IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 532 OF 2018

BETWEEN

NASSORO GOGO AND OTHERS..... APPLICANTS

VERSUS

NATIONAL INSURANCE CORPORATION.....1ST RESPONDENT

THE CONSOLIDATED HOLDING CORPORATION.....2ND RESPONDENT

RULING

Date of Last Order: 22/09/2020

Date of Ruling: 09/10/2020

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 applicant **NASSORO GOGO & OTHERS** has filed this application praying for an Order in the following terms:-

1. That, this Honourable Court may be pleased to grant leave to the applicant to apply for revision of the decision of this Honourable

Court after discovered there were new facts which are necessary for this matter .

2. That, this Honourable Court may be pleased to grant the Applicants an order for revision of the decision of this Honourable Court after discovered there were new facts which are necessary for this matter.
3. Cost of this application.

The application was accompanied by Chamber Summons which is supported by the jointly affidavit of the applicants namely Japhet Amon Mwipaja, Theodarus Michael and Ombeni Kamungu. The respondents challenged the application through a sworn counter affidavit of Emmanuel Kawishe the respondent's Principal Legal Officer.

The facts of the Application in brief is that the Applicants were 1634 among retrenched employees of the National Insurance Corporation who instituted Trade Inquiry No. 52 of 2002 in the Industrial Court of Tanzania for execution of non – payment of the new salaries agreed between Applicants Trade Union and the 1st Respondent (NIC) for the period from 1st January, 1997 up to 31st December, 2000. The Applicant were claiming for payment of Tshs. 13.4 billion but after auditing which was done by the Ernst and Young Company and submitted to this Court (which was established to

take place of the defunct Industrial Court), the Court ordered on 11th July, 2007 for the payment of Tshs. 2,745,155,763.46 to the Applicants following failure to get proof of Applicants actual claims. The Court on 19th March, 2008 made a ruling of the execution of the award of Tshs. 3,053,765,883.46 to the employees and the ruling on how payment would be honored was made by the Court on 04th September 2008.

Aggrieved by the decision of the Court the Applicants have filed the present application on 17th October, 2018 applying for extension of time to file Revision Application out of time.

At the hearing, the applicants were represented by Mr. Augustine Mathern Kusalika, Advocate, whereas Mr. Christopher Bulendi Advocate appeared for the 1st respondent. By leave of this Court the application was disposed of by way of written submissions.

Supporting the application, Mr. Augistine Kusalika submitted that the reason for the delay is the discovery of new facts which are necessary for this matter. There are sufficient grounds established by the applicants in this application that during the proceedings of Trade Dispute No. 52 of 2002 which was decided by this Honourable Court the applicants were not aware with the new facts or claim which were abandoned by the 1st Respondent.

Formerly, the applicants were employees of the 1st Respondent and were in the payroll during the period of 1st January 1997 to 31st December, 2000 thus they were among the 1634 beneficiaries of the court award. During the court proceedings, the applicants were advised to abandon their claim so that they could be paid good terminal benefits by the 1st Respondent on its exercise of retrenchment as indicated in an Agreement. However, after the exercise of payment of terminal benefits the number of beneficiaries was reduced to 1412 for the reason that they were outside 1st Respondent employment contract at the material period. Out of 1412 employees to be paid their terminal benefits only 305 were paid their balances and thereby leaving other employees aggrieved hence they went to Court claiming for their balance which amounts to Tshs. 1,749,474,429.00 as per agreement.

The Applicants Counsel argued that the 1st Respondent failed to honour her obligations stipulated in the said Voluntary Agreement thus the Applicants decided to lodge this matter in this Honourable Court which was determined in the favour of the Applicants herein. However, in the award this Court stated that 1st Respondent accepts the existence of unpaid salaries to the tune of Tshs. 13.4 billion but since the 1st Respondent has failed to surrender the relevant documents to the company styled by the name of Ernst & Young Company which was assigned to establish and scrutinize the

accurate amount claimed by the Applicants to the 1st Respondent thereto. The 1st Respondent failed to submit some of documents which were needed for accreditation and as result this Honourable Court proceeded by awarding Tshs. 2.7 Billion and not Tshs. 13.4 Billion agreed by the 1st Respondent in the Collective Bargaining Agreement.

Mr. Kusalika submitted that the position of the law currently is that the court may only exercise its discretion judicially on extension of time basing on sufficient cause shown in the Affidavits and taking action promptly. He cited the case of **Yusufu Same and Hawa Dada Vs. Hadija Yusufu,** C.A, Civil Appeal No. 1 of 2002 (unreported), and the case of **Rutagitina C. L V. Advocates Committee & Clavery and Mtindo Ngalapa**, Civil Application No. 21 of 2001 (Unreported). Therefore the Applicants were not aware with the new facts or claim which were abandoned by the 1st Respondent until when it was discovered. Thus, Mr. Kusalika submitted that the delay was not occasioned by the negligence of the Applicants but due to reasons stated in the applicants' affidavit and he prayed for the application to be granted.

In opposition, Mr. Christopher Burendu submitted that the Labour Court Rules, 2007 are very clear under Rule 56(1) that the Court may extend or abridge any period prescribed by the Rules on application based on two

conditions that there must be an application and good cause shown. He stated that in this matter the issue is whether the applicant managed to establish good cause for the Court to grant application. To support the position, the Respondent cited the case of **M/S Tanzania Coffee Board v. M/S Rombo Millers Limited,** Civil App. No. 35 of 2015(unreported) and the case of **Lymuya Construction Company Limited v. Board of Trustees of Young Women Christian Association of Tanzania**, Civil App. No. 2 of 2010(unreported).

