IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS LABOUR APPLICATION NO. 554 OF 2020

BETWEEN

JARA SECURITY CO. LTD ..... APPLICANT

VERSUS

AMANI H. MOMBO ..... RESPONDENT

RULING

Date of Last Hearing: 08/11/2021

Date of Ruling: 10/12/2021

I. Arufani, J.

The applicant filed the present application in this court seeking for enlargement of time within which to file in the court an application for revision of the decision of the Commission for Mediation and Arbitration (hereinafter referred as the CMA) delivered in Labour Dispute No. CMA/DSM/KIN/R.837/18/188 dated 22nd November, 2019. The application is made under Rules 24 (1), (2) (a), (b), (c), (d), (e) and (f), Rule 24 (3) (a), (b), (c) and (d), Rule 24 (11) and Rule 55 (1) and (2) and 56 (3) of the Labour Court Rules, GN. No. 106 of 2007 (hereinafter referred as the Rules).

The application is supported by an affidavit of Jafari Hussein Kejo, the applicant's managing Director and opposed by the counter

affidavit affirmed by the respondent. The applicant was represented in the matter by Iddi Rasuli Rashidi, Learned Advocate and the respondent appeared in the matter in person. Following the prevalence of Covid 19 pandemic the court ordered the matter be argued by way of written submission. As the matter was argued by way of written submission, I will not belabour in reproducing at length what is argued in the submission of the parties but I will deal with the arguments raised in the submission of the parties.

The brief back ground of the matter is to the effect that, after the applicant being aggrieved by the aforementioned award of the CMA they filed in the court the application for revision which was registered as Revision No. 915 of 2019. On 15th July, 2020 the counsel for the applicant prayed to withdraw the application from the court and the matter was marked withdrawn with leave to refile on or before 30th July, 2020 and the present application was filed in the court on 7th December, 2020.

The counsel for the applicant argued in his submission that, after the revision being withdrawn from the court the applicant left the matter to their Personal Representative namely Mr. Isaya Maiseli to refile the matter in the court as ordered by the court and the

applicant was making follow up of the updates of the matter from their personal representative. Later on, the Director of the applicant namely Jafari Hussein was served with summons to show cause why he should not be detained as a civil prisoner in execution of the CMA award dated 22nd November, 2019 and registered in the court as Execution No. 348 of 2020.

The applicant's counsel argued that, the applicant through their human resources officer discussed with the personal representative who was handling their case about what would have been the way forward and after seeing he was not taking the necessary steps as he promised, on 30th November, 2020 the applicant took their documents and find an advocate and on 7th December, 2020 they filed the present application in the court. The counsel for the applicant argued that, the court has powers under the provisions of the law upon which the application is made of granting the order the applicant is seeking from the court upon good or sufficient cause for the delay being shown.

To support his submission, he referred the court to the provisions of the law cited in the chamber summons together with the cases of **Felix Tumbo Kissima V. Telecommunication Co.**

Limited and Another, Civil Application No. 1 of 1997 [1997] TLR where the term sufficient cause was elaborated. He submitted that the applicant intends to challenge the award of the CMA basing on illegality appearing on the award. He argued that, the award was obtained on fraud and misrepresentation and the arbitrator acted on incredible evidence of the respondent.

He stated in his submission how the disciplinary hearing was conducted and the rights given to the respondent at the disciplinary hearing and submitted the respondent was paid all of his terminal benefits. To support his submission, he referred the court to the case of **Principal Secretary, Ministry of Defence and National Service V. Devram Valambia** [1992] TLR 185 where it was held that, illegality of the decision to be challenged is a sufficient cause for granting extension of time. He cited in his submission other various cases where the principle laid in the above case has been followed in granting extension of time.

He argued that, as the applicant filed the application for revision timely and it was struck out because of being accompanied by an incurably defective affidavit the applicant cannot be denied right to return to the court. He contended that, the delay was

technical delay and argued that, the instant application was filed in the court promptly and without wasting time. He referred the court to the case of **Cooper v. Smith** 918840 26 CH D 700 where it was stated inter alia that, the object of the court is to decide the right of the parties and not to punish them for the mistakes they have made in the conduct of their rights.

He also referred the court to the cases of **Fortunatus Masha V. William Shija** and Another [1997] TLR 154 and **Babito Ltd. V. Freight Africa NV-Belgium and Two others** Misc. Civil Application No. 42 of 2018. HC at Moshi District Registry where it was stated that, justice demand the application be granted in order for the matter to be heard on merit and it is not proper to punish the applicant for the same mistake referred as negligence. He also cited the case of **Yuda Wenceslaus Ndanu V. Frank P. Kibona and Another**, Misc. Land Application No. 553 of 2020 where the issue of technical delay was discussed by the court. He based on the above stated submission and authorities to pray the court to grant the application.

