

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

MISCELLANEOUS APPLICATION NO. 654 OF 2019

BETWEEN

MOHAMED K. DADY AND 27 OTHERS..... APPLICANTS

VERSUS

BAKHRESA FOOD PRODUCTS LTD..... RESPONDENT

RULING

Date of Last Order: 25/09/2020

Date of Ruling: 23/10/2020

A. E. MWIPOPO, J

This is an application for extension of time to file Revision Application out of the time provided by the law. The applicants Mohamed K. Dady and 27 others have filed the application praying for the following Orders:-

1. That, this Honourable Court may be pleased to extend time for the Applicants to file an application for revision and chamber summons out of time after Court granted leave to Masoud S. Kindamba to file

representative suit on behalf of 8 Applicants seeking revision against the award of the Commission for Mediation and Arbitration (CMA) at Dar Es Salaam Zone in Labour Dispute No. CMA/DSM/ILA/R.1340/17/293 dated 8th April, 2019 which was delivered by Hon. Johnson Faraja, Arbitrator.

2. Any other relief that the Court may deem fit to grant.

The application is accompanied by Chamber Summons supported by the affidavit of Masoud S. Kindamba. The Respondent challenged the application through a sworn counter affidavit of Rose Peter Msigwa, the Respondent's Principal Officer.

The background of the Application in brief is that the Applicants are employees of the Respondent since 2012. They instituted the labour dispute before the CMA claiming to be paid salary arrears from the year 2012 when they were employed up to 2017 to the tune of Tshs. 270,000/= per month. The Commission dismissed the dispute for the reason that the relationship between the Applicants and the Respondent was Agent Principal Relationship and not employer employee relationship. The Applicants were aggrieved with the Commission decision and they filed application for representative suit registered as Miscellaneous Application No. 248 of 2019, the application

which was granted by the Court on 7th October, 2019. Then, the Applicants filed the present application for extension of time to file revision out of time.

The parties to the application were represented whereby Mr. Paschal Temba, Personal Representative, appeared for the Applicants and Ms. Rose Peter Mtesigwa, Advocate, appeared for the Respondent. Each party submitted orally in support of their case.

Mr. Paschal Temba submitted in support of the application that the Commission delivered its award on 8th April, 2019, and the Applicants filed application for representative suit on 7th May, 2019. The application for representative suit was granted on 7th October, 2019, but the Court did not grant leave to file revision application out of time. The Application for representative suit was filed within 6 weeks for filing revision application. After the leave was granted the Applicants filed the present application for extension of time on 01st November, 2019. The Applicants intends to file revision application for the reason that there is illegalities in the CMA award which need to be determined by this Court. To support the position the Applicant cited the case of **Mohamed Salum Nahdi vs. Elizabeth**

Jeremiah, Civil Reference No. 14 of 2017, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported).

The Applicants argued that they were diligent in pursuing their rights before this Court. If the application is not granted they (Applicants) will be prejudiced their rights as there is reasonable grounds for revision. In case the application is granted there will be no injustice caused to the Respondent since he has right to be heard and defend his case. The Applicants prayed for the application to be granted.

Replying to Applicant's submission, Ms. Rose Peter Mtesigwa submitted that filing of representative suit is not a good reason for application for extension of time. The law provides in section 91(1) (a) of the Employment and Labour Relations Act, 2004, for a party aggrieved to file revision application within six weeks from the date of service of the award. The Applicants who are 8 in numbers could have instituted separate application in Court instead of instituting representative suit. By instituting the application for revision separately would not have occasioned any miscarriage of justice.

The Respondent further submitted that the representative order was granted on 7th October, 2019, but the present application was filed on the 1st November, 2019, which is almost 23 days from the date the ruling was delivered. The Applicants were supposed to account for each day delayed to file the application. This was held in **Tanzania Fish Processors Ltd vs. Eusto K. Ntagalinda**, Civil Application No. 41/08 of 2018, Court of Appeal of Tanzania, at Mwanza, (Unreported). The same position was taken by the High Court in the case of **Golden Crescent Assurance vs. Yusta Ezekiel Njau**, Civil Application No. 1 of 2020, High Court, Dar Es Salaam Registry, (Unreported). Also, the Court of Appeal in the case of **Lyamuya Construction Company Ltd vs. Board of Trustee of YWA of Tanzania**, Civil Application No. 20 of 2010, Court of Appeal of Tanzania, at Arusha, (Unreported), formulated some guidelines which are supposed to be applied by the Court in application for extension of time and one of the principle is that the Applicant must account for all period of delay.