The Counsel for the Respondent submitted that the decision intended to be challenged by the applicants through revision was made on 11th July 2007 and the present application was filed on 17th October 2018. This means that there was a delay of eleven years and three months. This is contrary to the principle as the applicant failed to be accountable for the delay of each day. The applicants failed to justify how the two respondents contributed to the delay of eleven years and three months.

The Respondent submitted further that the ground of discovering new facts could be useful in this application if they could state when new facts was discovered and within the period of delay. Therefore failure to state the

time on that allegation amounts to failure to account for the whole period of the delay.

The Counsel submitted that the second test is that delay should not be inordinate. In the present application the applicants' delay has taken up inordinate amount of time. The delay of eleven years and three months is very unusual. On such delay strong and sufficient reasons are required to justify the delay the things which was not honored by the applicants.

The Respondent submitted regarding the third test that the applicants did not act diligently in prosecution of their action. The applicants failed to give explanations in both affidavit and submission what happened on such delay for whole period of eleven years and three months. He further argued that the silence of the applicants indicates that they were not diligent enough and have failed to account even for a single day of the delay. To support his argument he cited the case **of Bushiri Hassan v. Ratifa Mashayo,** Civil Application No. 3 of 2007.

Lastly, Mr. Burenda submitted that the applicant have not stated any facts on the existence of a point of law of sufficient importance or illegality of the decision sought to be challenged. The applicant claim that they deserve payment of Tshs, 13.4 Billion which was admitted by NIC

Management instead of payment of Tshs. 2.7 Billion ordered by the Court. This is the point of facts which was properly addressed and determined by the Court. The Respondent prayed for the application to be dismissed.

The Applicant did not file any rejoinder submission.

Having considered parties submission, the main issue this Court is called upon to determine is **whether the applicant has 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 applicant must show a good cause in order for the Court to grant leave in an application for extension of time. 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) 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."*

The same position was stated by the Court of Appeal 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. This 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), that, I quote:-

> *"What constitutes "sufficient reason" cannot be laid down by any hard and fast rule. This must be determined by reference to all the circumstances of each particular case."*

In this matter at hand, the applicants are praying for this Court to grant extension of time on the ground that there is a new facts which was discovered and which need to be determined by the Court. The Applicants stated that they failed to file the application within a time on the basis that the 1st respondent failed to tender the relevant document which triggered them to be awarded 2.7 Billion instead of 13.4 Billion. On other hand the

respondent maintained that the applicants failed to be accountable for the delay of each day.

Having gone through the record, I observed that the decision regarding the payment of judgment debtors was made by this Court on 11th July 2007, the ruling of the execution of the award was made on 19th March 2008, and the ruling on how payment would be honored was made on 04th September 2008. The present matter was filed on 17th October 2018. Thus, it means there was a delay of almost 10 years and 7 months from the execution date. This is inordinate delay.

The applicants asserted that there was a discovery of a new fact in relation to documents which were not surrendered by the 1st respondent to the Ernst & Young Company which was auditing the applicants claims. As a result, the Ernst & Young Company did find that Applicant's claims lacks legal stance as there is no proof in the record whatsoever presented by the applicants to prove the alleged discovered new facts. However, the Applicants failed to tender any document or mention the document or state as to when they received documents regarding the remained claims for the Court to scrutinize the alleged claims. There is no evidence in record as to when they received or being served with those documents so as this Court could exercise its power of extending time for the applicants to take

necessary step for their claim. Discovery of a new facts or evidence in some circumstances has been found by Court to be a good cause for extension of time. This was held by the Court of Appeal in the case of **John Ondolo Chacha Vs Dar Cool Makers Ltd,** Civil Application No. 99 of 2014, Court of Appeal of Tanzania, (Unreported), where it held that;

> *"....the undisputed facts are that the applicant obtained the necessary documents on 38th April, 2014, documents that could enable him to proceed further with other necessary steps I consider that to be a good cause for the said delay.*

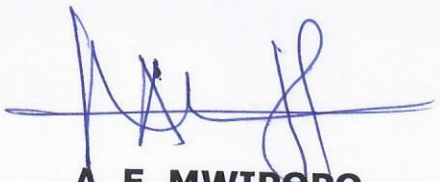
However, in the present application the applicants were not bothered to state the new facts discovered or to tender the document or to state in their submission as to when the document containing the new discovered facts was received or when the new facts were discovered.

As it was submitted by the Respondent, the applicant were supposed to account for the delay for the whole period of the delay. This was held by the Court of Appeal in the case of in the case of **Said Nassor Zahor and Others vs. Nassor Zahor Abdallah El Nabahany and Another**, Civil Application No. 278/15 of 2016 (unreported) that;

> *"...any applicant seeking extension of time is required to account for each day of delay."*

In the present application, the Applicant did not account at all for the delay which is surprisingly inordinate as the delay is for the period of more than ten years. The period of delay is very long and the applicants were supposed to account for it with strong reasons as to why they decide to come back ten years after the last decision of the Court on the matter. The applicant submitted that this Court stated that 1st Respondent accepted the existence of unpaid salaries to the tune of Tshs. 13.4 billion in its Ruling dated 11th July, 2007, but this is not correct. The Court in the Ruling stated that the Applicant were claiming to be paid Tshs 13.4 billion as salary areas but there is no proof for the amount claimed. As a result, the Court ordered for the payment of Tshs. 2.7 billion which was later on changed to Tshs. 3.05 billion in the Ruling of the Court dated 19th March, 2008. Even the issue of Applicant's claims for payment of Tshs. 13.4 billion which is the issue of facts was properly addressed and determined by the Court. Thus, the same is not a new facts or a point of illegality.

Therefore, I find that the applicants have failed to show a good cause and they failed to account for the delay of more than ten years. Consequently, the application is dismissed for want of merits. Each party to carry its own cost of the suit.



A. E. MWIPOPO
JUDGE
09/10/2020