

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

**MISCELLANEOUS LABOUR APPLICATION NO. 478 OF 2020**

*(Arising from Labour Dispute No. CMA/KIN/R.463/18/153)*

**BETWEEN**

**MORRIS D. NG'ONDO AND 31 OTHERS..... APPLICANTS**

**VERSUS**

**DAIKIN TANZANIA LIMITED .....RESPONDENT**

**EX-PARTE RULING**

*Date of Last Order: 04/11/2021*

*Date of Ruling: 10/12/2021*

**I. Arufani, J.**

The applicants filed in this court the instant application under Rules 24 (1), 24 (2) (a), (b), (c), (d), (e) and (f), 24 (3), (a), (b), (c) and (d), 55 (1) and 56(1) and (3) of the Labour Court Rules, GN. No. 106 of 2007 praying for the following orders:-

- 1. That this Honourable Court be pleased to extend time in order to enable the applicants to file an application for revision out of time through their Representative Morris D. Ng'ondo as it was granted in Miscellaneous Application No. 564 of 2019 before Hon. Muruke, J.*
- 2. Any other relief (s) this Honourable Court may deem fit and just to grant.*

The application is supported by an affidavit sworn by Morris D. Ng'ondo, the applicants' representative. Although the respondent was duly served through her advocate namely Joseph Chacha Mukohi as evidenced by the affidavit of the process server dated 15<sup>th</sup> June, 2021 filed in the court but nobody appeared in the court on behalf of the respondent to contest the application. That caused the court to allow the application to proceed ex-parte and the application was argued by way of written submission.

Mr. Twaha Taslima, Learned Counsel for the applicants stated in the submission of the applicant that, the applicants were granted twenty one (21) days by Hon. Muruke, J. within which to file in the court their application for revision of the CMA award. He argued the said order was issued on 3<sup>rd</sup> August, 2020 and on 24<sup>th</sup> August, 2020 when it was the last day for filing the revision in the court, the applicants lodge their application for revision in the court electronically through JSDS. He argued that, while the applicant thinking their application had gone to the proper registry of the court but in reality, the application went to the wrong registry as it went to the registry of Dodoma High Court Labour Division.

He went on arguing that, when the applicants made a follow up of the matter in the registry of this court through their representative, Morris they were advised by the Registrar of this court to lodge afresh the said application after the elapse of thirty days after the application lodged at Dodoma Registry is rejected from the system. He argued that, on 28<sup>th</sup> September, 2020 to 12<sup>th</sup> October, 2020 Morris who was appointed to represent other applicants was indisposed and unable to act upon within the short period of time of lodging the application in the court and he lost communication with other applicants and failed to engage an advocate of processing their application as the mobile phone of Morris dropped into water.

He submitted that, the court is vested with very wide discretionary power to grant extension of time and in exercising such power it requires a party applying for extension of time to demonstrate sufficient reasons or reasonable cause. He went on submitting that, the delay was caused by new system of filing documents electronically through JSDS which caused their application to be lodged at Dodoma registry instead of being lodged in the registry of this court and the sickness of Morris.



He cited in his submission the case of **Ratman V. Cumarasamy** [1964] All. ER 93 where it was stated that, in order for the court to grant extension of time there must be some material on which the court can exercise discretion. In addition to that he cited in his submission the cases of **Benedict Mumello V. Bank of Tanzania**, Civil Appeal No. 12 of 2002 and **Sultan Bin Ali Bin Hilal El Esri V. Mohamed Hilal and Two Other**, Misc. Application No. 116 of 2016 and **Daud S/O Haga V. Renatha Abdon Machafu**, Civil Reference No. 19 of 2006 (all unreported) which all emphasized that, the court has discretionary power to grant extension where sufficient cause has been shown. In fine the counsel for the applicant prayed the application be granted.

The court has carefully considered the submission made to the court by the counsel for the applicants and come to the view that, as held in various cases which some of them are the one cited in the submission of the applicant, the court has discretionary power of granting extension of time where there is good or sufficient cause for doing so. That position of the law can be seeing in the case of

**Benedict Mumello** (supra) where it was stated that:-

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

The court has found the applicants in the present application are seeking for extension of time prescribed by the court. The provision of the law governing application of this nature is Rule 56 (3) of the Labour Court Rules, GN. No. 106 of 2007 cited in the application of the applicants which states that, the court may, on good cause shown, condone non-compliance with the period prescribed by the court. 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."*

While being guided by all what I have stated hereinabove the court has found the issue to determine in this application is whether the applicants have managed to establish there is good cause for granting them extension of time they are seeking from this court. The court has found the cause for the applicants to delay to lodge their revision in the court within the time prescribed by the court is that their application was wrongly filed in the registry of Dodoma High Court Labour Division instead of being filed in the registry of this court.

The court has gone through the print out annexed in the affidavit supporting the application and find it shows the application



which parties were Morris D. Ng'ondo and 31 others V. Daikin Tanzania Limited was submitted in the Dodoma High Court Labour Division on 24<sup>th</sup> August, 2020 at 10:49: 17 which as per the decision of this court was the last date for the applicants to lodge their revision in this court. The court has found that, although from 24<sup>th</sup> August, 2020 to 16<sup>th</sup> October, 2020 there is a period of about two months but the counsel for the applicants has tried to give explanation to account for the stated period of time.

He argued that, after Morris D. Ng'ondo made a follow up of the matter in the registry of this court he was advised to wait for the application filed in the wrong registry to be rejected and after being rejected is when they would have filed the application in the court afresh. He went on arguing that, before ruling the revision in the court Morris who had been appointed to represent other applicants in the matter became indisposed from 28<sup>th</sup> September, 2020 to 12<sup>th</sup> October, 2020. Besides that, he stated the mobile phone of Morris dropped into water and failed to communicate with his fellow applicants and failed to engage an advocate of assisting them in the matter.

The court has found some of the stated causes like that of filing the revision in the registry of Dodoma High Court Labour Division instead of filing in the registry of this court and that of the applicant to be indisposed from 28<sup>th</sup> September, 2020 is supported by annexure TLC "2" and "3" respectively. Although the argument that the mobile phone of Morris dropped into water is not supported by any other evidence but the court has found that, as stated in the case **Ratman V. Kumarasamy** (supra) there are undisputed material facts on which the court can exercise its discretionary power to grant the order the applicants are seeking from this court.

The court has found the applicants were not idle for the whole period of the delay as they filed the revision in the court within the time given by the court but it went to a wrong registry. In addition to that the applicants' representative became sick. All those facts, shows the applicants were delayed by good cause to file their revision in the court within the period of time prescribed by the court.

In the premises the court has found the applicants have managed to satisfy the court there is good cause for granting them the order of extension of time to lodge in the court the application for revision of the award of the CMA out of time. Therefore, the



application is granted and the applicants are given fourteen (14) days from today to lodge their application for revision in the court. Order accordingly.

Dated at Dar es Salaam this 10<sup>th</sup> day of December, 2021.



I. Arufani

**JUDGE**

10/12/2021

**Court:** Ruling delivered today 10<sup>th</sup> day of December, 2021 in the presence of Mr. Twaha Taslima, Advocate for the Applicant and in the presence of Mr. Twaraha Yusuph, Advocate for the Respondent. Right of appeal for the Court of Appeal is fully explained.



I. Arufani

**JUDGE**

10/12/2021