

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 477 OF 2016

BETWEEN

ZANZIBAR PETROLEUM LTD APPLICANT

VERSUS

HUSSEIN J. KILANGO RESPONDENT

RULING

Date of Last Order 14/03/2018

Date of Ruling 06/04/2018

NYERERE, J.

This is an application for extension of time to file application for revision made under Rules 24(1),(2),(a)(b)(c)(d)(e)(f) and(3),(a)(b)(c)(d), 24(11), 56 (1) and (3) of the Labour Court Rules, GN. No.106 of 2007. The applicant sought to move the court for the following orders; that this Honourable court be pleased to extend time to file Revision against Labour Dispute No. CMA/DSM/TEM/106/2010 ruling dated 13/07/2012.

At the hearing the applicant was represented by M/S Mariam Semlangwa learned Counsel while the respondent had the representation of M/S Rose Mgalla learned Counsel. This revision application was argued by way of written submission.

Counsel for applicant in her written submission commenced with a prayer to adopt chamber summons and affidavit to form part of her submission and proceeded to advance the reasons for delay in filing the application for revision by elaborating that the central issue is the issue of illegality and cited the case of **VICTORIA REAL ESTATE DEVELOPMENT LIMITED V. TANZANIA INVESTMENT BANK AND 3 OTHERS APPLICATION NO. 255 OF 2014 CAT** Hon. Mmila J held that:

"In view of what I have expressed above, I find and hold that this is not the proper forum to tackle the issue whether or not the illegality was well founded. That said and done, I find that the applicant has shown good cause to attract the court to grant the application for extension of time as I accordingly do"

M/S Mariam Semlangwa, learned Counsel for applicant further argued that the applicant be afforded opportunity to file the intended revision application, in order to show that Temeke CMA had no jurisdiction to entertain the matter which emanated from Zanzibar, because the respondent filed labour dispute with ref no. CMA/DSM/TEM/106/2012 at Temeke Dar es Salaam. It was an application for extension of time to have his labour dispute entertained by CMA Temeke on the allegations that he had wrongly

filed it in Zanzibar. And the Applicant filed counter affidavit challenging the jurisdiction of CMA Temeke to adjudicate the matter.

Learned Counsel for applicant went on to argue that CMA Temeke alleged to have jurisdiction to entertain the matter, just because the notice of termination of the respondent was served to him where he resides at Temeke; however it was not the place where the dispute arose.

Furthermore Counsel for applicant submitted that on basis of illegality the court is to allow this application; for applicant to file application for revision and challenge Temeke CMA decision for entertaining a matter that it had no jurisdiction to entertain. Learned Counsel for applicant proceeded to argue that illegality constitutes good cause to grant extension of time citing the case of **REPUBLIC V. YONA KAPONDA & 9 OTHERS (1985) T.L.R. 84** which observed that where the court is seized with duty to consider an application of this nature it has to judge whether or not there are sufficient reasons for the delay.

In conclusion learned Counsel for applicant argued that view there is a serious issue of illegality which attracts the courts attention to extend time as Temeke CMA had no jurisdiction to entertain a

labour dispute that took place in Zanzibar. Counsel for applicant therefore prays the court to grant extension of time to file revision.

In rebuttal M/S Rose Mgalla learned Counsel for respondent opposed the applicants arguments that revision no. 172/2012 was struck out by this court for not having signature of attesting officer. With leave of the court applicant filed another revision, application no. 313/2013 and again was struck out for improper citation of enabling provisions, hence applicant applied for extension of time and was granted leave.

Learned Counsel for respondent added that the third Revision no. 85/2015 was struck out again, for defective affidavit, the parties were absent. That hearing was scheduled on 28th September, 2016 and parties were informed to come for hearing on 28th September, 2016.

That applicant was served with Revision no. 85/2016 ruling on 3/10/2016 before Deputy Registrar Malewo and were instructed to file application for extension of time immediately; however applicant failed. That the present application was filed on 3/11/2016 about thirty days from the day the ruling was delivered.

