

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 514 OF 2019

BETWEEN

JOSEPH NTOGWISANGU APPLICANT

VERSUS

ALAF COMPANY LIMITED RESPONDENT

RULING

Date of Last Order: 28/05/2020

Date of Ruling: 30/07/2020

S.A.N. Wambura, J.

JOSEPH NTOGWISANGU the applicant herein has filed this application under the provisions of Rules 24(1), (2)(a)(b)(c)(d)(e)(f), (3)(a)(b)(c)(d) and 26(1), (2)(a)(b), 26(3), 26(4), 26(11)(a) and 56(1) of the Labour Court Rules GN No. 106 of 2007 praying for the Orders that:-

- i. This Honorable Court may be pleased to extend the time within which the Applicant should file the notice of review of the ruling to dismissal the revision Application No. 595/2017 for being*

filed out of time of Hon. Z.G. Muruke, Judge, dated 29th July, 2019 and later issued to me on 30th July, 2019.

- ii. This Honorable Court be pleased to determine the matter in the it considered appropriate and give any other relief as the court may deems fit and just to grant in the circumstances .*

The application has been supported by his sworn affidavit.

The respondent **ALAF COMPANY LIMITED** through the counter affidavit of Adrian George Sigalla, Head of Administration challenged the application.

With leave of the Court the application was disposed of by way of written submission. I thank both parties for adhering to the schedule and for their submissions.

It is on record that Revision No. 595/2017 filed by the applicant was dismissed on 29/7/2019 for being time barred.

It has been submitted by the applicant that thereafter, on 13/8/2019 he went back to CMA to make a follow up. He was issued with a certified copy of the dispatch on 14/8/2019 (Exhibit JN 3) as proof that he was served with a copy of the award on 9/11/2017.

From 14/8/2019 to 20/8/2019 he was seeking legal assistance. But he was suddenly notified of the demise of his brother. He thus travelled to Mpwapwa, Dodoma to attend his funeral. He returned on 23/8/2019 as per Exhibit JN 4. Upon his return he concluded the legal assistance process thus filed this application on 28/8/2019.

He prayed for the application to be granted so that he could file his application for review as the dismissed application was timely filed and have the matter heard and decided on merit.

The respondent challenged the same on the ground that the applicant has not adduced sufficient cause for the delay in filing the same.

That since the Order dismissing the matter was issued on 29/7/2019, the application for review ought to have been file within 15 days, as provided for under Rule 27(1) of the Labour Court Rules, 2007 being on 14/8/2019. But the same was not so done and no sufficient cause was adduced. That by the time the applicant traveled to attend the funeral of his brother on 20/8/2019 he was already time barred.

That there is a lot of inconsistence in Exhibit JN3 to prove that the applicant was really served the same on 9/11/2017 while in his supporting

affidavit he was the one who alleged that he was served with the same on 7/11/2019.

That the intended review has no merit as the applicant has not stated that there was fraud, error on record or that he was denied a right to be heard as held in the cases of **Transport and Equipment Limited Vs. Devran P. Valambia**, Civil Appl. No. 18 of 1993 and **Christopher Pius Vs. ALAF Limited**, Commercial case No. 37 of 2012.

That this Court lacks jurisdiction to entertain the matter as the applicant is challenging the quantum of payment. He therefore ought to file the same at CMA as it was held in the case of **George Mapunda & Another Vs. DAWASCO** [LCCD] 2014 Case No. 89.

They thus prayed for the dismissal of the award.

As rightly submitted by both parties this Court has the discretion of extending time to a party to file the intended application. However this discretion has to be used judiciously as it was held in the case of **Isabella John Vs. Sylvester Magomba Cheyo & 2 Others**, Commercial case No. 49 of 2003.

The only obligation which the applicant has is to adduce sufficient reasons for the delay and one has to account for each day of the delay even if it is a single day as it was held in the case of **Bushiri Hassan Vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007. So filling a review of a ruling on a delay of only two days as prayed by the applicant cannot be of merit.

It is worth noting that by 13/8/2019 when the applicant decided to approach CMA he only had one day left to file the intended application. It is unknown as to why he waited to do so by then as he had an option of filing an application for extension of time to refile the dismissed matter just as he has filed this application.

Be it as it may be, the applicant has stated that he had travelled to Mpwapwa to attend his brothers funeral. I have had an opportunity to go through the alleged "Exhibit" JN4 as the proper name is "annexture". They are tickets issued to persons with Surnames of Joseph on 22/8/2019. They were travelling to Dar es Salaam from Mpwapwa on 23/8/2019. One of them could or could not be the applicant but there is yet no proof as to when the applicant left Dar es Salaam to Mpwapwa.

Whether the Court has jurisdiction to entertain the matter would be of interest to be discussed if the application is granted and the applicant files the same.

As for the merit of the application and as I have found that there is no proof as to when the applicant travelled to Mpwapwa (if at all he did), I believe the applicant has failed to adduce sufficient cause for the delay in filling this matter as was held in the cases of **Tosi Jategi Vs. Tanzania Port Authority**, Civil Application No. 145 of 2007 and **Valambia's case** (supra).

S.A.N. Wambura
JUDGE
30/07/2020

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ALAF COMPANY LIMITED RESPONDENT

Date: 30/07/2020

Coram: Hon. F.A. Mtarania, Deputy Registrar

Applicant: }
For Applicant: } Mr. Kassim Masimbo Personal Representative

Respondent: }
For Respondent: } Mr. Adrian Sigala (Administrative Manager)

CC: Lwiza

COURT: Ruling delivered today in presence of Mr. Kassim Masimbo Personal Representative for the Applicant and Mr. Adrian Sigala (Administrative Manager) for the Respondent.


F.A. Mtarania

DEPUTY REGISTRAR

30/07/2020