

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT MOROGORO

MISCELLANEOUS APPLICATION NO. 02 OF 2020

BETWEEN

KILOMBERO SUGAR CO. LIMITED APPLICANT

VERSUS

MENIDORA HAULE RESPONDENT

RULING

Date of Last Order: 11/06/2020

Date of Ruling: 19/06/2020

S.A.N. Wambura, J.

The applicant **KILOMBERO SUGAR CO. LIMITED**, filed this application seeking the Court's order for extension of time to file a revision of the award issued by Commission for Mediation and Arbitration [herein after to be referred to as CMA] at Morogoro on 31st July, 2017 in Labour Dispute No. RF/CMA/MOR/331/2015.

The application is supported by a sworn affidavit of Danstan Kaijage the applicant's Advocate.

Opposing the application the respondent **MENIDORA HAULE** filed a sworn counter affidavit.

At the hearing the applicant was represented by Mr. Danstan Kaijage while the respondent was represented by Mr. Kitua Kinja Advocate.

Mr. Danstan Kaijage prayed to adopt his affidavit to form part of his submissions. That the grant of extension of time is a discretionary power of the Court. It can be granted where there are sufficient grounds to exercise its power.

He further submitted that the applicant being dissatisfied with CMA's award filed the application for Revision No. 43 of 2017, which was struck out for being filed contrary to Rule 24(2) of GN No. 106 of 2007. It was followed by Misc. Application No. 10 of 2018 for extension of time which came for hearing on 19th December, 2019. It was again struck out for non-compliance with Rule 24(3) (a) (b) (c) and (d) of GN No. 106 of 2007, as provided for in paragraph 4 with its subparagraphs of his affidavit.

He further argued that the CMA's award was tainted with illegality therefore extension of time was the best way of resolving it as indicated in paragraph 5.1 of the said affidavit.

He thus prayed for the application to be granted so that the applicant can be heard on the revision as there were valid reasons for the respondent's termination.

In response Mr. Kinja submitted that, the applicant has to state on the time of delay and account for each day of the delay. To cement his submissions he cited the case of **Wambele Mtumwa Shahame vs. Mohamed Hamis**, Civil Appl. No. 138 of 2016 (CA) (unreported). He stated that the applicant has not accounted for each day of the delay, therefore the application cannot stand.

Mr. Kinja further argued that in paragraph 5:2 of the applicant's affidavit, there is an allegation that an earlier application had been struck out, yet there is no proof to that effect, considering that the award was delivered on 31/10/2017 and this matter was filed in January, 2020.

He argued that the applicant has failed to comply with the conditions laid down under Rule 56(1) of GN No. 106 of 2007, thus prayed for the application to be dismissed.

In rejoinder the applicant reiterated his submissions in chief.

The main issue to be determined is whether the applicant has adduced good cause to be granted an extension of time as it is required by the law.

It is an established principle of the law that good cause has to be adduced as a pre-condition for the Court to grant extension of time. Rule 56(1) of GN No. 106 of 2007 provides as herein quoted:-

*"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].

From the above provision there is no doubt that this Court has power to grant extension of time where a good cause has been shown.

In the case of **Benedict Mumello vs Bank of Tanzania**, Civil Appeal No. 12 of 2002, it was held that extension of time is the Court's discretion and it is granted where it has been sufficiently established that the delay was with sufficient cause.

What constitutes sufficient cause or reasons has been demonstrated by Mandia, JA (as he then) was in the case of **John Moses & 3 Others**

Vs. The Republic, Criminal Appeal No. 145 of 2006, following the definition in the case of **Elias Msonde Vs. Republic**, Criminal Appeal No. 93 of 2005, where it was 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 of 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."

The reasons for the delay in respect of the present application are found in paragraphs 4 and 5 of the applicant's affidavit. That the applicant was diligent by filing applications which have been technically struck out and the CMA's award was tainted with irregularities.

I have gone through, the applicant's affidavit in support of the application. I have noted that, CMA's award was delivered on 31st July, 2017 and this application has been filed on 2nd January, 2020. It is over two years and no reason has been adduced for the delay.

So the applicant has not accounted for the delay of each day as was held in the case of **Bushiri Hassan V. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007.

But again the applicant did not attach any Order to support his argument that the earlier application was struck out on 17th December, 2019 for ease of reference by this Court before excising its power of granting extension of time. In fact this goes to indicate the negligence of the applicant in filing his application.

In respect of the irregularities, the applicant's affidavit does not disclose specifically the irregularities of the CMA's award. In the cases **Zuberi Nassor Mohamed v. Mkurugenzi Mkuu Shirika la Bandari Zanzibar**, Civil Application No. 93/15 of 2015 and in the case of **Lyamuya Construction Co. Ltd** as cited in the case of **Omary Ally Nyamalege & 2 Others v. Mwanza Engineering Works**, Civil Application No. 94/08 of 2017 (unreported) the Court emphasized that:-

"... Such point of law must be of sufficient importance and I would add that it must be apparent on the face of record, such as the question of jurisdiction not that one

would be discovered by long drawn argument or process."

I thus find no justifiable reason advanced by the applicant to constitute good cause to warrant this court to exercise its discretion to extend the time within which to file an application for revision out of time.

Having said so, the application is accordingly dismissed for want of merit.

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