

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS LABOUR APPLICATION NO. 48 OF 2020

BETWEEN

FINEST CATERING SERVICES LTD.....APPLICANT

VERSUS

VICENT ALFRED MREMA.....1ST RESPONDENT

FIDELIS JOSEPH MTOLYE..... 2ND RESPONDENT

FARIDA BENARD 3RD RESPONDENT

FRED ANDRWE MWAKIAGE 4TH RESPONDENT

JUMA RAJABU LITEKA 5TH RESPONDENT

RULING

Date of Last Order: 17/06/2020

Date of Ruling: 24/07/2020

Aboud, J.

This is an application taken out by Finest Catering Service Ltd for extension of time to challenge the award in Labour Dispute no.

CMA/DSM/ILA/879/18/217 issued on 25/10/2019 by Hon. Mpapasingo, B. Arbitrator.

The application was made under Rule 56 (1), 24 (1) (2) (a) (b) (c) (d) (e) (f), 24 (3) (a) (b) (c) and Rule 55 (1) (2) of the Labour Court Rules GN. No. 106 of 2007, herein the Labour Court Rules. The applicant prayed for the following orders:-

- i. That this Honourable Court be pleased to extend time for the applicant to file an application for Revision out of time out of time against the decision delivered on 25th October, 2019 by Hon. Mpapasingo B, Arbitrator in labour dispute No. CMA/DSM/ILA/879/18/271.
- ii. Any other relief that the Court deems fit to grant thereof.

The respondents filed a counter affidavit challenging the application.

At the hearing Mr. Paschal Teemba, Personal Representative represented the applicant while Mr. Salum L. Rugwiza, Personal Representative was for the respondents. The application was argued by way of written submission.

In support of the application the applicant submitted that, he was not aware of the said award dated 25/10/2019 until 27/01/2020 through the service of summons from the High Court Labour Division in Execution No. 755 of 2019 by the City Agent Mails (CUM). The applicant added that he perused the CMA files and records and observed the decision to be impugned is pregnant with gross irregularities and breach of law, all together leading to this application for extension of time.

The applicant further submitted that, the delay to file the application for revision was not occasioned by any negligence on his party but one Siraji Msomba. He said the said Siraji Msomba was not appearing at the CMA without informing him. To support his argument he cited the Court of Appeal case of **Yusufu Same & Hawa Dada vs. Hadija Yusufu**, Civ. Appl No. 1 of 2002 and the case of **Twaha Kahesha vs. Gema Security Services Ltd.** Misc. Lab. Appl No. 187 of 2013.

Therefore, the applicant prayed for the application to be granted because he has chances of success in the revision because the Arbitrator had no jurisdiction to determine the matter.

In reply Mr. Salum L. Rugwiza submitted that, despite the mixed and premature point of the irregularities within the applicant's submission, that this stage is not the right position to invite this Court upon the same. He stated that, what is very substantial before this Court is the reason of lateness or the delay to file the intended application.

He submitted that, the adduced reason by the applicant is baseless due to the fact that the applicant was supposed to make proper follow up of when the award was to be issued because at the closure of the arbitration hearing both parties were aware of the date of the award. He added that, failure by the representative and the one who was present on the date of hearing to make follow up is not a sufficient reason to let the Court grant the extension of time.

As regard to the cases cited by the applicant, Mr. Salum L. Rugwiza submitted that they did not expose the prudence nature which may support his reason for delay to fit the circumstance of this application. He added that, all the cited cases were dismissed and the applicant prayed this Court to adopt the similar circumstance. Hence, he prayed for the application to be dismissed.

Mr. Salum L. Rugwiza further submitted that, the negligence of one Siraji Msomba, applicant representative not to communicate with the applicant does not hold water to grant the application at hand. To robust his submission he cited the Court of Appeal case of **Metal Product Ltd vs. Minister for Lands & Director of land service**, Civ. Case No. 5 of 1987. He therefore urged the Court to dismiss the application.

I have gone through Court's records together with the competing submissions from the two parties and my considered view is that, the issue for determination before the Court is whether the applicant adduced sufficient reasons or good cause shown for the delay to file the intended application so that he can be granted the order sought.

This court is vested with powers to extend time upon good cause shown under the provision of Rule 56(1) of the Labour Court Rules. The relevant section is to the effect 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 amounts to sufficient or good cause have been discussed in a number of cases including the Court of Appeal in the case of **John Mosses and Three Others vs. the Republic, Criminal Appeal No. 145 of 2006** when quoting the position of that court in the case of **Elias Msonde Vs. The Republic, Criminal Appeal No. 93 of 2005**, where Mandia J.A 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 by 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”.

In the application at hand the applicant moved the court to extent time within which to file revision application in respect of labour dispute no. CMA/DSM/ILA/879/18/271. The applicant’s reason for the delay is that his representative one Siraji Msomba did not update him with proceedings of the said matter before CMA. The applicant alleged that he became aware

of the impugned award on 27/01/2020 when the matter was at execution stage.

On the basis of the above analysis I am of the view that the applicant failed to demonstrate diligence in pursuing the matter. The record reveals that the applicant was represented by Siraji Msomba, Personal representative. It is further revealed that, Mr. Siraji Msomba was fully aware of the award from 12/12/2019 when he received the copy of the same. Therefore, the reason that the applicant was unaware of the award sounds baseless and it goes without say that the applicant was negligent in pursuing the matter. The fact that he was represented did not discharge him from the responsibility of pursuing his matter. The moment he realized that his representative was negligent in pursuing his matter, he was supposed to make close follow up on his own. It is clear from the records that, there is no any initiatives seem to have been made by him to follow up his matter. The circumstance of the case led the court's conclusion that he was negligent in pursing the matter.

The applicant delayed for almost five months, which demonstrates negligence on his part and, does not constitute sufficient reason to grant

extension of time as discussed above. In the situation, I have no hesitation to say that the applicant's delay to file the application within time was contributed by dilatory conduct.

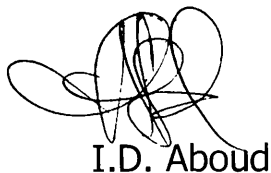
The applicant also alleged that, the impugned award is tainted with irregularities and illegalities to wit, the CMA Form No. 1 did not disclose the date when the dispute arose and the dispute was filed at CMA out of time. In the cases of **VIP Engineering and Marketing Limited & 3 Others V. Citibank Tanzania Limited**, Consolidated Civil References No. 6, 7 and 8 of 2006 and **Hezron Magessa Mariogo vs. Kassim Mohamed Said**, Civil Application No. 227/2015, it has been held that allegations on illegality can be a good ground to grant the applicant an extension of time.

However, for the same to be granted parties have to explain in details about the alleged irregularities as it was held in the case of **Lyamuya Construction Limited vs. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2/2010. In this matter the applicant has not done so in the affidavit as well as oral submission and, with due diligence the court perused on the record which reveals that the respondents claimed to be orally terminated

from 17/07/2018 to 06/08/2018. It is further revealed that the dispute was referred to CMA on 17/08/2018 which is thirty days from 17/7/2018 when respondents terminated. Therefore, the objection that the matter was filed to CMA out of time cannot stand as a ground to grant extension of time in this application.

In the result, I find the applicant failed to adduce sufficient reason for the delay to be granted the order sought. Hence, the applicant cannot benefit from Rule 56(1) of the Labour Court Rules. The application is dismissed for want of merit.

It is so ordered.

A handwritten signature in black ink, appearing to be 'I.D. Aboud', written over a horizontal line.

I.D. Aboud

JUDGE

24/07/2020