

**IN THE HIGH COURT OF TANZANIA  
LABOUR DIVISION  
AT DAR ES SALAAM**

**MISCELLANEOUS LABOUR APPLICATION NO. 523 OF 2019**

**BETWEEN**

**MSHINDO MOHAMED & 10 OTHERS..... APPLICANTS**

**VERSUS**

**IMPALA TERMINALS TANZANIA LTD.....RESPONDENT**

**RULING**

Date of Last Order: 06/08/2020

Date of Judgement: 23/10/2020

**Aboud, J.**

The applicants who are eleven (11) in number filed this application for extension of time under the representative suit by the 1<sup>st</sup> Applicant Mr. Mshindo Mohamed.

The application at hand emanates from the Court order of 25<sup>th</sup> June, 2019 where Hon. Wambura, J. granted the applicants leave to file representative suit, to wit the intended Revision Application against the award of the Commission for Mediation and Arbitration (CMA) in Labour Dispute CMA/DSM/TEM/343/2015 of 30/06/2017 by Amos, H. Arbitrator.

For a better appreciation of the issue of contention, it is necessary to explore the factual setting giving rise to the application which may briefly be recapitulated as follows.

At the CMA applicants on 01/11/2015 and 12/11/2015 unsuccessfully referred their complaint against the respondent for unfair termination of their employment. Dissatisfied the applicants preferred a Revision Application No. 320 of 2017 which is desired to be impugned.

The respondent successfully challenged the competency of the revision application by preliminary objection in respect of its competency. On 14<sup>th</sup> December, 2017 the Court upheld the preliminary objection and accordingly struck it out with leave to file application for representative suit within 30 days, so that they can file proper revision application.

On 19/12/2018 applicants filed their application for representative suit as ordered by the Court which was contested by the respondent by preliminary objection filed on 18/01/2019. However the preliminary objection was withdrawn by the respondent on 25/06/2019 and the applicants were granted leave to file

application representative suit. Given the fact that they were not within the prescribed time to file the revision application to remedy the situation, they preferred this application on 30/08/2019, which was filled after 66 days from the order of the Court of 25/06/2019.

In the applicants' supporting affidavit, they raised only one issue to be determined by the Court that:-

*'Whether the applicants had demonstrated sufficient cause for the delay in preferring the application for revision.'*

At the hearing before the Court which was by written submission the applicants were represented by Mr. Michael Mgombozi, from the Tanzania Union of Private Security Employee (TUPSE), whereas the respondent was represented by Mr. Abdallah Kazungu, Learned Advocate.

The representative of the applicant commenced his submission by fully adopting the contents of the supporting affidavit. In his submission, Mr. Michael Mgombozi submitted that the applicants filed their revision application on time on 21/07/2017 which was later struck at for being incompetent. It was submitted that, the main reason for the applicants delay to file proper revision application was

legal procedures in case where there are more than one applicant as in the present case of the applicants who are eleven in number. It is also submitted that, the applicants had to follow procedures to file their revision application by representative suit as required by the labour laws. He argued that, they did that in Miscellaneous Application No. 701 of 2018, thus they were delayed by technical grounds which is a good cause for the Court to condone or abridge the prescribed time. Applicant's representative further referred the Court to a number of cases as authorities to support the reason for the delay.

It was submitted that technical delay as in this case is a sufficient ground for granting extension of time where the first application was filed on time as was decided in **Christopher Gasper and 5 Others Vs. Tanzania Port Authority (TPA)**, Misc. Lab. Appl. No. 126 of 2015. Applicant representative further submitted that since the applicants promptly took action after their revision application that was filed on time was struck out for lack of representative suit, such act should be considered as demonstration of sufficient cause for the delay to file the intended application.

Further on the foregoing, the applicants' representative argued that, the intended application for revision is geared to challenge the impugned award on the basis that it has apparent errors on the face of its records amounting to serious allegations that Arbitrator's award was delivered without jurisdiction, hence warranting its revision as intended. In this aspect Mr. Michael Mgombozi, for the applicants also cited a chain of cases to support his argument.