Further Learned Counsel for respondent contended that applicant failed to show cause as required by rule 56(1). That on 3/11/2016 when applicant filed the resent application no reasons were given for the delay

and cited the case of **Ratnam V. Cumarasamy and Another (1964)**³

All E.R. 933 where the court held that:

"The rules of the court must, prima facie be obeyed, and, in order to justify a court extending the time during which some step in procedure requires to be taken, must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which provide a timetable for the conduct of litigation".

Learned Counsel for respondent argued that the court needs to consider, that the applicant has not given sufficient reason as to why the application was delayed, in the whole affidavit applicant has not given reasons for the delay.

Counsel for respondent opposed the argument advanced by applicant. She submitted that it was applicants contention if afforded leave to file application for revision; she will show illegality in the CMA ruling. That Temeke CMA had no jurisdiction to entertain a labour dispute that took place in Zanzibar.

Learned Counsel was of the view that applicant has failed to consider that both parties preferred Tanzania laws in case of dispute

and that termination took place at Temeke, Dar es Salaam, further learned counsel was of the opinion that the cited case of **VICTORIA REAL ESTATE DEVELOPMENT LIMITED** (supra) that in the ruling the court observed that there ought to be explanation as to why extension of time should be granted.

Furthermore Counsel for respondent observed that rule of justice require end of litigation that it was applicants intention to cause delay. The matter has been to court since 2012 therefore the court is to dismiss this application for extension of time.

After carefully examined parties' submissions in light of the relevant labour laws and practice the issue for decision is whether the applicants have demonstrated good cause; to entitle them to be granted extension of time. The law under Rule 56(1) of the Labour Court Rules GN 106/2007 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."

What constitute sufficient reasons has been demonstrated by 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)

On perusing the court records, particular applicant's affidavit, there is reasons adduced for the delay for the court to consider, this is so because the applicant narrates his grievance after being aggrieved by arbitrators decision in which the arbitrator entertained a matter that he had no jurisdiction. The arbitrator proceeded to hear application for condonation in favor of respondent, thus applicant filed revision no. 172/2012, in which was struck out on technical reasons.

Further applicant observed after the revision application was struck out, the applicant is out of time, to file another application hence the present application for extension of time.

On the other hand, respondents consciously informed the court that applicants in pursuit of justice filed yet another application Revision no. 85/2016 and its ruling was delivered on 3/10/2016 before Deputy Registrar Malewo; and applicant was ordered to file application for extension of time immediately; However applicant failed to honour court order and the present application was filed on 3/11/2016, a month after the order was pronounced.

Furthermore it was asserted by the applicant that there is a serious issue of illegality which attracts the courts attention; as Temeke CMA had no jurisdiction to entertain a labour dispute that took place in Zanzibar.

Subscribing to applicants issue of illegality, I still find applicant has the duty to explain what her delay was, and she did not take such steps in her supporting affidavit as the court is with duty to consider whether or not there are sufficient reasons for the delay.

As it was decided in the case of **Osward Masatu Mwizarubi V. Tanzania Fishing Processing LTD Civil Application No. 13/2010 , CAT** at page 5 that;

"What constitute good cause cannot be laid down by any hard and fast rule. The term "good cause" is relative one and is dependent upon the party seeking extension of

time to provide the relevant material in order to move the court to exercise its discretion”


In the present case, applicant has not shown sufficient reasons or good cause for the delay.

Furthermore it is the observation of the court; indeed the issue of illegality constitute sufficient cause for delay as was observed in the case of **The Principal Secretary, Ministry of Defense and National Service V. Devran Valambhia and Kalunga and Company, Advocates V. National Bank of Commerce Limited (2006) T.LR.** The court held that:

“Where, as here the point of law at issue is the illegality or otherwise of the decision being challenged, that is of sufficient importance to constitute “Sufficient reasons”

However in the present application, applicant has not provided relevant material in order to move the court to exercise its discretion and attract the court to grant the prayer of extension of time. Consequently this application is dismissed for lack of merit and failure to account the delay of thirty days.

It is so ordered.


A.C. Nyerere
JUDGE
06/04/2018