

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISC. APPLICATION NO. 206 OF 2017

BETWEEN

INDEPENDENT POWER TANZANIA LIMITED APPLICANT

VERSUS

1.VENERABILIS JIGGE 1ST RESPONDENT

2.HILDEPHONCE MUTEMBEI 2ND RESPONDENT

RULING

Date of Last Order 12/03/2018

Date of Ruling 06/04/2018

NYERERE, J.

This is an application to extend time to file application to set aside dismissal order issued in Revision Application No.175 of 2016 in which the matter was struck out for want of prosecution and non appearance and order re-enrolment of the same. The application is made under Rule 24(1), (2), (a) (b) (c) (d) (e) and (f), (3) a) (b) (c) and (d) and 55(1) & 56(1) of the Labour Court Rules, GN.No.106 of 2007.

Brief facts, the applicant filed Revision application No. 175/2016 challenging CMA award CMA/DSM/ILA/R.662/14/588, the applicant was being represented by Kay Mwesiga Felician Advocate, who had the conduct

of the matter from CMA that, learned Advocate left for leave without giving status of the case, which resulted to it being dismissed for non appearance. The applicant now seeks setting aside of the dismissal order.

At the hearing the applicant was represented by Mr. Balomi Advocate while the respondent had the representation of Audax Vedasto Advocate Counsel for the applicant in his submission argued that application No. 175/2016 was dismissed for want of prosecution for non-appearance, that the application was unreasonably abandoned by Kay Mwesiga Felician Advocate without formal application to withdrawal from the conduct of the matter. Counsel for the applicant went on to submit that the dismissed application for revision has overwhelming chances of success in challenging the CMA Award.

In rebuttal Counsel for respondent argued it is now established that for the court to extend time the applicant is to account for all the delayed days so the court can weigh whether the explanation given constitute a justifiable excuse for the delay, citing the case of **KARIBU TEXTILE MILLS LIMITED VS COMMISSIONER GENERAL (TRA) Civil Application No. 192/2016 & DAR ES SALAAM CITY COUNCIL VS S.GROUP SECURITY CO. LTD. CIVIL Application No. 234/2015.**

Counsel for respondent went on to submit that in the present case the period of delay is unidentified, it is not clear as to when the applicant got knowledge of the order which he seeks extension of time to set aside. Counsel for respondent is of the view, under Rule 38(2) of the Labour Court Rules 2017 an application to set aside an ~~ex parte~~ or default order of the Court is to be lodge within 15 days after the applicant had acquired knowledge of the order citing the case of **COSMAS CONSTRUCTION LTD VS ARROW GARMENTS LTD (1992) TLR page 127** the court held that:

"Such application which does not disclose the extent of delay cannot be granted.

Further Counsel for respondent argued that the matter was struck out after three non appearance, on 21st November, 2016 and 1st December, 2016; and 8th March 2017; However the applicant knew about the dismissal order on 25th June, 2017 and the present application was filed on 30th June, 2017. Counsel for respondent proceeded to argue that the applicant alleged to have known about the order on 25th June, 2017 which was Sunday and 2017 calendar is attached.

Furthermore Counsel for respondent argued that the application is defective as it failed to attach copy of the court order which he seek to set

aside nor does it state when that order was made and he cited the case reported in **LCCD of 2013 the case No. 32/2013 TANZANIA POSTAL BANK DAR ES SALAAM VS THOMAS EDWARD GAMBO** concerning the issue of non attaching documents for proof of annual leave.

Counsel for respondent responding on applicant's argument that his advocate was negligent, reckless and indiligent, in handling his claim, Counsel for respondent was of the view that even if such allegations are proved cannot at all be a reasonable excuse warranting extension of time and cited the case of Court of Appeal of Tanzania **JALUMA GENERAL SUPPLIES LTD VS STANBIC BANK (T) LTD Civil application No. 48 of 2014** and other cases decided by this court that negligence on the part of Advocate cannot be an excuse to support an application for extension of time.

In rejoinder Counsel for Applicant reiterated his submission in chief. And proceeded to submit that the present application was presented for filing on this court on 30th June, 2017; five days after the date of knowledge of the dismissal order.

