

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM

MISCELLANEOUS LABOUR APPLICATION NO. 404 OF 2019

BETWEEN

MIC TANZANIA LIMITED.....APPLICANT

VERSUS

EDWIN KASANGA.....RESPONDENT

RULING

Date of Last Order: 24/02/2020

Date of Ruling: 24/04/2020

ABOUD, J.

This is an application for extension of time to file revision application against Registrar's order dated 26th March, 2019 and the subsequent garnishee order nisi dated 27th March, 2019. The application was filed under the provision of Rule 24 (1), 24 (2) (a), (b), (c), (d), (e), (f), 24 (3) (a), (b), (c), (d) and Rule 55 (1) and 56 (1) of the Labour Court Rules GN. No. 106 of 2007 (Herein Labour Court Rules).

During hearing both parties were represented. Ms. Kihampa, Learned Counsel appeared for the applicant while Mr. Bethuel, Learned Counsel was for the respondent. The two rivals argued the application orally as ordered by the court.

In supporting the application, Ms. Kihampa prayed to adopt her counter affidavit to form part of her submission. She submitted that, there was an order by the Deputy Registrar in Execution Application No. 516 of 2016 where the application was heard ex parte without the applicant's notice. She stated that, the applicant delayed on the ground that, there was an application before the Court which was erroneously titled. The erroneously application was titled as Miscellaneous Application instead of Revision Application.

The learned counsel submitted that due to that error they decided to withdraw the application. She argued that immediately after withdraw of the said erroneously application they filed the present application. Ms. Kihampa said the delay has been accounted for as the applicant was already in court seeking an order for revision. She further stated that, five days delay was not too long considering the preparation of pleadings.

The Learned Counsel contended that, the order sought to be revised was conceived without following proper procedures. That there was illegality, because the application for execution before the Deputy Registrar was set for a special session but summons was never issued, and the application for execution was amended without being informed. She argued that, those are the illegalities which they wish the court to consider as their reasons for revision of this application if granted.

The counsel urged the court to allow the application for the interest of justice so that both parties can be heard in the execution application.

Responding the application Mr. Bethuel also prayed for the counter affidavit to be adopted to form part of their submission in resisting the application. He submitted that, the applicant has not shown good cause to convince the Court to grant the order sought. According to him parties were through mobile phones were informed about the execution application hearing which scheduled during special session. He contended that if parties were not informed then the matter could have not proceeded for hearing in court. He submits that, the order by the Deputy Registrar was made because the

judgment debtor did not appear for hearing and there was no reason for non-appearance.

Mr. Bethuel averred that the applicant's counsel was aware of the Deputy Registrar's order since late March, 2019 particularly on 27/03/2019. However, the applicant did not file application for revision of the Deputy Registrar's order until 03/07/2019. He further submitted that, purported Application No. 181 of 2019 was incompetent so, it cannot be regarded that there was an application to challenge the Deputy Registrar's order. He said the applicant did not account for each day of the delay from 27/03/2019 to 03/07/2019 when this application was filed.

The Learned Counsel argued that, to be accountable for the delay is a mandatory requirement of the law and, the applicant ought to have complied with such legal requirement. However, he failed to account for the three months of delay as it is on record. He finally prayed for the application to be dismissed.

In rejoinder Ms. Kihampa reiterated that, they were not notified of the said crash programme or special session as termed by Mr. Bethuel, Learned Counsel. She further submitted that, they filed their application against the Deputy Registrar's order of 27/03/2019 on

07/04/2019 unfortunately it was wrongly titled and they withdrew it from the Court's Registry on 01/07/2019. And on 05/07/2019 they filed this application.

Ms. Kihampa submitted that all stated above shows that the applicant was not inactive, and it is a settled law that the reasons for delay should not be interpreted narrowly but should consider all circumstances of the case. She referred the said position as was held in the case of **JHPIEGO vs. Emmanuel Mmbaga**, Miscellaneous Application No. 238 of 2019, Labour Court Dar es Salaam (unreported) at page 5. She concluded by a prayer to the court to allow the application.

After considering submission by parties and court records, is my view that the issue for determination is whether the applicant adduced sufficient reasons for the delay in filing revision application against the Deputy Registrar's order dated 27/03/2019.

Under the provision of Rule 56 (1) of the Labour Court Rules this court is vested with powers to extend time upon good cause shown. The relevant section is to the effect that:-

"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”.

The courts have defined to what amounts to sufficient or good cause in many decisions. 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** 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”.

Also in the case of **Tanzania Fish Processors Ltd. vs. Christopher Luhangula**, Civil Appeal No. 161/1994, CAT at Mwanza it was held that:-

“the question of limitation of time is fundamental issue involving jurisdiction...it goes to the very root

of dealing with civil claims, limitation is a material point in the speedy administration of Justice. Limitation is there to ensure that a party does not come to court as and when he chooses”.

Again in the case of **Blue Line Enterprises Ltd. vs. East African Development Bank**, Misc. Application No. 135 of 1995, the Court held that:-

“...it is trite law that extension of time must be for sufficient cause and that extension of time cannot be claimed as of right, that the power to grant this concession is discretionary, which discretion is to be exercised judicially, upon sufficient cause being shown which has to be objectively assessed by Court”.

The applicant ought to have not shown unnecessary delay, as it was held in the case of **Dr. Ally Shabhay vs. Tanga Bohora Jamat [1997] TLR 305.**

In the instant matter, I have gone through the said erroneously application which was timely filed on 07/04/2019 and withdrawn on

01/07/2019. Three days after the said withdrawal, that is on 05/07/2019 the applicant filed the present application for extension of time. Under that the circumstance of this case, I do not hesitate to say the applicant did not act negligently as he only took three days to prepare proper documents and refiled the same before the court. The applicant's conduct shows that he had an interest to proceed with the matter in court and, he exactly did so. Therefore, it is crystal clear the delay has been accounted for as rightly submitted by the applicant. On the basis of the above discussion, I find the respondent's allegation that the erroneously application was filed on 03/07/2019 to be not true and nowhere can be traced in court record to prove the fact instead it reveals that the contested matter was filed on 07/04/2019. Thus, the applicant successfully accounted for the delay to file the intended revision.

In this matter as discussed above, the applicant did not act negligently because the time taken to refile proper application was reasonable as well as justified.

In the result, this court using powers vested under Rule 56 (1) of the Labour Court Rules do hereby allow the application. The

applicant has to file the intended application for revision within 14 days from today.

A handwritten signature in black ink, appearing to be 'I.D. Aboud', written over a horizontal line.

I.D. Aboud

JUDGE

24/04/2020