

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION**

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 463 OF 2016

MAURICE RONDO AND 113 OTHERS.....APPLICANTS

VERSUS

CCBRT.....RESPONDENT

RULING

Date of Last Order: 21/02/2018

Date of Ruling: 06/04/2018

L.L.Mashaka, J

This is an application for extension of time filed by the applicants to file revision application against the ruling of the Commission for Mediation and Arbitration (herein referred to as CMA).

During the hearing of the application the applicants were represented by Mr. Sigsbert Ngemera, Advocate, and Ms. Caroline Kivuyo, Advocate who held brief for Learned Counsel Samah Salah with instructions to proceed appeared for the respondent.

Submitting for the application Learned Counsel for the applicants contended that they filed this application for extension of time to file an application for revision against the ruling of the CMA delivered on 10th June 2016 by Hon. William R. Chairperson at the CMA and prayed to adopt the affidavit accompanying the chamber summons and annexures thereto to form part of his submission.

He explained that they had lodged an application for revision timely on the 21st July 2016 and on the same day received a duly stamped copy by this Hon. Court on the same and is attached as Annexure MR 2. That they made some follow up but the application was not out from Hon. Deputy Registrar of this Court and when they appeared on 27/07/2016 for a follow up they were informed the application was rejected for being defective and upon receiving the information on the application being defective, time to lodge revision proceedings had already lapsed.

He further argued that on the 28/07/2016, they drafted an application for extension of time to file the revision application and was filed on the 29/07/2016. That application as per Learned Counsel could not be filed on the 28/07/2016 because their client was not around to sign the same but the client signed on the 29/07/2016 and the same date the application was lodged before this Honourable Court as per Annexure MR3. That when they appeared before His Lordship Mipawa, J on the 17/10/2016 they moved the Court to withdraw the application with leave to file and were granted 14 days to file same and on the 28/10/2016, this present application was lodged seeking for an extension of time to lodge revisional proceedings.

He contended that the delay to lodge an application for revision was not occasioned by any negligence and the applicants intend to pursue the matter, that was why it was filed within time at the beginning, with a view of obtaining substantive justice before this Court.

He submitted that upon receiving information from this Court, the applicants timely lodged an application for extension of time. It has been a trite law and the practice of this Hon. Court to grant extension of time upon showing a good cause for delay. He referred this Court to the case of **NHC Vs. Etiennes Hotel**, Civil Appeal No. 10 of 2005, Court of Appeal of Tanzania at Dar Es Salaam (unreported) to substantiate his point. It was his humble submission that a good cause has been given and an extension of time be granted.

In response Learned Counsel for the respondent prayed to adopt counter affidavit deposed by Samah Salah which was filed in this Court on 29/11/2016 to form part of her submission. She took note of the fact that the applicants' revision application was timely filed but for reasons of being defective it was rejected by the Court and Learned Counsel for the applicants filed an application for extension of time for reasons known to themselves, and the said application was withdrawn on Counsel for the applicants prayer on 17/10/2016. She contended that it was their humble submission that the conduct by the applicants depicts negligence and carelessness, firstly, by filing an incompetent revision but also for filing an application for extension of time and withdrawing the same. Learned Counsel insisted that carelessness and negligence were not a good reason that can warrant the exercise of this Hon. Court's discretion to grant extension of time.

Learned Counsel was in agreement with the Court of Appeal of Tanzania decision that extension of time can be granted were there are sufficient reasons, however in this application, there was no sufficient

reason demonstrated by the applicants to warrant the prayers sought. Thus under the circumstances the cited case of **NHC Vs. Etiennes Hotel [supra]** was inapplicable. That the applicants have not accounted fully for the delay. That it has been the law of the land that every delay has to be accounted for, even where there are sufficient reasons for extension of time. She made reference to the difference of time between 27/07/2016 and 29th July, 2016, the period when the revision was rejected and when application for extension of time was preferred before the Court refer Annexures MR 2 & MR3. That the applicants have not accounted for that period of time in their affidavit in support of application. Therefore it was their humble prayer that the attempted justification by Learned Counsel for the applicants are words from the bar as they did not form part of the affidavit hence this Hon. Court deem fit to disregard the words from the bar as it is factual issue.