Counsel for Applicant went on to submit on the mandatorily requirement to attach a dismissal order in the application seeking to set aside the dismissal order, he was of the view that the referred case of

TINA & Co. on stay of execution is distinguishable to the present application, that applicants basis for seeking an extension of time was not based on annual leave, also the referred case of TANZANIA POSTAL BANK to be distinguishable.

This Court has duly examined and considered both parties' arguments in their submissions, Court records and applicable laws. The issue for determination is; whether or not applicant has demonstrated existence of good grounds to move the court to invoke its powers vested under Rule 56 (1) of the Labour Court Rules, GN 106/2007, which categorically provides that;

"The court may extend or abridge any period prescribed by these rules on application and on good cause shown, unless the court is precluded from doing so by any written law."

According to the records, the applicant and his advocate failed to appear on, on 21st November, 2016 and 1st December, 2016; and 8th March 2017 when the matter was scheduled by court. It's the applicant's further contention that, he was aware of the dismissal order on 25th June. At the same time, counsel for respondent vehemently discredits applicant's contention, that 25th June, 2017 was a Sunday and no courts are open.

According to the reasons advanced by the applicant, he admitted that the delay was due to negligence on the part of his Advocate Kay Mwesiga Felician Advocate, that he conducted himself contrary to the applicant's directives and instructions causing application No. 175/2016 to be dismissed for want of prosecution, for non-appearance, as the application was abandoned. The respondent was quick to point out that Advocates negligence does not warrant extension.

In resisting the application Respondents reminded the court that the application at hand is defective as the copy of the court order which is to be set aside is not attached; in which the court concurs with the respondent. The applicant has not attached a copy of the court order in which extension of time is sought, and the applicant does not dispute this fact.

From the above observation, the court take note that, the interest of justice demand for cases to come to an end and not to lie in court for years just because one party has been negligent in handling his case for the detriment of the other party. Thus, for purpose of achieving the objects of the Employment and Labour Relations Act, No. 6 of 2004 as stipulated under Section (a) – (f) Section 3 of Employment and Labour Relations Act and the good end of justice this court cannot entertain mistakes that are

made by applicants who delays cases to come to an end without good cause as this one. I adopt the position in the case of **A.H Muhumbira & others vs. John K. Mwanguku, Misc. Civil Appeal No. 9 of 2002, CAT at Mbeya (Unreported)** where the Court of Appeal maintained its long position that;

".....the delay was caused by inadvertence or laxity on the part of the counsel for the applicants. As inaction, laxity and or negligence on the part of counsel does not constitute sufficient reason for extending time, I am not persuaded to grant the application sought.....even if it is accepted that applicants themselves did not know the correct legal position to follow, it is trite principle that ignorance of legal procedure would also not constitute sufficient reason for extending time."

Going back to the reason adduced by the applicant and with such position of the law, without hesitation I say the reason adduced by the applicant is not sufficient to warrant the court to grant the application sought. It is my view that the applicant as well as his counsel negligently handled this matter and have to suffer the consequences of non-appearance in court without good cause or sufficient reasons.

From the above observation, I am of the opinion that sufficient reasons for extension of time has to be demonstrated; as explained in the decision of Mandia JA in the Court of Appeal case of **John Mosses and Three others Vs. The Republic, Criminal Appeal No. 145 of 2006**, following the definition in the case of **Elias Msonde Vs. Republic Criminal Appeal No. 93 of 2005**, held that:-

"We need not belabor, the fact that it is now settled law that in application for extension of time to do an act required by law, all that is expected of the applicant is to show that he was prevented by sufficient or reasonable or good cause and that the **delay was not caused or contributed by dilatory conduct or lack of diligence on his part.**"(Emphasis mine).

Under the circumstance I find that the applicant failed miserably to adduce sufficient reasons to warrant the court to grant the application for extension of time for the applicant to file application to set aside dismissal order issued in Revision application No. 175/2016.

In the result the application is dismissed for lack of merit.

It is so ordered.


A.C. Nyerere

JUDGE

06/04/2018