

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT MOROGORO

MISCELLANEOUS APPLICATION NO. 30 OF 2019

BETWEEN

KILOMBERO SUGAR CO. LIMITED APPLICANT

VERSUS

IBRAHIM MVUNGI RESPONDENT

RULING

Date of Last Order: 08/06/2020

Date of Ruling: 19/06/2020

S.A.N. Wambura, J.

This ruling is in respect of an application brought by the applicant **KILOMBERO SUGAR CO. LIMITED** under Rules 24(1), (2)(a)(b)(c)(d)(e)(f), (3)(a)(b)(c)(d), 55(1) and 56(1) of the Labour Court Rules, GN No. 106 of 2007 praying for the following Orders:-

- 1. That, the applicant may be heard on the application for an order of extension of time to file an application for revision out of time.*
- 2. Any other relief(s) that this Honourable Court may deem fit and just to grant.*

It was supported by the affidavit of Danstan Kaijage who is their Advocate.

The respondent **IBRAHIM MVUNGI** filed a counter affidavit challenging the application. He was represented by Mr. Kitua Kinja Advocate

At the hearing of the application Mr. Kaijage prayed to adopt the affidavit in support of the application. That at paragraph 4 they have narrated the matter of facts and so pray that the same be granted as prayed. That reasons for the same are valid and the award is tainted with irregularities so the intended revision has overwhelming chances of success. This is because, though there were valid reasons for termination, they awarded the respondent an amount above the amount provided for by the law, that is fifteen (15) months compensation instead of twelve (12) months compensation.

He thus prayed for the application to be granted.

In response Mr. Kinja submitted that for the Court to grant such an application, sufficient grounds have to be adduced as well as every day of the delay ought to be explained on failing to file the application within time. That the award was delivered on 04/05/2016. So the applicant had to

file the application for revision timely. According to the applicant's affidavit para 4(2) in which the application is based, the ruling delivered on 19/12/2019 has not been attached to prove that the applicant was granted leave to file the same out of time.

The Deputy Registrar delivered his ruling on 20/10/2017. The award had to be executed within fourteen (14) days as it was proper. They also had to have been paid as Ordered by now.

He thus prayed for the dismissal of the application.

Mr. Kaijage had nothing to state in rejoinder.

Now there is no dispute that the Court can under the provisions of Rule 56(1) of the Labour Court Rules, 2007 grant such an extension but only where sufficient grounds are adduced by the applicant. Rule 56(1) of the Labour Court Rules, 2007 provides thus:-

*"Rule 56(1) 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.**"*

[Emphasis is mine].

The issue for this Court to address itself on is whether or not the applicant has adduced sufficient cause to be granted the extension of time as prayed.

The applicants alleged that the grounds adduced in paragraph 4 of their affidavit are sufficient ones for the Court to grant the same.

Paragraph 4 of the applicant's affidavit provides that:-

"4:1 The applicant and the respondent were parties in RF/CMA/MOR/215/2015, the matter which was decided by the Commission for Mediation and Arbitration at Morogoro (Hon. Magreth Kiwara, Arbitrator) in favour of the respondent on 04th day of May, 2016, whereby the Arbitrator ordered the applicant to compensate the respondent by paying wages arrears and fifteen months' salaries compensation to the tune of fifty one million three hundred thirty one thousand eight hundred (Tshs. 51,331,800/=)."

"4:2 The applicant was aggrieved by the decision of the Commission for Mediation and Arbitration hence filed an application for Revision No. 44 of 2018 to the High Court

of the United Republic of Tanzania (Labour Division) at Morogoro in order to challenge the decision of the Commission for Mediation and Arbitration.”

It was further stated that the award is tainted with irregularities so the intended revision has overwhelming chances of success.

It has been submitted that the award of CMA was delivered in May, 2016 (Annexure “KSCL 1”). An application for revision of the same was filed in 2018. It is unknown as to what happened to the said application. What we have on record is the ruling of the Deputy Registrar in Execution No. 21/2016 (Annexure “KSCL 2”) delivered on 20/10/2017, which is the basis of this application.

The respondent has alleged that the applicants has not complied to the Orders issued therein todate.

This actually means that the applicant has refused to comply with the said Order pending the application for revision to be filed and determined while there is no proof that the conditions for staying the execution of the same has been complied with. This is a very dangerous situation for a party to deliberately not comply to the Court’s Order. A mere application

for extension of time cannot be a reason for non-compliance to the said Order.

Now as for the reasons stated in paragraph 4 of the applicant's affidavit, I can briefly say they do not warrant an extension of time to the applicants. This is because, it is mere narration of the occurrences of this matter.

It has been held in the cases of **Attorney General v Tanzania Ports Authority & Another**, Civil Application No. 87 of 2016 that in granting applications of this nature the Court has to look into the length of the delay. It states:-

"Good cause includes whether the application has been brought promptly, in absence of any invalid explanation for the delay and negligence on the part of the applicant."

[Emphasis is mine].

The applicant has taken a long time to file this matter. This is because the Order of the Deputy Registrar was issued in October, 2017 and this application has been filed in December, 2019.

Again in the case **Oswald Masatu Mwizarubi v. Tanzania Fish Processors Ltd**, Civil Application No. 13 of 2010 it was held that:-

"What constitutes good cause cannot be laid down by any hard and fast rules. The term good cause is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion"

No reason has been adduced for the delay while the applicant is supposed to account for the delay of each day as it has been held in the cases of **Sebastian Ndaula Vs. Grace Rwamafa**, Civil Application No. 4 of 2014 and **Bushiri Hassan V. Latifa Lukio Mashayo**, Civil Application No. 3/2007.

The applicant has also alleged that the Deputy Registrar's Order is tainted with irregularities. 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 as to the irregularities alleged as it has 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. This has not been done in both the affidavit and oral submissions of the applicant.

In the circumstances, I find no merit in the application filed and I hereby dismiss the same.

S.A.N. Wambura
JUDGE
19/06/2020