She insisted that, the applicants have again not attempted to account for the period of 17th October 2016 when MR 3 was withdrawn before Hon Mipawa, J and 26th October, 2016 when the present application was filed in this Court where leave for 14 days was granted.

It was her humble submission that since the applicants failed to account for the delay on the dates explained above, it was her prayer that the application be dismissed. She fortified her submission with the Court of Appeal of Tanzania case of **Convergence Wireless Networks (Mauritius) Ltd & 2 others Vs. W/A Group Ltd**, Civil Appl. No. 263 'B' of 2015, CAT at Dar es Salaam (unreported) and submitted that the

application be dismissed for want of reasonable cause and for failure to account for the period of delay.

In rebuttal Learned Counsel for the applicants prayed to reiterate his submission in chief and that the delay to file an application for revision, the reasons have been given and humbly denied that there was negligence on the part of the applicants. That should the Court discover there was negligence on the part of the applicants then there are circumstances where negligence has been regarded as a good cause for extension of time particularly where the negligence is done by the advocates and not the applicants themselves. That the term "sufficient cause" should not be given a narrow interpretation but wide interpretation to include all reasons, all causes for delay which are outside the applicants power to control or influence which may delay taking steps. He referred the case of **Yusuf Same & Anor Vs. Hadija Yusuf**, Civil Appl. No. 1 of 2002, CAT at Dar Es Salaam (unreported) at pages 8 and 9, did set the interpretation and held that Learned Counsel's negligence constituted sufficient reason for delay in lodging appeal between 1st August, 1996 and 24th October 2016 within the same case at page 9 Justice Kaji also made reference to the case of **Felix Tumbo Kisima Vs. TTCL Ltd & Anor**, Civil Appl. No. 1 of 1997, CAT at Dar Es Salaam (unreported). Learned Counsel submitted that if at all it will be seen there was negligence on part of the advocate, the same was outside the control of the applicants and it therefore warrants sufficient reason for extension of time.

On the failure to account for the time from 17/10/2016 to 26/10/2016 within which this application was lodged, Learned Counsel

submitted that, was the period when they withdrew the application and granted leave by the Court to file within 14 days. Therefore the applicants were still within time the Hon. Court had granted within 14 days and they did file within the said time. As regards accounting for time from the 27/07/2016 and 29/07/2016, Learned Counsel argued that was only a period of 2 days, as submitted in their submission in chief.

He concluded that the applicants have advanced sufficient cause for delay and prayed for the prayer for extension of time be granted.

At the outset this Court makes it clear that in the course of the preparation of the ruling *suo motu* noted that the application was incompetent before the Court and the "incompetence" of the application goes to the jurisdiction of the Court, and the Court cannot proceed with the matter at hand before resolving the jurisdiction issue. That legal concept is begotten from the case of **Fanuel Mantiri Ng'unda Vs. Herman M. Ng'unda & Another**, Civil Appeal No. 8/1995, CAT at Mwanza where the Court held that:-

"...the question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature... (T)he question of jurisdiction is so fundamental that courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial..It is risky and unsafe for the court to proceed on the assumption that the court has jurisdiction to adjudicate upon the case..."

Also see the case of **Richard Julius Rukambura V. Issack N. Mwakajila & Another** Civil Appeal No. 3/2004, CAT (unreported) the Court held that:-

"...the question of jurisdiction is fundamental in any proceedings and can be raised at any stage even in the appeal stage. The Court, suo motu can raise it..."

The procedural issue noted is that the applicant had not shown the name of the drawer in his pleadings particularly the supporting affidavit filed in this Court on 28th October 2016 where it appears as drawn and filed by MNL LAW CHAMBERS. The affidavit is supporting this application. Also the affidavit attached to the Notice of Application bears the name of Sigsbert Ngemera. Both are differently styled and are of two different legal entities. Be it as it may this Court is of the finding that the name of the law firm, MNL LAW CHAMBERS is not a name of the drawer or Advocate in conduct of the matter who drew and filed the present application.

