

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM
MISCELLENOUS APPLICATION NO. 154 OF 2020

BETWEEN

ISMAEL JUMA.....APPLICANT

AND

HARUNA MNGAZIJA.....RESPONDENT

RULING

Date of Last Order: 08/10/2020

Date of Ruling: 04/12/2020

A. E. MWIPOPO, J.

This is application for extension of time to file Revision in this Court against the decision of the Commission for Mediation and Arbitration in labour dispute no. CMA/DSM/KIN/R.441/18/86. The applicant namely **ISMAIL JUMA** applies to the Court for the Orders in the following terms:

1. That, this Court be pleased to grant extension of time within which Applicant to file application for revision out of time.
2. That, this Court be pleased to make any other order for good end of justice.
3. The Cost of this application be provided for

The brief history of this application is that: The Applicant was employed by the Respondent namely Haruna Mngazija on 20th August, 2014 as watchman for Respondent's farm. The Applicant was terminated from employment on 28th December, 2017 without payment of his terminal benefits. Aggrieved by the Respondent's decision, the Applicant referred the dispute to the Commission for Mediation and Arbitration which delivered its decision in favour of the Respondent on 6th November, 2018. The Applicant was not satisfied with the Commission decision and he filed Miscellaneous Application No. 227 of 2019 for extension of time to file revision application which was allowed by this Court and the Applicant was granted 21 days leave to file a revision application from the date of the Court order which is 28th October, 2019. The Applicant did not file the revision application as it was ordered by the Court but filed the present application for further extension of time to file revision application on 29th April, 2020.

The Applicant was represented by Mr. Steven Haonga, Personal Representative, whereas the Respondent was not represented and he appeared in person. The hearing of the Application proceeded orally.

The Applicant's Personal Representative submitted in support of the application that after this Court granted the Applicant leave to file revision application on 28th October, 2019, the Applicant informed him that he have

no good communication with his former Personal Representative who has all documents concerning the application. For that reason, the Personal Representative requested the Court to supply them with some documents in order to file the revision application as per Court order. The copies of the documents were served to the Applicant on 24th April, 2020, and then the present application was filed on 29th April, 2020.

It was submitted by the Applicant's representative that the reason for the delay to file revision application on time is that the former Personal Representative of the Applicant did not file the revision application within the time ordered by the Court, thus it was not the negligence of the Applicant. The Applicant prayed for the Court to allow the application and grant further extension of time to file revision application against the CMA award.

The Respondent did not make any submission in reply but he informed the Court that he leave for the Court to decide.

From the submission, the issue for determination is whether the Applicant have provided sufficient reason for the Court to grant him further extension of time to file the revision application out of the time ordered by the Court.

As a general principle, this Court has discretion to grant an application for extension of time upon a good cause shown. In the case of **Tanga**

Cement Company vs. Jumanne D. Masangwa and Another, Civil Application no. 6 of 2001, Court of Appeal of Tanzania, (Unreported), where the Court of Appeal held that:

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

In the present application, the evidence available shows that the Court granted 21 days leave to the Applicant to file a revision application in Misc. application No. 227 of 2019 on 28th October, 2019. Instead of filing revision application within the time ordered by this Court, the Applicant filed the application for further extension of time on 29th April, 2020. The application was out of time for more than five months.

The Applicant's reason for the delay is that there was bad communication between the Applicant and his former Personal Representative who had all documents concerning the case. This made the Applicant to make a requested to the Court to be supplied with some documents in order to file the revision application as per Court order. The copies of the documents were served to the Applicant on 24th April, 2020,

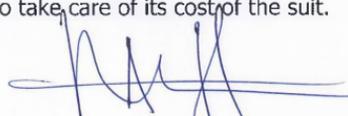
and after service of the documents the present application was filed on 29th April, 2020.

It is clear from the submission that the Applicant is blaming the Applicant's former representative whose name was not disclosed to the Court for the delay. However, the Applicant failed to explain as to when he approached the present personal representative for assistance and as to when the request was made to the Court for the alleged documents. There is no letter which was tendered or any evidence adduced as to when the documents were requested from the Court. Further, there is no evidence whatsoever to prove that the alleged documents were supplied by the Court to the Applicant on 24th April, 2020, as alleged by the Applicant. Even the reasons for the delay as submitted by the Applicant's representative are different to the facts found in his affidavit.

Reading the Applicant's affidavit, the only reason for the delay found in the affidavit is that the delay was caused by the act of the Applicant seeking for legal assistance from the day the ruling of this Court was delivered. There is nothing in the affidavit which shows that the Applicant had any personal representative or he requested for any document from the Court. This means that, there is nothing at all in the record to support Applicant's argument. The Applicant's reasons are just a mere statement

raised from bar introducing a new fact without any proof. Thus, it is my opinion that the Applicant failed to provide sufficient reasons for the delay for the Court to grant him further extension of time to file revision application.

Therefore, I find the application to be devoid of merits and I hereby dismiss it. Each party to take care of its cost of the suit.

A handwritten signature in blue ink, appearing to read 'A. E. Mwiipo', is written over a horizontal line.

A. E. MWIPOPO
JUDGE
04/12/2020