

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
(AT DAR ES SALAAM)
MISC. APPLICATION NO 441 OF 2019
(ORIGINATING FROM CMA/DSM/ILA/250-/19)

AMINA MAULISI APPLICANT

VERSUS

ZILIPENDWA GUEST HOUSE1ST RESPONDENT

AMIDU MWINYIJUMA2ND RESPONDENT

RULING

Date of last Order; 31/08/2020

Date of Judgement; 30/10/2020

Aboud, J.

This ruling is in respect of application for revision against the decision of the mediation issued by Commission for Mediation and Arbitration (herein to be referred as CMA on 10th April 2019, in Labour Dispute CMA/DSM/ILA/250/19 by Hon. Abdallah.

The application is supported by the affidavit of the applicant Amina Mauls. In opposition, the respondent filed a counter affidavit of Amidu Mwijuma, the respondent's Director.

Hearing was by way of written submission, both parties adhered to the schedule hence this Ruling. The applicant was unrepresented.

In supporting the application the applicant submitted that the reason for delay was due to her severe sickness condition that continued to be undesirable and the fact that the Applicant had been suffering from Tuberculosis she had to attend consecutive clinics thus why failed to bring an application for revision within time.

She argued that even though it is stated that ignorance of law is not a defense and the action done by the person with mandatory bound all but, the delay to file the application for revision was not occasioned by any negligence in the side of the applicant but the delay occurred beyond control of the Applicant taking into account that the Applicant did not know what to do to reverse the decision of the commission for Mediation and Arbitration. She cited the case of **YUSUFU SAME VS HAWA DADA**, Civil Appeal NO.1 OF 2002 where by KAJI J.A had quoted the word of MFALILA J (has he then was) in **FELIX TUMBO KISIMA VS TTC LIMITED AND ANOTHER** cat CIVIL APPLICATION NO 1 OF 1997 (unreported) were Mfalila J has this to say.

" sufficient cause" should be given wide Interpretation to encompass all reasons or causes which are outside the applicant's power to control or influence, resulting in delay in taking necessary step, and depending on the overall circumstances surrounding the case, extension of time may be granted even where there is some element of negligence by the Applicant's advocate."

She stated that the matter at hand was assigned to her representative on behalf of the Applicant who acted negligently and without integrity. Therefore on such circumstance the applicant is entitled to be granted extension of time. Considering the circumstances of the case we pray application for extension of time be granted.

She argued that, it is the duty of the Applicant to show good and sufficient cause upon which the court can exercise its discretion. Considering the fact that the Applicant was manipulated by the first Respondent and his advocate (second respondent) to sign the

settlement agreement and that the said decision is illegal and tainted with material irregularities therefore granting condonation is the only remedy for recollecting the same.

She further argued that the 2nd Respondent and her advocate manipulated the Applicant to sign the settlement agreement and the decision dates 10th day of April 2019 by Hon Abdallah-Mediator. Therefore the nature of the case itself invites this honorable Court to grant extension of time to file the revision so as to revise and set aside the award which was procured improperly and illegal affecting the end of justice.

She thus prayed for the application to be granted.

In reply, the respondents submitted 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. He stated that what amount to sufficient cause has been defined by Hon Nsekela, JA as he then was in the case of Tanga

Cement Company Limited versus Jumanne D. Masangwa and Amos A. Malwanda-Civil Application No. 6 of 2001 (unreported) as follows:

“What amount to sufficient cause has not been define, from decided cases a number of factors has to be taken into account, including whether or not the application has been brought promptly; the absence of any valid explanation for the delay; lack of diligence on the part of the applicant.”

He argued that there is no dispute that on 10th April, 2019 the Commission from Mediation and Arbitration per Hon Abdallah (Mediator) delivered the outcome of mediation between the Applicant herein and the Respondents.

He submitted that, at CMA the applicant was represented by an advocate of her choice yet she neither explain how she was manipulated by her own advocate nor how the 2nd Respondent did manipulate her. Further the Applicant did not explain how the advocate for the Respondents participated to manipulate her.