In reply the respondent argued in his submission that the application is totally devoid of merit and ought to be rejected in its

entirety as it is a delaying tactics and misuse of the court's precious time with the aim of avoiding the respondent from execution the award. He argued that, after the applicant failed to refile the application on or before 30th July, 2020, on 29th September, 2020 he filed in the court the execution of the award whereby the applicant's Managing Director was required to show cause why he should not be arrested and detained as a civil prisoner. He argued that, after the said summons being issued is when the applicant filed the present application in the court.

He argued that, the applicant has neither accounted for each day of failure to file the revision within time nor explain or give reason on why the court should grant them extension of time. He argued that, although the applicant argued disciplinary hearing was in accordance with the law and the respondent was paid his terminal benefit fully but the whole process of termination was mess as the hearing procedure was not followed. He stated that, Rule 4 (1), (2) and 96 of the GN. No. 42 of 2007 shows who was supposed to be the chairman of the committee and his role. He stated the disciplinary form had no designation and had no signatures of the persons participated in the hearing.

He submitted that the issue to determine in the matter is whether the applicant has disclosed sufficient cause for being granted extension of time. He referred the court to the case of **Bertha Bwire V. Alex Mganga**, Civil Reference No. 7 of 2006 where it was stated that, extension of time is a matter of discretion of the court which must be exercised judiciously and flexibly with regard to the relevant facts of the particulars case. He also referred the court to the case of **Bushfire Hassan V. Latina Lucia Masanya**, Civil Application No. 3 of 2007 where it was stated that, delay of even a sing day has to be accounted for.

In addition to that the counsel for the respondent referred the court to the case of **Benedict Mumelo V. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (unreported) where it was stated extension of time is entirely in the discretion of the court. He also referred the court to the case efficient **International Freight Ltd. and Another V. Office Du Burundi**, Civil Appeal No. 23 of 2005 (unreported) where it was stated that, the court should not in future look kindly to application which in reality only amount to trying one's luck. At the end he prayed the court to dismiss the application for being devoid of merit.

Having carefully considered the rival submission from both sides and after going through the application and its supporting affidavit the court has found that, as the application is made under section 56 (3) of the GN. No. 106 of 2007 the court is required to be satisfied there is good cause for granting the order of enlargement of time the applicant is seeking from the court to refile the revision which was withdrawn from the court out of time.

The court has framed the above issue after seeing the applicant is urging the court to enlarge the time given by the court to refile the revision which was withdrawn from the court. The provision of the law upon which the application is made, Rule 56 (3) of the GN. No. 106 of 2007 permit the court to condone non-compliance with a period of time prescribed by the court for doing anything in a matter where good cause for doing so has been shown. The question to ask here is what is good cause? The term good cause is not defined in the GN. No. 106 of 2007 or any other statutes.

However, there are various decisions made by this court and the Court of Appeal where some factors required to be taken into consideration when determining whether there is good cause for granting extension of time have been stated. One of the cases where

what amount to good cause was stated is the case of **Jacob Shija V. M/S Regent Food & Drinks Limited & Another**, Civil Application No. 440/2008 of 2017 CAT at Mwanza (unreported) where it was stated that:-

> *"What amount to good cause cannot be laid by any hard and fast rule but are dependent upon the facts obtained in each particular case. That is each case will be decided on its own merit, of course taking into consideration the questions, inter alia, whether the application for extension of time has been brought promptly, whether every day of delay has been explained away, the reasons for the delay, the degree of prejudice to the respondent if time is extended as well as whether there was diligence on the part of the applicant."*

The court is also in agreement with the counsel for the respondent that, the law as stated in number of cases which one of them is **Bertha Bwire** (supra) is well settled that, granting or refusing to grant extension of time is on discretion of the court but that discretion must be exercised judiciously. While being guided by the position of the law stated in the above quoted case the court has found the reason for the delay to file the application for revision in the court within the time given by the court as deposed at paragraphs 7 to 12 of the affidavit supporting the application is that

the applicant was depending their application for revision to be filed in the court by their personal representative and the said personal representative would have updated them about the progress of their case but that was not done by their personal representative.

