

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

MISCELLANEOUS APPLICATION NO. 484 OF 2020

HOME AFRICA INVESTMENT CO. LTD.....1st APPLICANT

VERSUS

MAIKO NKYA.....RESPONDENT

RULING

13th October, & 3rd December 2021

Rwizile J.

The applicant is applying for extension of time to file an application for revision. The affidavit sworn by Paul Makang'a, the applicants advocate, has averred that since 2019 when the first application for revision was filed and struck out for being defective, she has been in court struggling to file applications. His affidavit has advanced grounds for determination.

It should be noted that the applicant was employed by the respondent do carpentry works. He started working with the applicant on 20th January 2017, until when he was terminated on 2nd January 2018. The respondent was not happy with termination. He referred the matter to the Commission.

The applicant defaulted appearance, this paved the way to an ex parte hearing and then an ex parte award.

The same was issued in favour of the respondent. The applicant's attempts to set it aside failed. She filed the application for revision, which was found with defects and then struck out. She was out of time to refile, hence this application.

Mr. Paul Makang'a argued the application by stating that article 107A (1), (2)(d) and (e) of the Constitution of the URT enjoins the courts to dispense justice without being tied in technicalities which may occasion failure of justice. He asked this court to grant the application because he has shown good grounds for delay. It was his view that since he filed the application for revision in time, but it was struck out, this application be granted in order to accord her a change to argue the illegality present in the award. To support his finding, the learned counsel asked this court to follow the decision in the case of **Tanzania Social Action Fund & Another vs Celestine Samora Manase & 11 others**, Misc. application No. 356 of 2017.

John Mark Maro, is the advocate for the respondent. When opposing the application, he submitted that the applicant was negligent in filing applications. The applications filed, in the counsel's view, did not comply with the law. This is because, he argued dismissal was for failure to comply with rule 24 of the Labour Court rules GN No. 106 of 2007. It was his argument that after refileing another application, it was also struck out. This means therefore, filing this application has to comply with section 14(1) of the Law of Limitation Act. In his view, the applicant was required to show sufficient cause for the delay.

He went on submitting that Rule 56 of the Labour Court Rules provides for extension of time, provided that reasonable cause has been shown. This also is in line with the cases of **Karim Hassan vs National Microfinance Bank Plc**, Misc. Application. 253 of 2017 and **Ismael Juma vs Haruna Mngazija**, Misc. Application No. 154 of 2020. The counsel, in conclusion, held the view, that the applicant has failed to show sufficient cause and so this application should not be granted.

Before delving into the merits of the submissions, I have to first lay down the principles this court applies to grant or reject an application for

extension of time. It is trite that, granting or refusing extension of time is an absolute discretion of the court. For the application to be granted, one must show sufficient cause and account for each day of delay. This was stated in the case of **Benedict Mumello vs Bank of Tanzania**, Civil Application No. 12 of 2012, where the Court of Appeal held inter alia that:

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

In the case of **Wambura N. J Waryuba vs The Principal Secretary Ministry for Finance and Another**, Civil Application No.320/01 of 2020, again the Court of Appeal held that;

"...It is essential to reiterate here that the Court's power for extending time ... is both wide-ranging and discretionary but it is exercisable judiciously upon good cause being shown.

However, in the case of **Lyamuya Construction Co. Ltd vs Board of Trustees of Young Women's Christian Association of Tanzania**, Civil

Application No 2 of 2010, the Court of Appeal laid down three principles to be considered as hereunder;

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

The same principles have been consistently applied by courts whenever the occasion arises. The principles as above have been codified into law, in nearly the same manner as in the case laws. To guide arbitrator before condoning an application, Rule 11(2) of the Labour Institutions (Mediation and Arbitration) Rules, 2007, GN No. 64 of 2007, provides that before granting an application for condition, consideration is in regard to the following;

- i. the degree of lateness and
- ii. reasons thereof,

- iii. the prospects of succeeding,
- iv. the amount of prejudice attached to the case on the other party.

In the matter at hand, it can be noted that Revision No. 820 of 2019 was struck out for being defective for contravention of the rule 24(3) (c) and (d) of the labour court rules. Basing on the nature of the application it is apparent that parties to this application have been locked in this matter since 2018. The applicant has failed to prosecute the case in different occasions. It was first filed and did not attend at the commission. It was fixed for hearing and it was indeed heard exparte. He filed the application to set it aside but it was found that she had no reasonable cause. She then filed a defective application which was struck out. To be precise, according to the ruling of this court, Revision No 820 of 2019 was struck out, because the applicant filed an application without statement of material facts, legal issues and reliefs. In other words, if is as good as filing an appeal without advancing grounds of appeal. This in my view, is an act of negligence. I think, it should be taken as gross negligence.

The history behind this application therefore, is that all the time, the applicant has been the source of all this delay. I have shown before that there are principles to guide the court before granting or rejecting an application for extension of time. These include among other things, that the applicant should show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take. I am certain, if I may be pardoned for saying so, that the applicant has been negligent and has shown no diligence in prosecuting the matter, since its inception before the commission.

On illegality, this court fetches supported in the cases of **Lyamuya Construction PS Ministry of Defence**, and the case of **Finca (T) Ltd and another vs Boniface Mwalukisa**, Civil Application No. 589/12 of 2018, (supra) CA unreported. It was held that illegality is a good ground for extension of time. But in order to plead illegality successfully, it must be glaringly apparent on the face of the record. The applicant has submitted that, illegality he is talking about, is that the applicant was not given a right to be heard. In my view this is not just in the face of the record. This is because, in order to establish the right to be heard was infringed, there must argument to prove that the right was denied without justifiable

course. It may seem, the applicant was given the right but sat on it. Based on the foregoing, this application has no merit. It is dismissed. I make no order as to costs.




A.K.Rwizile

JUDGE

03.12.2021

Labour Court TZ.