

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT MOROGORO

MISCELLANEOUS APPLICATION NO. 31 OF 2019

BETWEEN

KILOMBERO SUGAR COMPANY LIMITED APPLICANT

VERSUS

PETER ROBERT MSAGARA RESPONDENT

RULING

Date of Last Order: 10/06/2020

Date of Ruling: 19/06/2020

S.A.N. Wambura, J.

The applicant **KILOMBERO SUGAR COMPANY LIMITED**, filed this application seeking the Court's order for extension of time to file a revision of the award issued by the Commission for Mediation and Arbitration [herein after to be referred to as CMA] at Morogoro on 30th November, 2018 in Labour Dispute No. RF/ CMA/MOR/15/2017.

The application is supported by a sworn affidavit of **Danstan Kaijage** the applicant's Advocate. Opposing the application the respondent **PETER ROBERT MSAGARA** filed his 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. He submitted 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 cited the case of **Transport Equipment vs. Valahmbia and Attorney General** [1993] TLR 91, to that effect.

That the applicant being dissatisfied with CMA's award filed an application for Revision No. 4 of 2019 which came for hearing on 19th December, 2019. It was struck out for non-compliance with Rule 24 of GN No. 106 of 2007, as stated in paragraph 4 with its subparagraph of his affidavit.

He further argued that CMA's award was tainted with illegality therefore extension of time is the best way of resolving it, as indicated in paragraph 5 of the said affidavit.

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

Opposing the application Mr. Kinja averred that, for the Court to exercise its power of granting extension of time, sufficient cause has to be adduced for the delay. He referred this Court to the case of **General Guards and Office Cleaner Vs. Chacha Masuri & 27 Others**, Misc. Appl. No. 18/2010 LCCD 2011/2 at page 104 where the Court stressed the same. That the Court has to act judiciously, since this power is well provided under Rule 56(1) of GN No. 106 of 2007.

Mr. Kinja argued that paragraph 4 of the applicant's affidavit does not adduce good causes for being granted such leave. He cited the case of **Jonathan Sikay Vs. Damiano Richard**, Misc. Land Appl. No. 216/2014, where it was held that the Court has to consider the reasons for the delay and whether the appeal has a likelihood of success.

That in this matter the applicant has not accounted for the delay of each day considering that the award of CMA was delivered on 30th November, 2018 and this application has been filed on 30th December, 2019. That it is over a year and no reason has been adduced for the delay.

That though the applicant states that there was an application which was struck out as it was supported by a defective affidavit, the said Order has not been herein attached.

In respect of the defective application, Mr. Kinja argued that the applicant had to comply with Rule 24 of GN No. 106 of 2007. In the circumstances the application fails stand for failing to comply with the law.

He thus prayed for the application to be dismissed.

In rejoinder, Mr. Kaijage retaliated his submissions in chief. But urged, that the case of **Jonathan Sikay** (supra) is distinguishable from this matter as it was an application for leave. As for the sufficient reasons, the respondents concedes there are applications which were struck out. So the applicant was acting diligently seeking to file an application for revision.

For the interest of justice they prayed for the application to be allowed so that the matter can be decided on merit.

Now the main issue is whether the applicant has adduced sufficient cause to be granted leave to file the intended revision application out of the prescribed time.

As it was cited in the Notice of Application and Chamber Summons, the applicant's prayer is made under 56(1) of the Labour Court Rules, GN 106 of 2007. This is the provision of law that grants this Court power to

extend time upon application on a good cause. Rule 56(1) of GN 106 of 2004 provides as follows:-

*“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].

It is therefore expected that the applicant will show that he was prevented by sufficient or reasonable or good cause and the delay was not caused or contributed by his act or omission as it was held in the case of **Tanga Cement Company Ltd v. Jumanne D. Masangwa & Another**, Civil Application No. 6 of 2001, CAT at Tanga.

In the present matter, the applicant has submitted that the delay resulted from the striking out Revision No. 4/2019 for being defective. They also raised the issues of illegality. The respondent was of the view that the applicant failed to comply with law.

I have read the application and the supporting affidavit. The record shows that, CMA's award was delivered on 30th November, 2018 and this application has been filed on 30th December, 2019. It is over a year and no

reason has been adduced for the delay. The applicant did not attach any Order in support his argument that the application was struck out on 19th December 2019, for ease of reference by this Court before excising its power of granting extension of time.

In respect of the alleged illegality, the applicant's affidavit does not suggest 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 **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."

[Emphasis is mine].

I am thus of the view that the alleged illegality is not clearly apparent on the face of the applicants affidavit.

The applicant has also failed to account for the delay of each day as it was held in the case of **Daudi Haga Vs. Jenitha Abdan Machanju**, Civil Reference No. 19 of 2006.

Therefore I find that the applicant has not demonstrated any good cause that would entitle him extension of time.

In the result this application fails and is accordingly dismissed for want of merit.

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