

**IN THE HIGH COURT OF TANZANIA  
LABOUR DIVISION**

**AT DAR ES SALAAM**

**MISCELLANEOUS APPLICATION NO. 754 OF 2019**

**MVANO MANDAWA.....APPLICANT**

**VERSUS**

**DAWASA.....RESPONDENT**

**RULING**

*Date of last Order: 13/11/2019*

*Date of Ruling: 18/11/2020*

**Z.G.Muruke, J.**

Applicant Mvano Mandawa was employed by respondent on November, 2009 as human resource officer. He served at different positions and place within Dar es salaam, last position he held was Human Resource Manager station at head officer in February, 2015. Applicant was terminated on 27<sup>th</sup> August, 2016 through letter received on 30<sup>th</sup> August, 2016. Being dissatisfied with termination, referred dispute at CMA in which decision was against him, thus filed revision application number 564/2018 that was struck out on 16<sup>th</sup> December, 2019. Copies of drawn order were served to him on 19<sup>th</sup> December, 2019 being after three days, thus filed present application on 30<sup>th</sup> December, 2019 for extension of time within which to file revision.

Respondent filed counter affidavit sworn by Florence Saivoije Yamat her principal legal officer to object the prayers sought.

On the date set for hearing applicant was represented by Evans Nzowa while Amos Enock represented respondent. By consent hearing was by way of written submission. Both counsels submitted along lines their affidavits.

In short applicant counsel submitted that applicant delay to file his revision was not contributed by dilatory conduct. Applicant filed revision number 564 of 2018 within time but was struck out for being incompetent following change of name of the respondent from DAWASCO to DAWASA. This situation constitute as sufficient reason or good cause to warrant court to grant extension sought referring this court to the case of **Barclays Bank (T) Ltd Vs. Kombo Ally Singano (2013) LCCD 165**, where it was held that;

In the circumstance of this case I am of the view that the applicant has adduced sufficient reason for the delay to file application for revision, to with that the he filed the revision in time but it was struck out for being incompetent before the court. The applicant has shown diligence in his part to pursue the matter.

Mr. Evans R. Nzowa prayed for application to be granted on the reasons and case law submitted. Respondent counsel on the other hand submitted that, applicant filed his application on 21<sup>st</sup> September, 2018, DAWASCO was already a defunct body through GN 414 published on 11<sup>th</sup> August, 2018. Contrary to applicant counsel submission, the delay is not technical as claimed to be, but rather an actual delay actuated by negligence on the part of the applicant, because when applicant filed his first revision the application could not stand at it was against defunct body.

Having heard both parties in brief, I feel it is necessary to reiterate, as a matter of general principle that whether to grant or refuse an application for extension of time like the one at hand, is entirely in the discretion of the Court.

The Law, Rule 56(1) of the Labour Court Rules, GN No. 106/2007, provides that:-

**"The court may, extend or abridge any period prescribed by these rules on application and good cause shown, unless the court is precluded from doing so by any written law."**

From applicants own affidavit at paragraph 3.8 he said, application was struck out on 16<sup>th</sup> December, 2019. He received copy of drawn order on 19<sup>th</sup> December, 2019. Present application was filed on 30<sup>th</sup> December, 2019. From 19<sup>th</sup> December – 30 December is period of 11 days. It took applicant to file present application 11 days to change the name from DAWASCO to DAWASA. There is no explanation given in the affidavit counting everyday passed from 16<sup>th</sup> December to 30<sup>th</sup> December. In extension of time, each day passed beyond prescribed time court and it has to be counted for.

On failure to account for each day of delay was discussed in the case of **Interchick Company Limited Vs. Mwaitende Ahobokile Civil Application No. 218 of 2016** (unreported) where it was held that

**"Delay of even a single day, has to be accounted for, otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."**

In the case of Blue line Enterprises Ltd Vs. East African Development Bank Misc. Civil Cause No. 135/1995 where Katiti, J held that:-

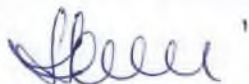
**"It is trite law that extension of time must be for sufficient cause and that extension of time cannot be claimed as of right, that the power to grant this concession is discretionary, which discretion is to be exercised judicially. Upon sufficient cause being shown which has to be objectively assessed by court."**

Extension of time cannot be granted to an applicant who has failed to account for all days that he has delayed same was discussed in the case of **Vodacom Foundation Vs. Commissioner General (TRA)** Civil Application No.107/2017 (unreported) in which it was held that,

**"..... after the withdraw, it took the applicant nine clear days to lodge the present application 02/03/2017. These nine days have also not been accounted for"**

**..... the applicant, through her advocates has just made a general statement to the effect that she was busy seeking the certification in the Tribunal. With due respect to the Learned Counsel for the applicant, I see no sufficient explanation regarding delay in this period.**

From the affidavit sworn in support of the application, there is no sufficient cause shown for this court to extend time, Accordingly application for extension of time is dismissed for lack of sufficient cause.



Z.G.Muruke

**JUDGE**

18/11/2020

Ruling delivered in the absence of all the parties.



Z.G.Muruke

**JUDGE**

18/11/2020