

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM

MISCELLANEOUS LABOUR APPLICATION NO. 664 OF 2019

BETWEEN

NATIONAL INSTITUTE OF TRANSPORT.....APPLICANT

VERSUS

JOEL NYAUSA MWAINYEKULE.....RESPONDENT

RULING

Date of Last Order: 10/08/2020

Date of Ruling: 28/08/2020

Aboud, J.

This is an application for extension of time to file revision application against the decision of the Commission for Mediation and Arbitration (The CMA) in its award in Labour Dispute No. CMA/DSM/KIN/R. 373/15/998 by Makanyaga, A. A, Arbitrator. The application was made under the provision of Rule 24 (1), 24 (2) (a), (b), (c), (d), (e), (f), 24 (3) (a), (b), (c), (d) and Rule 56 (1) of the Labour Court Rules, 2007 GN. No. 106 of 2007 (herein the Rules). The application was opposed by Mr Anthony Yohani Kiyanga, Learned Counsel.

This application emanates from the Court's order dated 03/05/2019 in Revision No. 162 of 2018. The said application was struck out for being incompetent with leave to re-file within ten (10) days. The deadline for the applicants to file proper application was on 13/05/2019. The applicant failed to file the application within the given time as granted for the reason which will be advanced in this application. The applicant therefore, filed the present application for extension of time.

The matter was ordered to proceed by way of written submission where both parties complied with the Court order. I commend them.

Arguing in support of the application, the applicant submitted that, they failed to file proper application on time due to the reason that on 13/05/2019 when he was in the process of filing it he received directives by the Parent Ministry, the Ministry of Works, Transport and Communication that, all cases involving the government have to be represented by the Attorney General in collaboration with the office of the Solicitor General. Thereafter the office of the Attorney General directed the matter be handled with

them; hence the applicant was crippled to proceed in filing the application and left it in the hands of the responsible office.

He further stated that, he was in dilemma whether to file the application or to let it be done by the Solicitor General's Office as per the higher authority's directives. He also made several follow up by letters asking the way forward but in vain. The applicant argued that, he acted with reasonable promptness as was ready to field the application within time but he could not go further due to the governing procedure in the government, which is associated with may flaws that needed to be addressed by the proper authority for the better administration of the government affairs. He cited several authorities to support his case.

He thus submits that, the delay in filling application for revision was not occasioned by negligence on the party of the applicant but was due to the reasons as submitted above and they believe to have good chances of success. Applicant finally prayed the application to be allowed.

In response, the respondent strongly resisted the application. He argued that, the applicant delay of almost seven months after receiving the directive from the Ministry was not accounted for as

required in law. Respondent submitted that, failure to account for each day is a good cause for dismissal of this application as was decided in the case of **Elfazi Nyatega and three others Vs. Caspian Mining Ltd.**, Civil Application No. 44/08 of 2017. Also the case of **Director General - PCCB Vs. Frank Ipyana**, Revision No. 23 of 2019, where this Court held that, negligence on a party's side is not a sufficient cause for failure to comply with the law, and that applicant office is among those expected to show a high degree of care and laxity has no place in its operations.

The respondent finally prayed that application be dismissed for want of merit.

In rejoinder applicant reiterated his submission in chief and added that, was outside of the powers to proceed with the matter without different directive it being a public institution. And that the applicant took all necessary steps to write several letters to the Ministry without success. He said the process involved there government offices with different systems which causes the delays to file proper application. Thus, the delay was not perpetuated by any negligence on the part of the applicant.

I have carefully considered parties submissions and the Court record, so the point of determination here is whether the applicant has adduced sufficient reason for the delay to file the intended application.

From the applicant's submission and the affidavit in support of the application, it is very clear that the applicant filed the revision on time but was found to be incompetent before the Court. The applicant failed to re-file the same after was struck out by this Court and granted leave to do so. I fully agree that for this application to be considered positively the applicant has to convince the Court that, the delay was caused by sufficient reasons according to the established principle. And I took into account the position that, application for extension of time is within the discretion of the Court to grant or refuse it as was decided in the case **of Benedict Mimello Vs. Bank of Tanzania**, Civil Application No. 12 of 2002, where the Court of Appeal held that:-

"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been

sufficiently established that the delay was with sufficient cause”.

As discussed above the main reason for the delay to file the application within ten granted days was the Ministry’s directives that the government has decided all government pending Court cases should be handled by the office of the Attorney General and Solicitor General including those of the Public Institution like the applicant at hand. I asked myself is that sufficient reason to grant this application.

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 Mooned 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 record it is revealed that the applicant had ten days file the proper application and the due date was on 13/05/2019. In my view the applicant had no any other choice when he received the directives from the higher authority on 13/05/2019 stopping them to handle this matter and order to let the Solicitor General take it up. Under the circumstance of the case I fully agree the applicant had no further control of the matter. As he rightly submitted the way government business is conducted there are number of systems involved, like in this matter more than two government offices are involved, that is the applicant, the Ministry responsible, the Attorney General and Solicitor General.

According to the applicant’s affidavit they received the instruction which led to this situation on the last day of filing the application, so it was not possible to ignore such directives. In my view the applicant did not conduct the matter negligibly. He had prepared to file the application on time but was precluded by the directives from the higher authority. As he rightly submitted that was something new to him and had to obey the directives while making

follow ups by letters to be told the way forward as indicated in the affidavit in support to the application. The long time spent to file the application is explainable and amount to sufficient reason for the delay application.

I also took cognizance of the established principle that, government offices are expected to show higher degree of care and laxity has no place in its operations, but what would have been done by the applicant other than reminding or asking the proper authority to hasten the process of filing this application within short time. I am saying so because after 13/05/2019, the applicant was out of time, so even the Attorney General or Solicitor General was supposed to file the application of extension of time to ask for the Court's leave to file proper revision application.

Therefore, I am of the considered view that this is one of the cases which the Court will not let it rest because of the bureaucratic systems in the government rather has to be allowed to be disposed on merit so long as the respondent will not suffer any prejudice. However, this should not be taken as a trend in the Government Institutions Systems, but they have to be keen enough that Courts orders have to obey to the letters. And if at all there is a need to

review or reform their system they have to do so and hasten the process to avoid any delays in the delivery of justice.

In the result the application has merit and is accordingly allowed. Applicant is to file the intended revision on or before 10/09/2020.

It is ordered.

A handwritten signature in black ink, appearing to be 'I.D. Aboud', written in a cursive style.

I.D. Aboud

JUDGE

28/08/2020