

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION**

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 138 OF 2020

DAVID MSUMBA.....APPLICANT

VERSUS

TANZANIA ELECTRIC SUPPLY CO. LTD..... RESPONDENTS

RULING

Date of last Order: 04/06/2021

Date of Ruling: 11/06/2021

Z.G.Muruke, J.

The applicant David Msumba, filed present application seeking for extension of time to file revision of the decision issued by Commission for Mediation and Arbitration (CMA) at Dar es Salaam on 24th May, 2019 in Labour Dispute No. CMA/DSM/TEM/704/2018 by Hon. Mikidadi, A - Arbitrator. Application is supported by applicant's affidavit, in opposing the application respondent filed a counter affidavit sworn by Nancy Mapunda the respondent's Principal Officer. Hearing of the application was by way of written submission. Both parties were represented. Advocate Magusu Mugoka represented the applicant, whereas Nancy Mapunda, respondent's Principal Officer was for the respondent.

Mr. Mugoka submitted that, while on employment applicant was charged with offences resulting to Economic Case No.06/2014, where he was convicted and sentenced to five(5) years imprisonment. He unsuccessfully appealed to the High Court and later to the Court of Appeal where the decision was quashed on 17th August, 2017 and left



free. Applicant filed his labour complaint no. CMA/DSM/KIN/R.610/2017 at CMA Kinondoni, the same was struck out for want of jurisdiction, then filed the dispute no. CMA/DSM/TEM /704/2018 before CMA Temeke hence the impugned ruling, subject of this application.

Mr. Mugoka further contended that, the reason for the delay was beyond human control. The applicant was wrongly prosecuted and sentenced for two years until the Court of Appeal rescinded the decision. Having been released by Court of Appeal the applicant became sick, in terms of the copies of medical report (annexure DM4). Counsel submitted that the grant of application is of essence as the applicant will get a chance to be heard on merit, citing various cases including the case of **Bushiri Hassan v. Latifa Mashayo** Civil Application No.2/2007 and **Sebastian Ndaula v. Grace Lwamafa** Civil Application No.4/2014 where it was held that '*The delay is excusable, if sufficient reason has been accounted for*'. In the end Counsel for applicant prayed for the application to be granted.

Respondents counsel prayed to adopt the affidavit in opposition to form part of her submission, and argued that the dispute reference number CMA/DSM/TEM/704/2018 was struck out on 24th May,2019. Applicant filed Misc application No.641/2019 seeking for extension of time on 25th October, 2019, being five (5) months from the date of the CMA's ruling. The application was withdrawn with leave to refile, hence present application. The delay of five (5) months was inordinate delay. Applicant has not stated what was the cause of delay as required under Section 56(1) of the Labour Court Rules,2007, hence no sufficient reason was adduced before this court. She referred a number of cases



including the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No.02/2010. Nancy Mapunda prayed for the application to be dismissed for want of sufficient reason for the delay.

Given the nature of the application the issue to be determined is; *whether the applicant has adduced sufficient reasons to suffice extension of time to lodge revision application out of time.*

It is a settled principle of law that in order for the court to exercise its discretionary power of extending time, sufficient reasons for the delay have to be shown. This position is clearly stipulated under Rule 56(1) of the Labour Court Rules, GN No. 106 of 2007, it provides: -

'The court may, extend or abridge any period prescribed by these rules on application and good cause shown, unless the court is precluded from doing so by any written law.'

This was insisted in a number of court decisions. For instance, in the case of **Mumello v. Bank of Tanzania** [2006] E.A. 227 where it was held that-

'It is trite law that an application for extension of time is entirely in the discretion of court to grant or refuse and that extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause.'

It is also clear that, what amounts to sufficient cause depends on the circumstances of each case. In the case of **Osward Masatu Mwizarabu V Tanzania Fish Processors LTD** Civil Application No 13 of 2010 (Unreported) where the Court of Appeal stated, thus-



'The term good cause is relative one and is depend upon the circumstance of each individual case. It is upon the party seeking extension of time to provides the relevant material in order to move the court to exercise its discretion.'

I have keenly gone through the applicant's affidavit and submission, most of the reasons stated were based on the delay to file the dispute before CMA and not application for revision before this court. However, at paragraph 8 of the affidavit I came across a reason of sickness which is supported by annexure DM4 (medical report). From the said medical report, it shows that the applicant was sick from 20th June,2019, was unable to walk and had numbness on both upper and lower limbs. The report shows that the recovery was improving up to 20th September,2019 when the Doctor confirmed his improvement that he can walk properly. It is true that the delay was of five months from 24th May,2019 to 25th October,2019 the date when the first application for extension of time in Misc. Appl. No. 641/2019 was filed.

It is crystal clear that, the applicant is seeking for a right to be heard, which is one of fundamental principles of natural justice. It is a rule of natural justice, that no man should be condemned unheard. In the case of Yusuph **Goronga & 59 Others v Tanzania Electric Supply Co. Ltd**, Misc. Lab. Apl.No.552 of 2018 this court stated that;

'The very foundation upon which our judicial system rests is that, a party who comes to court shall be heard fairly and fully, magistrates who does not hear a party before him or her offends the fundamental principle of natural justice.'



Basing on the circumstances of this matter, it is my view that once the applicant is denied this application, he will be having no chance to challenge his termination which was affected without affording him a right to defend himself as he was in jail, serving imprisonment sentence. For the interest of justice, the application is granted. The applicant to file intended revision within 30 days from today. The applicant must adhere to law to avoid the privious mistakes. Ordered accordingly.



Z.G. Muruke

JUDGE

11/06/2021

Ruling delivered in the presence of Daniel Shao, holding brief of Maguso Mugoka Counsel for the applicant and in the absence of respondent.



Z.G. Muruke

JUDGE

11/06/2021