

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS LABOUR APPLICATION NO. 427 OF 2019

BETWEEN

BENJAMIN BRIGHTON GEMBE.....APPLICANT

VERSUS

PATH TANZANIA..... RESPONDENT

RULING

Date of Last Order: 27/07/2020

Date of Ruling: 16/10/2020

Aboud, J.

This is an application for extension of time to file application for revision made under Rule 56 (1), 24 (1) (2) (a) (b) (c) (d) (e) (f), 24 (3) (a) (b) (c) and Rule 55 (1) (2) of the Labour Court Rules GN. No. 106 of 2007, (herein the Labour Court Rules). The applicant prayed for the following orders:-

- i. That this Honourable Court be pleased to extend time to the applicant to lodge out of time Revision application in this Court against the award in Complaint No.

CMA/DSM/KIN/R.1190/16/32 of the Commission for Mediation and Arbitration (herein CMA) Dar es Salaam Zone.

- ii. That, this Honourable Court be pleased to grant any other relief(s) it deems fit.

The respondent filed a counter affidavit challenging the application.

At the hearing the applicant was represented by Mr. Musa Kassim, Learned Counsel where as Mr. Aliko Simon, Learned Counsel appeared for the respondent. The matter was argued by way of written submissions.

Arguing in support of the application Mr. Musa Kassim submitted that, under section 91 (1) (a) of the Employment and Labour Relations Act, [CAP 366 R.E 2019] (herein the Act) revision applications need to be filed within six weeks (42 days) from the date of the award. He stated that in the present application the award was delivered on 22/02/2019 and the applicant was supposed to file his application before 05/04/2019.

Mr. Musa Kassim went on to submit that, on 02/04/2019 the applicant filed revision application which was rejected for being defective as stated at paragraph 5 of the affidavit and reflected at annexure BG-1. He stated that again on 05/04/2019 the applicant filed another application which was also rejected on 08/04/2019. Mr. Musa Kassim submitted that thereafter the applicant travelled to Tabora to meet with his advocate and prepared for his application for extension of time as evidenced by the bus tickets (annexture BG-3). He added that the application for extension of time was filed in this Court as Misc. Appl. No. 199 of 2019 which was struck out on 16/07/2019 for being incompetent as reflected in annexure BG-4.

Mr. Musa Kassim further submitted that, after being served with a copy of the striking out order on 17/07/2019 again the applicant travelled to Tabora to meet with his advocate on 20/07/2019 and on 22/-7/2019 the applicant re-filed his application for extension of time. The Learned Counsel stated that, as demonstrated above the applications for extension of time were brought promptly all the time in this Court. To strengthen his argument he cited a range of Court of Appeal cases including the case of **Keloi Madore vs. Mepukori**

Mbelekeni and Another, Civ. Appl. No. 13/2016 CAT at Arusha (unreported). He therefore prayed for the application to be allowed.

Responding to the application Mr. Aliko Simon submitted that, the applicant's submission does not stipulate sufficient, convincing and cogent grounds that would satisfy the Court in granting the application at hand. He stated that, the delay in filing the application for revision was caused by filing defective documents which does not constitute sufficient ground to grant an extension of time. He added that the defects in the documents are the result of negligence and lack of diligence of the applicant and his advocates in performing their professional duties.

Mr. Aliko Simon argued that, the powers to grant an extension of time are entirely in the discretion of the Court however such powers need to be exercised judiciously. He added that in exercising its discretion the Court must adhere to some principles that have been laid down in the case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christians Assossiation of Tanzania**, Civ. Appl. No. 02 of 2010, the principles which were emphasized in the case of **Charles**

Nanduta & 2 others VS. Republic, Criminal case Application No. 22 of 2015 CAT at Mtwara. He stated that the relevant principles include:-

- i. The applicant must account for all days of the delay.
- ii. The delay should not be inordinate (unreasonable)
- iii. The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and
- iv. If the Court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.

Mr. Aliko Simon strongly submitted that, the applicant has failed to meet the principles laid down above. As to the first principle above he stated that the applicant has failed to account on each day of the delay as it was stated by the Court of Appeal in the case of **Bushiri Hassan vs. Latifa Lukio Mashayo**, Civ. Appl. No. 03 of 2007.

Regarding the second principle he submitted that, the delay by the applicant was inordinate. He added that even if the applicant's

document were defective as alleged he had an option of seeing his Advocate in Dar es Salaam on the same date and filed his application on 09/04/2019. He strongly stated that the applicant's act of wasting 3 days travelling to Tabora for preparing the application for extension of time was unreasonable.

As to the third principle Mr. Aliko Simon submitted that, there has been gross negligence of the applicant and his advocate in pursuing their right for revision. He cited number of cases to cement his submission. The Learned Counsel contended that the respondent will be prejudiced if the application for extension of time is granted because the applicant seeks for an order of reinstatement instead of the compensation awarded by the Arbitrator. He therefore urged the Court to dismiss the application and order costs of this application.

