

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

MISCELLANEOUS LABOUR APPLICATION NO. 617 OF 2019

BETWEEN

CHENG XIN INVESTMENT CO. LTD.....APPLICANT

VERSUS

SWAHIBU OMARY ZAHABU.....RESPONDENT

RULING

Date of Last Order: 25/08/2020

Date of Ruling: 11/12/2020

About, J.

This an application for extension of time to file application for revision made under Rules 24 (1), 24 (2) (a) (b) (c) (d) (e) (f) and 24 (3) (a) (b) (c) (d) and Rule 55 (1) and Rule 56 (1) or (2) or (3) of the Labour Court Rules, GN No. 106 of 2007 (herein in Labour Court Rules). The applicant prayed for the following orders: -

- (i) That this Honourable Court be pleased to grant orders for extension of time within which applicant may apply for revision of both proceeding and award thereof in the original Labour Dispute No. CMA/DSM/KIN/R. 565/18/154 between the parties here in above named, where the

award was delivered by Hon. Mpapasingo, Arbitrator, on 08/02/2019.

- (ii) Any other reliefs and this Honourable Court deem proper to grant.

The respondent filed a counter affidavit challenging the application.

At the hearing the applicant was represented by Mr. Osca Cathbert, Learned Counsel where as Mr. Jackson Mhando, Personal Representative appeared for the respondent. The matter was argued by way of written submissions.

Arguing in support of the application Mr. Osca Cathbert submitted that the applicant's delay in filing application for revision has been caused by her application for setting aside the exparte award between the parties herein in the CMA which was eventually dismissed on 27/09/2019 for having no merit. He stated that the said application was lodged at CMA within a time as required by the law.

Mr. Osca Cathbert went on to submit that the delay was neither negligence nor in action of the applicant as the exparte award was delivered on 08/02/2019 and after being delivered he never rest, as

he filed another application for setting aside. To support his argument, he cited different cases including the cases of Court of Appeal, the case of **Mohamed Enterprises (T) Ltd. Vs. Mwalimu wa Simba and another**, Misc. Appl. No. 651 of 2015 (unreported).

Mr. Osca Cathbert further submitted that, apart from showing good cause for delay another factor to be considered is whether the granting of extension time will prejudice the respondent. In strengthening his argument, he cited the case of **Benedict Mumello Vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (unreported). He therefore prayed for the application to be granted.

Responding to the application Mr. Jackson Mhando submitted that the applicant's delay of filing the application for revision was done on his will as he decided to file the application for setting aside exparte award instead of application for revision in this court, hence acted contrary to section 91 (1) of Employment and Labour Relations Act. He stated that those cases cited by the applicant are distinguishable to this application, on the ground that the relevant cases involve technicalities while the matter at hand does not have technicalities.

Mr. Jackson Mhando argued that what prayed by the applicant before this court is res-judicata, therefore if the same will be granted it will be contrary to section 9 of the Civil Procedure Code, Cap. 33 RE. 2002.

He therefore prays the court's dismissal order and costs of this application.

In rejoinder the applicant reiterated his submission in chief.

Having gone through the parties' submissions, Court records as well as relevant labour laws, in my view this Court is called upon to determine whether there are sufficient reasons to grant the application at hand.

It is apparent that, this court is vested with powers to grant an extension of time upon good cause shown as provided under the provision of Rule 56(1) of the Labour Court Rules. The relevant provision is to the effect that: -

'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'.

What amounts to sufficient or good cause have been discussed in a number of cases including the Court of Appeal in the case of **John Mosses and Three Others Vs. the Republic, Criminal Appeal No. 145 of 2006** when quoting the position of that court in the case of **Elias Msonde Vs. The Republic, Criminal Appeal No. 93 of 2005** where Mandia J.A 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 by 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 court has discretion to grant extension of time depending on the circumstance of the case as was decided in the case of **Republic Vs. Yona Kaponda and others (1985) T.L.R. 84**, where the Court of Appeal of Tanzania spelled out the circumstances under which extension of time can be granted. I quote: -

'In deciding whether to allow or not to allow an application to appeal out of time, the court has to consider whether or not there is 'sufficient reason' not only for the delay, but

also 'sufficient reasons' for extending the time during which to entertain the appeal'.

Also, in the case of Benedict Mumello Vs. Bank of Tanzania, Civil Appeal No. 12 of 2002, the Court of Appeal of Tanzania held that: -

'it was trite law that extension of time is entirely in the discretion of the court to grant or refuse it. And that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause'.