The Applicant in the present case have not accounted the delay from the time this Court granted leave to Applicants to file representative suit up to the date of filing the present application. The Applicants have not

accounted for the delay in the affidavit in support of the application or in their submission.

On the point of illegality, the Respondent submitted that the illegality is not provided anywhere in the Notice of Application or in Applicants submission. In the cited case of **Mohamed Nahdi vs. Elizabeth Jeremiah, (Supra)**, the issue of illegality was part of the pleadings of the Applicants. In the present application nothing is stated in the Notice of Application or in the affidavit concerning the issue of illegality. The Respondent is not in position to be heard on the issue of illegality as he is not prepared on the issue. The Respondent prayed for the application to be dismissed for want of merits.

In rejoinder, the Applicant retaliated his submission in chief and emphasized that under rule 44(2) of G.N. No. 106 of 2007, it is mandatory requirement of the law to file representative suit. The Applicants used 21 days to prepare and file application for representative suit and 23 days to prepare and file the present application. The cases cited by the Respondent are not applicable in the present application where the Applicants were late

because of the time spent in Court applying for representative suit and not for any negligence as it was in the cited case.

Having heard parties' submission, the main issue this Court is called upon to determine is whether the Applicants have shown a good cause for the Court to grant leave for extension of time to file the revision application out of the time prescribed by the law.

As a general principle, the Applicants are supposed to show a good cause for the Court to grant leave in an application for extension of time. This was the position of the Court of Appeal 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 it 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."

Also, the Court of Appeal took the same position in the case of **Benedict Mumello vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002,

Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported), where the Court held inter alia 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, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."

Despite of the above principle, what amount to a good cause depends on the circumstances of each case as it was held in the case of **General Manager Tanroads Kagera vs. Ruaha Concrete Company Ltd**, Civil Application No. 96 of 2002, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported).

In this matter at hand the applicants are praying for this Court to grant extension of time on the ground that they were late because of the time spent in Court applying for representative suit. In contention, the Respondent is of the opinion that applying for representative suit is not a good cause for application for extension of time and the Applicants have not accounted for the delay.

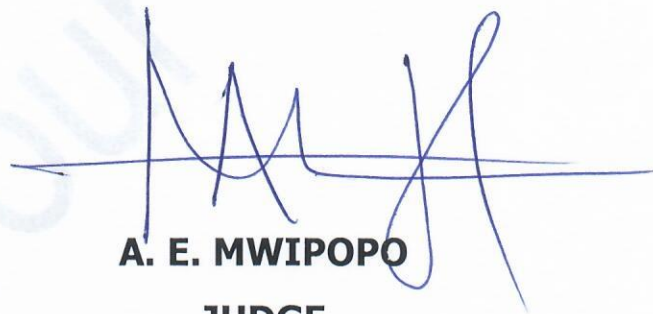
The evidence available in the record shows that the Commission delivered its award on 8th April, 2019, and the Applicants filed application for representative suit on 7th May, 2019. This was 29 days from the date the

award was delivered. By this time the six week period for filing revision application provided by the law has not expired. The application for representative suit was granted on 7th October, 2019, and the present application for extension of time was filed on 01st November, 2019, which is almost 23 days from the order. Under 44(2) of the Labour Court Rules, G.N. No. 106 of 2007, it is mandatory for the numerous person having the same interest in the suit to seek the permission of the Court for one or more of such person to appear and be heard or defend on behalf of the other persons interested. The same was the position of this Court in the case of **Christopher Gasper and 438 Others vs. Tanzania Ports Authority**, Misc. Labour Application No. 281 of 2013, High Court, Labour Division at Dar Es salaam, (Unreported). Therefore, the Applicants who were interest to file representative suit had to file the application for representative suits as they have done. For that reason, I find that the ground of filing for application for representative suit is good ground for extension of time to file revision application out of time especially when the application for representative suit was filed within the time to file the application for revision.

The Respondent argued that the Applicant have not accounted for 23 days delay to file the application for extension of time after the order of the

Court granting permission to the applicant to file representative suit. The Applicants averred that the days were used to prepare the application. I'm of the opinion that the time is reasonable since there are 8 Applicants in the application hence there is need to prepare the application before filing it. As I find the Applicants grounds to be a good cause, there is no need to determine the ground of illegality.

Therefore, I find the application to have merits and the same is hereby allowed. The Applicants are granted 30 days leave starting to count from today to file a revision application. Each party to cover its own cost of the suit.

A handwritten signature in blue ink, appearing to read 'A. E. MWIPOPO', is written over a horizontal line. The signature is stylized and somewhat cursive.

A. E. MWIPOPO

JUDGE

23/10/2020