

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT MOROGORO

MISCELLANEOUS APPLICATION NO. 27 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 is 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 submitted that this is an application for extension of time brought by the applicant. It is supported by his affidavit which he prayed to adopt to form part of his submissions. That Revision No. 23/2018 was struck out for being supported by a defective affidavit. That immediately thereafter the applicant filed the present application. That they are intending to challenge the ruling of the Deputy Registrar delivered in Execution No. 21/2016.

That paragraph 4 of the affidavit contains grounds in which this application is made. Paragraph 5 contains the legal issues which he invited the Court to look at.

That Rule 56(1) of the Labour Court Rules, 2007 grants this Court mandate to extend time to the applicant upon good grounds being adduced.

Mr. Kaijage thus submitted that paragraph 4 of the affidavit contains good grounds for the Court to grant this application as held in the case of **Transport Equipment Vs. Valahmbia and Attorney General** [1993] TLR 91 where the Court stated that the grant of extension of time is at the discretion of the Court.

He thus prayed that the application be granted.

In response Mr. Kinja argued that Rule 56(1) of the Labour Court Rules, 2007 has stated that the Court can extend time where there are valid reasons. That CMA's award was delivered on 04/05/2016. The application for Revision No. 10/2016 was struck out for being defective with leave to refile the same.

The applicants filed Rev. No. 12/2017 where the affidavit was defective. They thus prayed to withdraw the same with leave to refile. They filed Rev. No. 44/2018 the said matter was struck out as the affidavit was again defective.

Failing to file a proper application they were not granted a further extension. However the applicant has not attached the rulings of this Court though they stated that there is a ruling which was issued by this Court.

Mr. Kinja further submitted that justice delayed is justice denied. That the applicant has filed three (3) defective applications thus delaying the matter. That they do not have a reasonable cause to convince the Court to file an application for revision.

He thus prayed that the application is dismissed and the applicant be left to enjoy the award issued by CMA.

In rejoinder Mr. Kaijage submitted that the applicant is challenging the ruling of the Deputy Registrar and not CMA's award. That they have not filed the same thrice as stated.

He thus pray for the application to be allowed.

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

The question is whether or not the applicant has adduced sufficient causes to be granted the extension of time as prayed.

The applicant alleges 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:-

"Paragraph 4:1 The applicant and the respondent were involved 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."

The applicant has alleged in paragraph 4:2 that an earlier application for revision was struck out by this Court as per Annexure "KSCL 2".

However as stated by the respondents the said ruling has not been attached. This means there is no proof that the applicant filed an application for revision in time but the same was struck out.

Considering that the award to be reviewed was delivered in May, 2016, it means there was an inordinate delay in filing this matter up to the 30th of December, 2019 contrary to what was held in the case of **Attorney General v Tanzania Ports Authority & Another**, Civil Application No. 87 of 2016.

As if that is not enough the applicant has again not accounted for each day of the delay as held in the case of **Bushiri Hassan V. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007

But again even the alleged irregularities in the award which would have been said to be a good ground for granting extension of time as was held in the case of **Arunaben Chaggan Mistry Vs. Naushad Mohamed Hussien & 3 Others**, Civil Appl. No. 6 of 2016 has not been explained as it was held in the case of **Lyamuya Construction Limited Vs. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010.

In the circumstances, I dismiss the application for want of merit.

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