And in Yusufu Same & Another Vs. Hadija Yusufu, Civil Appeal no. 1 of 2002 (unreported), the Court of Appeal of Tanzania 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'.

Yusufu Same's case (supra) broadly defined what constitutes sufficient reason or cause as follows, I quote: -

'Generally speaking, an error made by an advocate through negligence or lack of diligence is not sufficient cause for extension of time. This has been held in numerous decisions of the Court and other similar jurisdictions...But there are times, depending on the overall circumstances surrounding the case, where extension of time may be granted even where there is some element of negligence by the applicant's advocate as was held in Felix Tumbo Kisima Vs. TTC Limited and Another, CAT Civil Application No. 1 of 1997 (unreported). It should be observed that "sufficient cause" should not be interpreted narrowly but should be given a wide interpretation to encompass all reasons or causes which are outside the applicant's power to control or influence resulting in delay in taking any necessary step'.

Lucidly expounding the term "sufficient reasons" Lord Guest in Ratma Vs. Cumarasamy and another (1964) 3 All E.R 933, stated that: -

'Sufficient reasonmust be determined by reference to all circumstance of the particular

case ... which will move the court to exercise its juridical discretion in order to extend the time limited by rules'.

Having considered the above discussion, is my view that the Court has to take into regard the circumstances of each case in determining whether to use its discretionary powers to grant the leave to file application out of time or not.

In the application at hand the applicant moved the court to extent time within which to file revision application in respect of an ex-parte award in Labour Dispute No. CMA/DSM/KIN/R. 565/18/154.

It is trite law that, the remedy for an ex-parte award is to file application for setting aside of the same and at the same court or tribunal which determined the matter and not to appeal or revise.

The Court notes from parties' submissions and the court records that, an exparte award was delivered on 08/02/2019 and the application for setting aside the same was dismissed on 27/09/2019 and the present application was filed on 22/10/2019.

Therefore, the court will determine if the applicant's reasons for the delay to come to this for revision are sufficient to warrant

extension of time sought. According to him he was delayed by the process of dealing with the applications to set aside the ex-parte award of the CMA. As I have observed that the applicant had to follow the legal procedures provided in challenging the ex-parte award and he correctly did. He was not allowed to come straight to this court for revision, so that being said I have no hesitation to say he has sufficient reason for the delay if any. I am saying "if any" because the court notes that, from the record the applicant needed not to make this application. The records reveal that on 27/09/2019 the CMA dismissed the applicant's application to set aside the ex-parte award, which means the time to file the intended revision started to run against him on that particular day.

Section 91 (1) (ii) of Employment and Labour Relations Act provides for the revision against the CMA award to be filled within six weeks of the award dated served to the applicant. Thus, the applicant had no reason to make this application of extension of time because the time was in his favour had it been he had filed revision straight away without asking for the court's leave to do so. During the time the applicant made this application only 22 days had passed

from the date an ex-parte award was delivered. Thus, he would have been within the 42 days allowed to file the intended revision.

On the basis of the above, it is my considered view that in this application the applicant's advocate negligently handled the matter as was not supposed to ask for the court leave to file the revision because was within time to do so. Thus, I am convinced the circumstance of this case allows the court to grant the leave sought despite of the negligence behaviour of the applicant's advocate. It is obvious that the applicant's application is based on reasons which are outside his power to control or influence resulting in delay in taking the necessary step of filling the intended revision as was decided in Yusufu Same's case (supra).

On the other hand, the Learned Counsel for the respondent submitted that the applicant delay was due to his negligence and once his prayer granted it will be res-judicata.

Regarding respondent's allegation that by maintaining applicant's prayer it will be res-judicata, the court find this allegation lacks legal stance. That, according to section 9 of the Civil Procedure Code, Cap 33 RE. 2002, for the res- judicata to operate it must be in the same matter, for the same parties and had been determined by

competent authority. In this application the applicant is seeking for extension of time and there is no any evidence tendered by the respondent to show that the same matter has already been determined by the competent authority.

On the basis of the above discussion, I find that the applicant deserves to be granted the extension of time so that he can exercise his right to be heard on the substantive application of revision as he intends to do.

In the result the application is allowed and the applicant has to file his revision application on or before 31/12/2020.

It is so ordered.



I.D. Aboud

JUDGE

11/12/2020