It was submitted that the applicants are seeking leave to file the intended application so that they can have opportunity to be heard about their claims against the impugned award and, that the right to be heard is a fundamental principle of natural justice of which failure to adhere to is an error that goes to the root of the matter.

Thus, the applicants' representative concluded by praying the application be allowed in the interest of justice as there is apparent errors in the records of the CMA.

Resisting the application Mr. Kazungu adopted the respondents counter affidavit and made submission which based on the contentious issue at hand that; whether the applicants have

demonstrated sufficient cause or good caused for their application at hand to be granted.

Mr. Kazungu, Learned Advocate for the respondent submitted that applicants failed to show the good reasons for the delays to file the intended application. He further submitted that, what has been submitted by the applicants is merely good to be consumed for academic purposes but they are not legal grounds to support this application. He argued that, what has been demonstrated by the applicants does not justify their delay to file the intended application immediately after they were granted leave to file representative suit for the revision application on 25/06/2019. He contended that, the applicants decided to sleep and relaxed for more than sixty six (66) days from the given order of the Court without taking any action, which shows negligence on the part of them and, is not the good cause for extension of time.

It was also submitted that, the case referred by the applicants are distinguishable to this matter because applicants failed to demonstrate which technicalities delayed them to file the intended revision application. He further argued that no vivid irregularities in the award which were reflected in the applicant's submission as well

as affidavit to justify the grant of the order sought. Mr. Kazungu submitted that, this Court is bound to its decision and records as it is provided under Rule 3 (1) (9) of the Labour Court Rules, 2007 (The Rules). So it has to consider the record of this matter up to when the applicants' application No. 701 of 2018 for representative suit in order to file the intended application was granted, which was on 25/06/2019 and explains as well as proves the applicants negligence in handling this matter. It was also submitted that, the Court has discretion to extent time but such powers need be exercised judiciously and in consideration of guidelines for the grant of extension of time as have been decided in many relevant judicial decisions.

Mr. Kazungu concluded by a prayer that the application be dismissed for want of merit because nothing has been demonstrated to warrants the grant of the leave sought.

I have considered and weighed the rival arguments from both parties. Let me start by reiterating that, is a general principle that whether to grant or refuse an application like this at hand is entirely in the discretion of the Court but, such discretion is judicial so it must be exercised according to the rules of reason and justice. In

unreported case of **Lyamuya Construction Company Ltd. Vs. Board of Registered Trustees of Young Women's' Christian Association of Tanzania**, Civil application No. 2 of 2010 the Court of Appeal gave the following guidelines for the grant of extension of time:-

- (A) the applicant must amount for all the period of delay.*
- (b) The delay should not be inordinate.*
- (c) The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.*
- (d) If the Court feels that there other sufficient reasons such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged'.*

Also in the case of **Mbuso Vs. Shah (1968)** EA the defunct Court of Appeal for Eastern Africa held thus:-

*'All relevant factors must be taken into account in deciding has to exercise the discretion to extend time. These factors include the length of the delay the reason for the delay, whether there is an arguable case*



*on the appeal and the degree of prejudice to the defendant if time is extended'.*

The Court of Appeal reiterated the above grounds for extension of time in the case of **Yusuf Same and Another Vs. Khadija Yusuf**, Civil Appeal No. 1 of 2002 (unreported), where was held that:-

*'It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it. This discretion however has to be exercised judicially and the overriding consideration is that there must be sufficient cause for so doing. What amounts to sufficient cause has not been defined? From decided cases a number of factors have to be taken into account, including whether or not the application has been brought promptly, the absence of any valid explanation for the delay; lack of diligence on the part of the applicant'.*

Having considered the above position of the law and what is stipulated under Rule 56 (1) of the Labor Court Rules, that, I quote:-

*'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.*

I will now deal with the issue before the Court that, whether the applicants have demonstrated sufficient cause or good reason to grant extension of time.

