicant.

Objecting to the application, the respondent contended that, such reason is unfounded as there was no even a certificate of death of the alleged deceased attached to the affidavit. The applicant preferred the current application which was heard by way of written submissions. The applicant appeared in person and was unrepresented whereas the respondent was represented by Mr. Martin Frank learned Advocates.

Supporting the application, the applicant who was represented by Ms. Upendo Msuya, learned Advocate told this Court that, initially the applicant was represented by Mr. Elkana Mollel, Advocate with Roll Number 9049 who succumbed to death while in Babati District in Manyara Region where he went representing another client. That, after his demise, the applicant did not manage to secure any information regarding her case and when she did she was already out of time hence the current application. She urged the Court to exercise its discretion to grant extension of time in the interest of justice. In support of the application, he cited the authority in the case of

Juto Ally vs. Lucas Komba & Another, Civil Application No. 484/17 of 2019, CAT at Dsm (unreported).

Opposing the application, the respondent submitted that, there was no single document or evidence proving that the said that former Advocate tragically passed away due to the road accident he encountered. More so, there is no explanation as to how such death barred the applicant from challenging the Award of the Commission timely. He argued that the applicant had a duty to follow up on his case despite the advocate's demise rather than using his death as an excuse. To cement his argument he cited the case of **Tanzania Zambia Railway Authority vs. Gerald S. Msovela**, Revision Application No. 451 of 2020, TZHC at Dsm in which the Court underscored the importance of accounting for each day of the delay.

Respondent further contended that the applicant has not established any good ground to extend the time he prayed that, this application and be dismissed as the applicant said they did not know as to whether the time to appeal has expired which shows recklessness on her part. There was no rejoinder.

After going through the parties' affidavits as well as their rival arguments made in support and opposition to the application, the question for determination is whether this application has merit.

In resolving this issue, I will be guided by the general principle that the grant of extension of time is entirely upon the court's discretion, which however should be exercised judiciously. Moreover, the grant is not automatic, a party has to convince the court that he has genuine grounds and sufficient reasons for the court to exercise its discretion and grant extension of time. This was held in the case of **Benedict Mumello vs Bank of Tanzania**, Civil Appeal No 12 of 2012, CAT. There is no definition of what a good cause must entail in extending time, it can, however, be a number of factors such as the duration of delay, whether the delay was not inordinate; whether the applicant has sufficiently accounted for the delayed period; whether the applicant has demonstrated diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take, or whether there exists a point of law of sufficient importance such as the illegality of the decision sought to be challenged. (See; **Attorney General vs. Tanzania Ports Authority & Another**, Civil Application No 87 of 2016

CAT and **Ramadhan J. Kihwani vs TAZARA**, Civil Application No. 401/18 of 2018, CAT (unreported).

In the application at hand, the applicant claimed that the delay was caused by the death of the former Advocate who died in a road accident in Babati District in Manyara Region where he was attending the case of his another client. Unfortunately, no proof of his death was attached to the applicant's affidavit. This could have varied from a number of things such as the death certificate, death announcement, pictures of the burial service, and the like. The late Elkana being an officer of the Court was known, however in the matter at hand, what was required was the date of his death for purpose of computing from when the Award was issued to when this application was filed. This would have enabled the Court to conclude whether the delay was inordinate or beyond the control of the applicant or due to the applicant's own negligence.

To the contrary, even the date of the death of the said Advocate was never mentioned either in the affidavit filed in support of the application or during her submission before this Court. Taking into account the facts that the impugned Award was issued on 17th July 2020 and this application was filed on 27th June 2023 after the lapse of almost three years, the fact that

the only reason for the delay was the death of the former Advocate who was handling the case; the same is unreasonably unfounded. The three-year delay is by all standards inordinate and without concrete explanations this cannot be easily pardoned. This alone disentitles this Court to exercise its discretion in granting her extension of time.

In the case of **Hassan Bushiri vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 the requirement of accounting every day of delay was emphasized as follows;


"Delay, of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken".

It is therefore my considered opinion that, the applicant was required by law to account for all three years delays of which she did not do and failure to do so entitles her not, the application she has advanced. In light of the above, I find this application to be devoid of merits and proceed to dismiss it. This being a Labour matter, I do not give any orders as to costs.

It is so ordered.

DATED and delivered at **ARUSHA** this 3rd day of November 2023.




J.C. TIGANGA
JUDGE