

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

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 07 OF 2021

SILVIA KIFANYI.....APPLICANT

VERSUS

VICTORIA SERVICE STATION.....RESPONDENT

RULING

Date of last Order: 01/06/2021

Date of Ruling: 25/06/2021

Z.G.Muruke, J.

This is an application for extension of time to file Revision against the decision of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/DSM/KIN/R.1168/16/25 delivered by Hon. Mwakisopile I.E, - Arbitrator, on 28th August,2017. The applicant SILVIA KIFANYI, is praying for extension of time to lodge an Application for Revision out of time against the arbitral award. The application is supported by her own affidavit. The same was challenged by the counter affidavit of Lameck Harold Matemba, the applicant's authorized officer.

The application was disposed by way of written submission. Mr. Philip the applicant's representative submitted that, applicant through her representative Mr. Mkibi Dickson filed revision application No.149/2018 which was struck out for being defective with leave to refile on 7th November,2018. Before the application was struck out, she

travelled to Iringa for maternity care and the matter was attended by her representative. On September, 2018, she got suspicious as her representative was not responding to her calls. She decided to make follow-up to this court and found that the application was struck out since 7th November, 2018. Mr Philip further submitted that, the applicant is seeking for the right to be heard on the application on merit, referring the cases of **Ridge v. Baldwin** [1963] 2 All ER 66, and **Irene Temu v. Ngassa M Dindi & 2 Others**, Civil Application No. 278/17 of 2017 (unreported) the representative abandoned the matter without informing the applicant. It was the personal representative who caused the delay. The applicant is a victim of the dishonest and negligent personal representative. He thus prayed for this court to allow the application.

In response, Mr. Francis Mwita respondent's counsel submitted that the application is not proper as the applicant has wrongly cited the enabling provision. The applicant has cited Section 24 of the Labour Court Rules, instead of Rule 24. Again, the applicant is seeking extension of time to file an application for revision against labour dispute No. CMA/DSM/KIN/R.1168/16/25 as delivered on August, 2017. The applicant has submitted entirely on Rev. No. 149 of 2018 which was struck out by Hon. Aboud J. The applicant's submission is based on the the struck-out order in Revision No. 149 of 2018, upon which she was granted 14 days to refile proper application from the date of issuance of that order. The applicant has failed to comply to the direction of the court.

Further, Counsel submitted for the respondent that, they refute the contention that the application proceeded before the court while she was in Iringa. The application was struck out on the same day when the parties appeared before Hon. Aboud, J as reflected in Annexure A2 (the proceedings). That, it took the applicant a full year up to 3rd September, 2020 when she acted by writing a letter. The applicant has not accounted on each day of her delay as required by the law. Referring the case of **FINCA(T) LIMITED & Another v. Boniphace Mwalukisa**, Civil Application No.589/12 of 2018.

Mr. Mwita further submitted that, cited cases of **Ridge v. Baldwin**, and **Irene Temu v. Ngassa M Dindi & 2 Others** (supra) are distinguishable with the circumstances of this case. He thus prayed for the application to be dismissed for want of merit.

From the submissions the issue for determination is, whether the applicant has sufficient reasons to suffice extension of time to file the revision application out of the time provided by the law.

It is the general principle of law that, it is a discretion of the Court to grant an application for extension of time upon a good cause shown. In the case of **Tanga Cement Company v. Jumanne D. Masangwa and Another**, Civil Application no. 6 of 2001, Court of Appeal of Tanzania, (Unreported) CAT held that:

'...an application for extension of time is entirely in the discretion of the Court to grant or refuse it. This unfettered discretion of the Court however has to be exercised judiciously, and overriding consideration is that there must be sufficient cause for doing so. What amount to sufficient cause has not been defined. From

decided cases a number of factors has been taken into account, including whether or not the application was brought promptly, the absence of any valid explanation for the delay, lack of diligence on the part of the applicant.'

In the matter at hand, the reason advanced by the applicant as the cause of the delay is that, when she left to Iringa for maternity care, she left the matter in the hands of her then personal representative Mr. Mkibi Dickson. After the application was struck out for being incompetent on 7th November, 2018, leave was granted to file a proper application within 14 days. Unfortunately, Mr. Mkibi left the matter untended until 10th October, 2020 when the applicant took initiative to pursue on her own by inquiring what happened with her application. The respondent argued that the applicant is uncertain as to what application extension of time is sought, and the applicant has failed to account on each day of her delay from the date when the application was dismissed.

As stated by the respondent's counsel, the applicant has not accounted each day of the delay as required by the law. However, after consideration of the advanced reasons by the applicant it is obvious that there was negligence on part of her representative Mr. Mbiki, who was feeding the applicant false information that, the matter was proceeding before the court while the same was not true. Therefore, she cannot be punished by her representative actions.

It is obvious that what the applicant is seeking is extension of time to file Revision application to challenge the CMA's award. The applicant is striving to be heard on merit. This Court has always emphasized that,

the right to be heard is a fundamental principle which the courts of law must jealously guard against. In the case of **Yusuph Goronga & 59 Others v. Tanzania Electric Supply Co. Ltd**, Misc LAB. Appl. No.552 OF 2018 it was that held

' 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.'


On the upshot for the interest of justice the application is hereby granted. Intended revision application to be filed within thirty (30) days from today. The applicant must adhere to the requirement of the law to avoid the prior mistakes. It is so ordered.


Z.G. Muruke

JUDGE

25/06/2021

Ruling delivered in the presence of Donald Philip applicant representative and Mathew John, holding brief of Advocate Francis Mwita for the respondent.


Z.G. Muruke

JUDGE

25/06/2021