This Court has on several occasions held the position that legal firm, among others, in the case of **British Council Tanzania Vs. Godfrey Kinogo**, Rev No 238/2016, HCLD at Dar es Salaam, per Mipawa, J [as he then was], [unreported] delivered on 17/05/2017; whereas the case of **Lucas A. Nzegula (Son and Heir of Zuhura John) Vs. Isaac Athuman and Royal Insurance (T) Ltd**, Civil Appeal No 66/2008 [unreported] at p. 11 per Mihayo, J (as he then was), was quoted *in extenso* and held that:

"Two as I have said above, the submissions by the respondent were filed by C&M Advocates. It would appear the advocate who signed as Advocate for the second respondent is one Oscar Epaphra Msechu telling by the rubber stamp used. Now, C & M Advocates is not an Advocate in terms of section 2 and 6 and 8 of the advocates Act (Cap 341 R.E 2002). C & M Advocates cannot therefore file a document. The document must be filed by an individual advocate having the conduct of the matter "for and on behalf " of C & M Advocates" Also quoted in the case of **Omar Ali Omar Vs Registrar of Titles**, Misc. Land Application No. 90 of 2014[unreported] per Hon. Mansoor, J, HCLD at Dar Es Salaam. Though these are submissions, I am persuaded by the position held that C& M Advocates cannot file a document and is not an advocate.

Also in the case of **Ramadhani Sood Balenga Vs Hans Aingaya Macha**, Land Case No. 66 of 2013, HCLD at Dar es Salaam it was held that:

"The plaint in question was signed by "C.E.R.W &Co Advocates and Global Chambers. These are partnerships or firms, duly registered under the Business Name Act, Cap 214 R.E 2002 and they are composed with Advocates as partners. The partners in these law firm or partnership are Advocates who are enrolled as Advocates and they hold in their individual names certificates to practice as legal practitioners. With respect, these Firms or Partnership are not legal practitioner or advocates recognized by

the Advocates Act and thus they are not persons entitled to practice as advocates under the Advocates Act. C.E.R.W & Co Advocates and Global Law Chambers are not Advocates or legal practitioners recognized by the law. There are not any such persons as C.E.R.W & Co. Advocates or Global Law Chambers called to the bar and enrolled under S.2 of the Advocates Act and their names are not registered in the roll of Advocates. C.E.R.W & Co. Advocates and Global Law Chambers cannot legally sign and or file any pleading in the Courts.

The endorsement of Court pleadings is an irregularity in procedure and so the pleadings endorsed by persons not enrolled as a legal practitioner or advocates renders such process/ pleadings defective."

The position above fits the present application as there is no name of the officer or Advocate of MNL LAW CHAMBERS who was in conduct of the application for the preparation and filing of pleadings. Therefore the application is not endorsed it offends Section 44 (1) of the Advocates Act, Cap 341 R.E 2002 which requires any drawer of a document to endorse or cause the same be endorsed. See also the cases of **Ashura Abdulkadri Vs. The Director Tilapia Hotel**, Civil Appeal No.2/2005,CAT at Mwanza[unreported]per Msoffe, JA (as he then was) where the CAT amplified the provisions of Section 44(1) of the Advocates Act Cap 341 RE 2002; **Novatus Williams Nkwama Vs. TUGHE, Revision No. 8 of 2016,HCLD at Sumbawanga** [unreported] per Mashaka, J at pages 6-8.

The position above is also employed in the case of **Bollore Africa Logistics Tanzania Ltd Vs. Rose Mwaikambo**, Revision Application No. 291 of 2016, HCLD at Dar Es Salaam [unreported] Mashaka, J.

Since the affidavit is defective, it cannot support this application and is accordingly struck out of the Court register. This leaves the application with no legs to stand and offends Rule 24(3)(a)(b)(c)&(d) of the Labour Court Rules GN No. 106 of 2007, hence incompetent to move the Court and the same is accordingly struck out.

For meeting good ends of justice, I grant the applicants leave to file a competent application for extension of time within 14 days from today.

It is so ordered.



L.L. Mashaka

JUDGE

06/04/2018