In rejoinder the applicant reiterated his submission in chief.

Having gone through the rival submissions by the parties, Court's records as well as relevant labour laws, it is my considered view that the issue for determination before the Court is whether the applicant has adduced sufficient reasons for the grant of the application at hand.

It is apparent that, this court is vested with powers to grant an extension of time upon good cause shown as provided under the provision of Rule 56(1) of the Labour Court Rules. The relevant provision is to the effect that:-

“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”.

What amounts to sufficient or good cause have been discussed in a number of cases including the Court of Appeal in the case of **John Mosses and Three Others Vs The Republic, Criminal Appeal No. 145 of 2006** when quoting the position of that court in the case of **Elias Msonde Vs. The Republic, Criminal Appeal No. 93 of 2005** where Mandia J.A held that:-

“We need not belabor, the fact that it is now settled law that in application for extension of time to do an act required by law, all that is expected by the applicant is to show that he was prevented by sufficient or reasonable or

good cause and that the delay was not caused or contributed by dilatory conduct or lack of diligence on his part”.

In the application at hand the applicant moved the court to extent time within which to file revision application in respect of labour dispute No. CMA/DSM/KIN/R.1190/16/32. As the record reveals the impugned award was delivered on 22/02/2019. The Learned Counsel for the respondent strongly challenged the application at hand on the ground that the applicant acted negligently in pursuing his case. He further stated that in granting an application for extension of time the Court has to satisfy that the applicant has proved the principles established in the case of **Lyamuya Construction Company Limited** (supra) as they are indicated above. I fully agree with the respondent’s submission in that regard and the Court will consider the principles in question in the decision hereunder.

The applicant’s reason for the delay in this application is that he has been filing incompetent applications which were rejected by this Court. In this reason I join hands with the Learned Counsel for

respondent's submission that such a reason cannot stand as a good ground for extension of time. However in my view the fact that the applicant filed the first application for revision on time which was rejected for being defective as evidenced by annexure BG1 and immediately he filed another application on 05/04/2019 as reflected by annexure BG2 which was again rejected for being defective. Furthermore it is revealed that an application for extension of time was struck out on 16/07/2019 and on 22/07/2019 the applicant filed the present application.

In my view the applicant's actions constitute sufficient ground for the grant of an application at hand. As the record reveals the applicant did not sleep to his right, he acted immediately after his application was rejected therefore he had been tirelessly knocking the doors of this court to be afforded with the right to be heard. Thus, the applicant's efforts cannot be ignored by this Court. It is also my view that the delay in the present application resulted from technical delay in the sense that the first application for revision was filed on time but was rejected due to technical reasons. Under such circumstances as discussed above the fact that the first application was filed on time and the applicant acted immediately to apply for

another application constitutes sufficient cause for the grant of the application at hand. This was also the position in the case of **Fortunatus Masha vs. William Shija and Another** [1997] TLR 154 it was held that:-

"A distinction should be made between cases involving real or actual delays and those like the present one which only involve what can be called technical delays in the sense that the original appeal was lodged in time but the present situation arose only because the original appeal for one reason or another has been found to be incompetent and a fresh appeal has to be instituted. In the circumstances, the negligence if any really refers to the filing of an incompetent appeal not the delay in filing it. The filing of an incompetent appeal having dully penalized by striking it out, the same cannot be used yet again to determine the timeousness of applying for filing the fresh appeal. In fact the

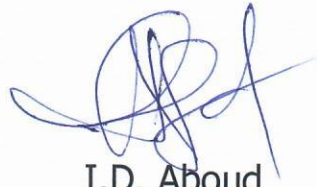
present case, the applicant acted immediately after the pronouncement of the ruling of this Court striking out the first appeal".

On the basis of the above discussion it is crystal clear that the applicant has adduced sufficient reason for the grant of the application at hand. I have also noted the respondent's submission that they will be prejudice if the application at hand will be granted. On my view I seen no basis of the respondent's submission that he will be prejudiced if the application is granted. The fact that the applicant prayed for reinstatement and instead of was awarded compensation does not prejudice their right in anyway. Thus, the delay in the present application is not inordinate and the applicant has accounted for his delay.

In the result I find the applicant has adduced sufficient reason for the delay to grant the application at hand as required by Rule 56(1) of the Labour Court Rules. Therefore, I find the present application has merit. The application is hereby granted. The applicant to file his intended revision application on or before 30/10/2020. However it has to be noted that the Court had been

lenient to the applicant by allowing him to refile competent application. Thence, governed by the principle that litigations have to come to an end this is the last chance granted to the applicant to file competent application before the Court.

It is so ordered.

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

I.D. Aboud

JUDGE

16/10/2020