The applicant counsel stated in his submission that, the applicant discovered the personal representative had not refiled the application for revision in the court after their Managing Director being served with summons to show cause why he should not be detained as a civil prisoner. Thereafter the applicant engaged the current advocate who prepared the present application. The court has considered the above argument and find that, the applicant was required to refile the revision which was withdrawn on or before 30th July, 2020 and the application at hand was filed in the court on 7th December, 2020 which is almost after expiration of more than four months.

The court has considered the said period of time and the argument by the applicant's counsel that the applicant is a vigilant litigator as they were following up their matter through their personal representative but failed to comprehend how a vigilant litigator would have stayed for such a long period of time without following up their matter in the court and continued to make follow up the progress of

their case to the personal representative who was not giving them satisfactory information of the progress of their case.

It is the view of this court that, if the applicant was really a vigilant litigator, they would have made a follow up of the matter in the court to know if their revision had been refiled in the court within the time prescribed by the court and not to wait until when their Managing Director was served with summons to show cause as to why he should not be detained as a civil prisoner to awake and find another person who would have assisted them in the matter. The court has also arrived to the above view after seeing there is no even a scintilla evidence showing there was a follow up which was being made by the applicant to their personal representative to file the revision in the court as deposed in the affidavit supporting the application.

The court has also considered the argument by the counsel for the applicant that their delay is technical as the previous application was filed in the court within the time and it was withdrawn with leave to refile but failed to see any merit in the said argument. The court has come to the stated finding after seeing that, even if the period from when the revision withdrawn from the court was pending in the

court is excluded from the whole period of the delay but still there is a period of more than four months from when they were waiting for their personal representative to refile the revision in the court which has not been properly accounted for.

Under that circumstances it cannot be said the delay of more than four months is a technical delay envisaged in the case of **Fortunatus Masha** (supra). That will cover only the period when the revision which was withdrawn from the court was pending in the court and not even the period beyond the time the applicant was required to refile the revision in the court. To the view of this court and as rightly argued by the counsel for the respondent and stated in the case of **Bushfire Hassan** (supra) the applicant was required to account for the whole period of the delay and account for every single day of the delay. The above view is getting support from the case of **Juma Shomari V. Kabwere Mambo**, Civil Application No. 330/17 of 2020, CAT at DSM (unreported) where it was stated that:-

> *"It is settled law that in an application for extension of time to do a certain act, the applicant should account for each day of delay and failure to do so would result in the dismissal of the application."*

The counsel for the applicant argued further that there are illegalities in the award of the CMA as it was procured fraudulently and on misrepresentation as the respondent has already been paid all of his terminal benefits. The court is in agreement with the counsel for the applicant about the position of the law stated in the case of **Devram Valambia** (supra) that illegality on an impugned decision or award is a good and sufficient cause for granting extension of time. However, the court has found the position of the law stated in the cited case was well expounded in the case of **Lyamuya Construction Ltd V. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) where it was stated that:-

> *"Since every party intending to appeal seeks to challenge a decision either on point of law or facts, it cannot in my view, be said that in Valambia's case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. The court there emphasized that such point of law must be that of sufficient importance and,* ***I would add that it must also be apparent on the face of the record, such as the question of***

jurisdiction; not one that would be discovered by a long-drawn argument or process." [Emphasis added].

While being guided by the position of the law stated in the above quoted extract the court has considered the points of illegalities alleged by the counsel for the applicant that they are in the award issued by the CMA but failed to see any merit in the said argument. The court has found the point of fraud and misrepresentation raised by the counsel for the applicant is not a point of law apparent on the face of the record which can be discovered without requiring long argument to discover the same.

The court has also found that, the argument that the respondent was paid all of his entitlement was raised in the CMA and as appearing in the award annexed in the affidavit supporting the application were considered in the award issued by the CMA which shows some of the claims of the respondent were denied and others which were found were proved and granted. Under that circumstances it cannot be said there is illegality in the award of the CMA which can be used as a good or sufficient cause for granting the applicant extension of time they are seeking from this court.

Basing on all what I have stated hereinabove the court has found the applicant has not managed to satisfy the court they were delayed by good cause to refile the revision in the court or there is sufficient cause for granting them the order of extension of time they are seeking from this court. In the upshot the application is hereby dismissed for being devoid of merit. It is so ordered.

Dated at Dar es Salaam this 10th day of December, 2021.

I. Arufani

JUDGE

10/12/2021

Court: Ruling delivered today 10th day of December, 2021 in the presence of Mr. Iddi Rasuli Rashidi, Advocate for the Applicant and in the presence of the Respondent in person. Right of appeal to the Court of Appeal is fully explained.

I. Arufani

JUDGE

10/12/2021