**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**MISCELLANEOUS LABOUR APPLICATION NO. 448 OF 2019**

**BETWEEN**

**BARNABAS M. MPANGALA .....APPLICANT**

**VERSUS**

**TANESCO.....RESPONDENT**

**RULING**

Date of Last Order: 04/06/2020

Date of Ruling: 14/08/2020

**Aboud, J.**

This is an application for extension of time to file an application for revision against the award and proceeding of the Commission for Mediation and Arbitration (here in CMA) delivered on 08/04/2019 by Hon. Johnson Faraja, Arbitrator in labour dispute No. CMA/DSM/KIN.927/16/866. The application is supported by the affidavit of the applicant himself.

The application was argued by way of written submission. Both parties were represented by Learned Counsels. Mr. Stanley Kalanje

was for the applicant while Mr. Thadeo Mwabulambo appeared for the respondent.

Arguing in support of the application Mr. Kalanje submitted that, the applicant's reason for the delay is reflected at paragraphs 3, 4 and 5 of his affidavit. He stated that the applicant made several follow up to the respondent's Human Resources Office and he was assured that the matter was placed in management for the approval and initiation of modality of reinstatement and payment of other rights. Mr. Kalanje added that due to such follow up the applicant delayed to file the revision on time and being a layman he was not able to account for the time limit. To strengthen his argument he cited the case of **Attorney General Vs. Twiga Paper Production Ltd.,** Civ. Appl. No. 108 of 2008.

Mr. Kalanje submitted that in the cited case four conditions were established for the grant of the application for extension of time. The said conditions are the length of delay, the reason of delay, degree of prejudice to the respondent if the application is granted and possibly chances of succeeding if the application is granted. Mr. Kalanje was of the view that the established conditions are met in the present application.

Mr. Kalanje further submitted that, an appeal or revision in labour cases is a constitutional right provided under Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977 thus the application should be granted.

Mr. Kalanje also cited the case of **Hellen Jacob vs. Ramadhani Rajabu** [1996] TLR 139, where the Court insisted that in order for extension of time to be granted the applicant is supposed to advance reasonable and/or sufficient reason that caused delay. He stated that the applicant proved his reason in the present application. He therefore prayed for the extension of time to be granted.

Responding to the application Mr. Mwabulambo submitted that, there are two issues needs to be determined by this Court. The first issue is whether the applicant has managed to advance good cause as required by Rule 56 (1) of the Labour Court Rules, GN. No. 106 of 2007 and the second issue is whether the applicant has managed to account on each day of the delay.

On the first issue he submitted that, there was no any oral dialogue between the parties because soon after delivery of the CMA award the respondent initiated payments and the same was executed

via applicant's NMB account. He added that the CMA ordered the respondent to pay the applicant 12 months salaries, notice of termination and leave. Therefore the respondent could not engage in a discussion of reinstatement. Mr. Mwabulambo further submitted that, the respondent is a government institution and all institutions of the kind communicate through official letters, but the applicant did not tender any document supporting his allegation. He cited a number of cases to robust his submission which will be considered in the decision.

As to the second issue Mr. Mwabulambo submitted that, the applicant failed to account for each day of his delay. To strengthen his argument he cited two decisions of the Court of Appeal which all emphasized on the principle of counting for each day of the delay.

Mr. Mwabulambo further submitted that, the right to be heard emphasized by the applicant should be in accordance with the rules of procedure. To back up his argument he cited a number of cases including the case of **Laureno Mseya vs. Republic**, Criminal Appl. No. 4/06 of 2016.

After careful considering the rival submissions of the parties, I find the issue to be determined is whether the applicant has adduced sufficient cause for the delay.

It is an established principle that the decision to grant or not to grant an application for extension of time depends upon a party seeking for an order to adduce sufficient cause for not doing what ought to have been done within the prescribed time. This was also the position in the case of **Laureno Mseya** (supra).

In the present application it is on record that the impugned award was delivered on 08/04/2019 and the applicant filed the present application on 30/07/2019. Filing of revision application in this Court is governed by section 91 of the Act, where a party aggrieved by the CMA award is required to file his/her application within six weeks of the date of the award. Therefore, the applicant was supposed to file his intended revision application by 19/05/2019. However, the record reveals the applicant delayed for almost 72 days to file his application.

In his affidavit and submission before this Court the applicant alleged that the reason for his delay is because he was engaged in

dialogue/negotiation with the respondent. Now the question is does that amount to sufficient reason? The answer is no. I fully agree with Mr. Mwabulambo's submission that, the respondent being a government institution its communication is through letters. However in the present application the applicant did not tender any document to prove that indeed was negotiating with the respondent. I also find no basis of the applicant's submission that, the respondent's office promised to reinstate him, as right submitted by Mr. Mwabulambo that the Arbitrator's award was on payment of compensation. Thus the alleged offer of reinstatement does not make any sense at all.

More so it has been argued in a number of cases that, engaging in negotiation is not a sufficient reason for the grant of the application for extension of time. This is also the position in the case of **Leons Barongo vs. Sayona Drinks Ltd** Lab. Div. Dsm. Rev. No. 182 of 2012 where it was held that:-

> "Though the court can grant an extension, the applicant is required to adduce sufficient grounds for delay. I believe the reason that the applicant was negotiating with the respondent does not amount to sufficient

ground for delay, more so, because the respondents have denied to be engaged in such negotiations".

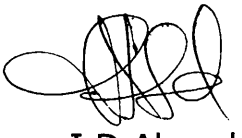
I have also considered the applicant's submission that an appeal or revision is a constitution right. In this aspect I fully agree with the respondent's Counsel submission that in pursuing the right to be heard the applicant was supposed to adhere to the mandatory stipulated procedures. It is my view that if the applicant wished to be availed with the right to be heard he should have filed his application within 42 days required by the law. Failure to file revision on time he was supposed to account for each day of his delay of which he failed to do so. It has been emphasized in a number of cases that delay of even a single day has to be accounted for, as was decided the in case of **Bushiri Hassan vs. Latifa Lukio, Mashayo**, Civ. Appl. No. 03 of 2007.

On the basis of the foregoing discussion, it is my view that the applicant has failed to account for the delay of almost 3 months. I find the reason that he was engaging in oral dialogue with the respondent, does not constitute sufficient ground to grant the application at hand. My decision is governed by the principle that

litigation has to come to an end so as to allow parties to engage in other productive activities and not attending Court proceedings unnecessarily.

In the result as the applicant failed to adduce sufficient reasons for his delay, I find the present application has no merit. Thus, it is dismissed accordingly.

It is so ordered.



I.D.Aboud

**JUDGE**

14/08/2020