Respondents further argued that the applicant confusing regarding her allegation of manipulation as stated in her affidavit paragraph seven (7) of the Applicant's Affidavit, the Applicant had deposed that she was manipulated by the 2nd Respondent and her own advocate (the Applicant's advocate) But on her submission she submit that she was manipulated in collaboration with the 2nd Respondent advocate. The key question is which is which is between the two statements above. It is our humble submission that the Applicant's statement that she was manipulated without giving evidence on the same is a baseless statement which does not hold water and it has to fail.

He argued that the applicant alleged that she failed to apply for revision of the outcome of mediation delivered on 10th April, 2019 due to her sickness as she was attending tuberculosis clinics. He submitted that it is an established principle that, the one who alleges must prove the existence of such allegation. He prayed for the application to be dismissed.

From the above submissions the main issue is whether the applicant have shown sufficient cause to be granted leave to file revision application out of prescribed time.

The applicant prayer is made under Rule 56(1) of G.N No. 106 of 2007. The provisions gives power this Court to extend time. Rule 56(1) of G.N No. 106 of 2007 provides as follows;-

“ Rule 56(1) - The court may extend or abridge any period prescribed by these rules on application and on good cause shown, unless the court is precluded from doing so by any written law.”

[Emphasis is mine].

From the above provision shows that the Court have discretion to extend time or period prescribed in the Rules, where the applicant have shown a good cause and the delay was not caused or contributed by his act or omission. (See the case of **Tanga Cement Company Ltd v. Jumanne D. Masangwa and Another**, Civil Application No. 6 of 2001, CAT at Tanga).

In this application the applicant raised three things to be considered as a sufficient cause for this Court to grant extension of time. Which are, applicant has sufficient cause for the delay, and there was no negligence on the part of applicant and illegality of the said decision.

Starting with sufficient cause, the applicant alleged that the delay was due to her sickness. In the case of **Fredrick Mdimu v. Cultural Heritage Ltd, Revision No. 19 of 2011**, HC, Lab. Div. at DSM, It was held that;

"Sickness is a good cause for delaying to file matters within given time. However the same has to be proved and not merely alleged that hindered him to act within a time and file his application to set aside the arbitral award within a prescribed time....."

On such basis the applicant's prayer to be granted extension of time lacks legal stance as there is no any evidence to prove the same.

Regarding negligence, it is from the record that mediation was conducted and certificate of settlement was issued on 10th April 2019 and the present application was filed on 26th July 2019. That means there was a delay of more than a month, contrary to Section 91(1) (a) which demand the same to be filed within 42 days from the day the ruling was issued. In the case of **Said Ramadhani v. Geita Gold Mining Ltd**, Misc. Application 29 of 2013(unreported) held that;

“In deciding the aspect of extension of time the applicant is expected to account cause for delay of every date that passes beyond he prescribed period”

Again in the case of **Dr. Ally Shabhay v. Tanga Bohora Jamaat** [1997] TLR 305 at page 306, it was held that:-

“those who come to Courts of must not show unnecessary delay in doing so; they must show great diligence”

However the same was not honored by the applicant in this application which proves negligence.

Lastly on the issue concerning illegality, the applicant contend that she was manipulated by the respondents. In the case of In the case **Zuberi Nassor Mohamed v. Mkurugenzi mkuu shirika la bandari Zanzibar**, Civil Application No.93/15 of 2015 and in the case of **Lymuya Construction Co. Ltd** as cited in the case of **Omary Ally Nyamalege and 2 Others v. Mwanza Engineering Works**_Civil Application No.94/08 of 2017 (unreported) the Court emphasized that:-

"... Such point of law must be of sufficient importance and I would add that it must be apparent on the face of record, such as the question of jurisdiction not that one would be discovered by long drawn argument or process"

In this application there is no any evidence which show that how the applicant was manipulated in relation to certificate of settlement issued on 10th April 2019 to justify the alleged illegality.

Applying the above principles, I have not been persuaded by what is before me not even the alleged illegality to lead me to find that it is apparent in the face of the record to be considered as a sufficient cause to be granted condonation.

On this findings, I am of the view that the application has no merit, I dismiss the same with no cost.

It is so ordered.



I.D. Aboud

JUDGE

30/10/2020