

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM
MISCELLENOUS APPLICATION NO. 531 OF 2019

BETWEEN

DAVID MESHACK NDIEGE.....APPLICANT

AND

BAYPORT FINANCIAL SERVICES (T) LIMITED.....RESPONDENT

RULING

Date of Last Order: 28/09/2020

Date of Ruling: 30/10/2020

A. E. MWIPOPO, J.

This is application for extension of time to file Revision in this Court against the Commission for Mediation and Arbitration decision in labour dispute no. CMA/DSM/KIN/R.787/17/873. The applicant namely David Meshack Ndiege applies to the Court for the Orders in the following terms:

1. That, this Court be pleased to grant extension of time to file amended Application as ordered by Hon. Sophia Wambura, J., on 22nd July, 2019.

2. Any other relief that may be deemed fit and just to be granted.

The Applicant was employed by the Respondent namely Bayport Financial Services Tanzania Ltd as Administrative Officer. The Applicant was terminated from employment following disciplinary proceedings outcome. Aggrieved by the employer's decision, the Applicant referred the dispute to the Commission for Mediation and Arbitration which delivered its ruling in favour of the Respondent on 28th September, 2018. The Applicant was not satisfied with the Commission decision and he filed Revision No. 820 of 2018 which was truck out on 22nd July, 2019, for incompetence with leave to file a proper application within 14 days from the date of the Court order. The Applicant filed application on 6th August, 2019 which was rejected for being filed out of time. Then the Applicant filed the present application for extension of time on 3rd September, 2019.

Both parties in the application were represented. The Applicant was represented by Mr. Salum Lugwiza, Advocate, whereas the Respondent was represented by Mr. Hassan Musa, Advocate. The Court ordered hearing to proceed by way of written submissions.

The Applicant submitted in support of the application that the reason for the delay to file Revision Application on time granted by the Court is that the

same was filed without attaching the Court order as a result the Revision Application was rejected by the Registrar. The Applicant delayed to file the application following the delay in serving the Applicant with the Court order granting leave whereby he ended filing the application without the copy of the order. The delay was not caused by unnecessary delay on the part of the Applicant but rather on defects of the document. The delay was not too inordinate and there is overwhelming chance of success in the intended revision. The applicant prayed for the application to be granted.

In contention, the Respondent submitted that the reason advance by the Applicant is flimsy. The Applicant was granted 14 days leave to file a proper application on 22nd July, 2019, after the Revision was struck out for incompetence. Counting from the date of the Court order, the 14 days for filing the application ended on the 5th August, 2019. The Applicant lodged the application on 6th August, 2019 hence it was time barred. Thus, it is not true that the application was rejected by the Registrar for failure to attach the Court order. The Respondent argued that even failure to attach the court order granting leave is negligence hence not a good cause.

The Respondent further submitted that the Applicant has not accounted for one day delay of filing the revision application on 6th August, 2019, instead of filing it on 5th August, 2019. Also, the Applicant have not

accounted for delay in filing the present application on 3rd September, 2019, after the application was rejected on 6th August, 2019. The Respondent prayed for the application to be dismissed.

In rejoinder, the Applicant submitted that under section 19(2) of the Law of Limitation Act, Cap. 89, R.E. 2002, the day on which the judgment complained of was delivered and the period of time requisite for obtaining copy of the decree or the order appealed from or sought to be reviewed shall be excluded, as a result the application which was rejected on 6th August, 2019 was filed on time. Then, the Applicant retaliated his submission in chief.

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.

As a general principle, this Court has discretion to grant an application for extension of time upon a good cause shown. The position was held in the case of 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 this application, the evidence available shows that the Court granted 14 days leave to the Applicant to file proper application after it struck out Revision No. 820 of 2018 on 22nd July, 2019. Pursuant to the Court order, the Applicant filed the application on 6th August, 2019, which was out of time for a day. The Registrar rejected the application for the reason that the application was filed out of time and that the leave to file the application was not attached. Then, the Applicant filed the present application for extension of time on 3rd September, 2019. The Applicant have argued that the delay was caused by the failure of the Court to serve the applicants with the Court order granting leave. The Respondent is of the view that the application was filed out of time and the Applicant failed to account for the delay.

From the evidence available, it is clear that the Applicant was granted 14 days leave to file a proper application on 22nd July, 2019, but he filed the application on 6th August, 2019, which means it was out of time for one day. 14 days leave granted ended on 5th August, 2019. The Court order is very clear that the 14 days leave granted is from the date of Court order which is

on 22nd July, 2019. The Applicant argument that the Law of Limitation Act excludes the day on which the judgment complained of was delivered in computing the period of limitation prescribed by the law is no applicable in this case where the period of limitation was granted by the Court. Therefore, the Registrar properly rejected the application filed by the Applicant on the 6th August, 2019, for being filed out of time.

The Applicant argued that the reason for the delay is that the Court order granting leave was not served to him at the time he filed the application. But, there is nothing in the record to support Applicant's argument. The Applicant asserted in paragraph 5 of his affidavit that after the application filed on 6th August, 2019, was rejected to be admitted by the Registrar, he visited the Court Clerk who gave him the copy of the ruling. The Applicant did not state as to when the copy of the said Court order was served to him. But, also there is no evidence available to shows that the Applicant requested or did make follow up to obtain the said order from the Court. Thus, I find this ground for extension of time to be devoid of merits.

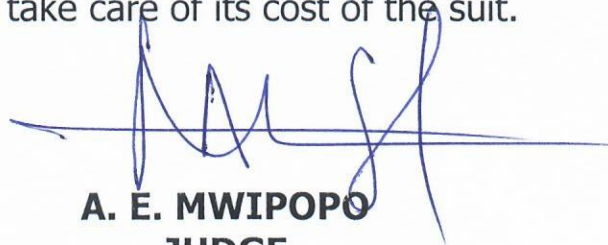
Further, as submitted by the Respondent, the Applicant did not account for the delay. The reason for the delay to file the application for a day on 6th August, 2019, as already been found to have no merits. Also, I agree with the Respondent that the Applicant did not account at all on the

delay of filing the present application on 3rd September, 2019, after he was informed that the application filed on 6th August, 2019 was rejected. In application for extension of time, the Applicant has duty to account for 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."

The Court of Appeal was of the same position in the case of **Abdu Issa Bano vs. Mauro Daolio**, Civil Application No. 563/02/2017, Court of Appeal of Tanzania, at Arusha, (Unreported).

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. E. MWIPOPO
JUDGE
30/10/2020