The reasons demonstrated by the applicants delay to file the intended application is reflected in the affidavit in support to the application as well as the applicant's submission. That, they delayed to do so because of technicalities, to wit legal procedures that they had to follow from the moment their timely filed revision application was struck out by the Court on 14/12/2017 and the subsequent application which followed thereafter. The applicants submitted that they were ignorant of those procedures, so explains their delay.

With due respect, I found the reason for the delay to have no merit. It is so clear from the guiding principles and as has been decided in a number of Courts decision that ignorance of law has never been considered to be a good cause for extension of time. It is expected for any diligent and prudent party to the suit who is ignorant or is not properly seized of the applicable procedure will

always be anxious to ask, so that can be appraised of it or otherwise will not be excused for sloppiness.

I am mindful of the Court's decision to the effect that there is a distinction between cases involving real or actual delays and those which involves technical delays in the sense that, the original revision application was lodged in time but the Court removed from registry because was incompetent and the fresh application has to be filed. Under such circumstance, normally the Court considers it as technical delay and may grant extension of time. However, is my view that it all depends on the circumstance of each case. In the case at hand it is true that the original Revision Application No. 320 of 2017 was filed on time, but was struck out for being incompetent. Applicant remedied the situation by filing another application where the Court granted the application for representative suit in consider to file the intended revision application as discussed.

However, the applicants delayed to file this application for more than sixty six (66) days from 25/6/2019 when were granted leave to file their revision by a representative suit to 30/8/2019 without any good reasons. There is no any explanation for such delays in the applicant's affidavit and submission as rightly submitted by the

respondent's counsel, Mr. Kasungu. The general statement that there were some legal technicalities within that time cannot suffice to be considered as sufficient reason or good cause to grant the leave sought. Applicants were expected to account for each day of the delay to satisfy the Court to do what is asked to do. I found the applicants were negligent in perusing their case because what legal technicalities would have made them late for such too long to file this application?

In my view this application would have been considered positively if was brought promptly from the date the Court granted the applicants leave to file their revision by representative suit on 25/06/2019, but they filed on 30/8/2019 instead. The applicants' action in dealing with this matter shows the delay was inordinate and they were not diligent enough in the prosecution of the intended revision application.

In the event I reject the applicant's reason of legal technicalities which allegedly involved in this matter.

On the alleged illegalities of the award of the CMA, that desired to the impugned. I am mindful of the decision in the case of

**Kashonda Amphibia vs. Amphibia Said**, Civil Application No. 48

of 2009, where was held:-

*'Bearing in mind that it is now established law in this country that where a point of law involves the illegality of the decision, that by itself constitutes sufficient reason to grant an extension of time.... even if the appellant's intended appeal is out of time, there is no other option but to grant extension of time'.*

Right away I say such factor also need to be considered with justiciable reason (s), that as well established by the Courts a judge need to be persuaded that the alleging illegality of the decision being challenged is clearly apparent on the face of record, a good example is the question of jurisdiction. Basing on this position, I am not convinced the alleged illegalities that the Arbitrator did not consider some of the applicants claims as they pleaded should be entertained. Is my view that such alleged illegalities by the applicants are not clearly apparent on the face of the CMA award because they need long drawn process to be deciphered from the impugned decision.

On the basis of the above discussion I am convinced that even if the applicants might have faced technical delays from the time their

first revision application was struck out, they acted negligently in perusing their case further. More so, I must say they failed to demonstrate the alleged illegality which would have entitled them to be granted extension of time. Applicants slept over their right to pursue this matter as they failed to account for each day of the delays from the moment were granted leave to proceed with the representative suit. Despite the fact that they were already out of time but if could have acted promptly from 25/06/2019, such effort would have been considered by the Court as a sufficient and reasonable cause to grant an extension of time to file the intended application. In other word applicants have not demonstrated any good cause that would entitle them extension of time.

In the result, the application is found to have no merit and is accordingly dismissed.



I.D. Aboud

**JUDGE**

23/10/2020