

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 661 OF 2019

BETWEEN

JENIPHER MBURUJA..... APPLICANT

AND

MILLENIUM MICROFIN (T) LIMITED.....RESPONDENT

RULING

Date of Last Order: 18/09/2020

Date of Ruling: 16/10/2020

A. E. MWIPOPO, J

This is an application for extension of time to file Revision in this Court against the decision of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/DSM/KIN/R.937/18/273 [before Ho. Massaua, Arbitrator] dated 5th August, 2019. The applicants namely Jenipher Mbuluja lodged the present application praying for the Court to extend the time within which to file Revision Application out of time against the whole Award of the CMA at Ilala in the respective labour dispute. The Applicant also prayed for

any order or relief(s) as this Court may deem fit and just to grant in the circumstances.

The background of the application briefly is that: the applicant was employed by the respondent namely Millenium Microfin (T) Limited on 4th August, 2014 as Human Resources Officer. The Applicant was terminated on 13th August, 2018, on retrenchment and she referred the dispute to the CMA which decided the dispute in Respondent favour. The Applicant was aggrieved by the decision and he filed her application on 16th October, 2019, but the same was not registered. The applicant was informed on 18th October that the application was rejected for being filed out of time. She make a follow up to the Commission for Mediation and Arbitration on 21st October, 2019, where she was able to obtain a copy of the Award signed by both parties. Then, the Applicants filed the present application on 4th November, 2019, for extension of time to file revision application.

Both parties to the application were represented, Ms. Subira Omary, Advocate, appeared for the Applicants, whereas Ms. Editruda Mrema, Advocate appeared for the respondent. The application was heard through oral submissions.

Ms. Subira Omary submitted in support of the application that after the Applicant was sent by the Respondent on leave without pay, she referred the matter to the CMA which delivered its award on 5th August, 2019. The Award was served to the Applicant on 9th September, 2019. The applicant filed application for Revision on 16th October, 2019 but the same was not admitted for failure to attach the signed Award. The information about rejection of the revision application filed by the applicant was known on 18th October, 2019 and the reason advanced by the Registrar is that there was no proof as to when the applicant obtained the Award as a result the Court rejected to admit the same.

The applicant made a follow up at the CMA for the copy of the signed Award which was served to the Applicant on 21st October, 2020. On the 22nd October, 2020 the Applicant prayed for the same to be admitted as by that time it was late for a day. The Registrar rejected the prayer for a reason that already the Application has already been entered into the system hence the only remedy available is to make an application for extension of time. Then the Applicant filed the present application for extension of time.

Thus, the application was not filed within time for the reason out of Applicant control. To support the argument, the Applicant cited the case of

Kowe Malegeri Vs. Airwing Secondary School, Revision Application No. 61 of 2019, High Court Labour Division at Dar Es Salaam, (unreported); and the case of **Dr. Ally Shabaya Vs. Janga Bohara Jamat**, (1997) TLR 305 (CAT). The applicant avers that she has shown diligence and the prayed for the application be granted.

In reply, Ms. Editruda Mrema submitted that there is no evidence to show that the Arbitrator Award was delayed, and also there is no evidence to prove that the application was rejected by the Register even though it was filed on time. The reasons provided by the applicant is not sufficient to prove that the application was rejected. Even if the applicant provide the evidence to prove the delay, he must account to each day of the delay. The Award was delivered on 05/08/2019 but the applicant filed the Application on 16/10/2019. The applicant failed to account for the delay to the standard required. To support the position the Respondent cited the case of **FINCA (T) Ltd and Another Vs. Boniface Mwaluksa**, Civil Application No. 589/12 of 2018, CAT at Iringa, (unreported); and the case of **Melt Ginning Company Ltd Vs. Makoye Phinias and 4 Others**, Misc. Civil Application

No 161 of 2019, High Court, Mwanza District Registry, (unreported). The Respondent prayed for the application to be dismissed with cost.

In rejoinder, the Counsel for the Applicant retaliated the submission in chief and emphasized that the reason for the delay is that the revision application was not attached with a signed CMA Award and not that the applicant was served late with the CMA Award. On the submission by the Respondent that there is no proof that the application filed earlier was rejected by the registrar, the practice is that after filing of the application the same is not returned to the party who filed the same. Even the recommendation provided by Hon. Registrar are done orally. The applicant was of the opinion that she accounted for each day of the delay and provided sufficient reasons as to why the matter was filed in delay.

From the submissions, the issue for determination is whether the applicant have provided sufficient reasons for the Court to grant him extension of time to file the revision application out of the time prescribed by the law.

It is a discretion of the Court 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) 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 application for extension of time, 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 the present case the applicant submitted that the delay in filing the application was for a main reason that the revision application filed on 16th October, 2019 was not attached with a signed CMA Award and as a result

the Registrar rejected it. The Respondent is of the view that there is no proof whatsoever to the Applicant's allegation.

The evidence available in the Record shows that the CMA award was delivered on 5th August, 2019. The Award was served to the Applicant on 9th September, 2019, according to the copy of the attached Award. The applicant stated in the affidavit that she filed application for Revision on 16th October, 2019 but the same was not admitted for failure to attach the signed Award. The information about rejection of the revision application filed by the applicant was known on 18th October, 2019 and the reason advanced by the Registrar is that there was no proof as to when the applicant obtained the Award as a result the Court rejected to admit the same.

Then she stated that went to the Commission to obtain a copy of the CMA Award which was signed by both parties on 21st October, 2019. The attached copy of the Award shows that the same was certified by the Commission on 21st October, 2019. This also prove the Applicant allegation that she made a follow up to the Commission. Applicant went with the copy to the Registrar on the 22nd October, 2019, to-re file the Application but she was informed that the application was out of time. This evidence of the

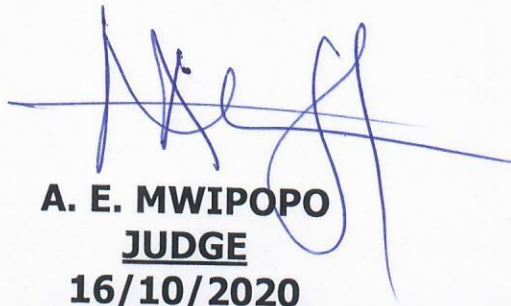
Applicant provides satisfactory explanation for the delay up to the 22nd October, 2019. The Applicant has said nothing concerning the delay in filing the Application from 22nd October, 2019, when she was informed that the application was out of time to the 4th November, 2019, when she filed the present application for extension of time which is almost 12 days delay. As submitted by the Respondent, the Applicant is supposed to account for each day of the delay.

It is a trite law that in the application for extension of time the applicant is supposed to account for each and every day 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, I find that the applicant did not account for the delay from 22nd October, 2019, when she was informed that the application for Revision was out of time to the filing of the present application on 4th November, 2019. For that reason, I find that the Applicant have not accounted for the delay.

Therefore, the application is hereby dismissed for lack of merits. Each party to bear his own cost.



A. E. MWIPOPO
JUDGE
16/10/2020

Labour Court TZ