

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 483 OF 2020

BETWEEN

ABDULKADIR RUMANYIKA AND 27 OTHERS.....APPLICANT

AND

ULTIMATE SECURITY (T) LTD t/a

GARDA WORLD LIMITED.....RESPONDENT

RULING

Date of Last Order: 13/04/2021

Date of Ruling: 25/06/2021

A. E. MWIPOPO, J.

This is an application for extension of time to file revision application against the award of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/DSM/KIN/R.296/17/466. The Applicants namely Abdulkadir Rumanyika who represent 27 others Applicants pray for the following orders of the Court:-

1. That the Court may be pleased to grant leave for extension of time to file an application for revision against the Commission award in Labour Dispute No. CMA/DSM/KIN/R.296/17/466 dated 10th January, 2019.

2. That, the Court be pleased to grant leave so that the Applicants can file a fresh application for revision out of time.

3. Any other order this Court may deem fit and just to grant.

The application was accompanied with Chamber Summons and was supported by Joint Affidavit of Abdulkadir Rumanyika, Emmanuel Anthony and Renatus Mmari. The Affidavit contains one ground of revision in paragraph 19 that whether the Applicants have demonstrated sufficient reason for delay in preferring the application for labour revision against the Commission award.

Background of the application in brief is that, the Applicants were employed by the Ultimate Security Limited on diverse dates as security guards. They were terminated for operation requirement on 15th February, 2017. The Applicants were aggrieved and referred the dispute to the Commission for Mediation and Arbitration which delivered its award on 31st January, 2019. The Applicants were not satisfied with the Commission award and they filed Misc. Application No. 482 of 2019 for representative suit which was granted 20th April, 2020 on a condition that they have to announce the same on two Swahili newspaper which are regularly read. On 8th June, 2020 they wrote a letter to Judge Incharge, High Court Labour Division requesting for the Court to allow them to make announcement

once instead of two times as it was ordered by the Court. The Court allowed them to announce once in the newspaper on 15th July, 2020 and the announcement was published on 28th October, 2020. Then the Applicants filed the present application for extension of time to file revision application on 20th October, 2020.

When the matter came for mention on 17th February, 2021 both parties entered appearance. The Applicants were represented by Mr. Michael Mgombozi, Personal Representative, whereas the Respondent was represented by Mr. Richard Lyampawe, Respondent's Principal Officer. The hearing of the matter was fixed on 13th April, 2021. On the hearing date only the Applicants' personal representative appeared and Respondent was absent. The Court ordered for the hearing to proceed in *ex parte* as there was no information of the Respondent's whereabouts despite the fact that on the previous mention date when the matter was fixed for hearing the Respondent was represented.

Submitting in support of the Application, the Applicant counsel argued that the Applicants were granted leave to institute representative suit in Misc. Application No. 482 of 2019 on 20th April, 2020. By that time already 42 days' time limitation provided by the law for instituting revision

application against arbitral award has elapsed. The Court granted the said leave on condition that the Applicants has to announce the same in two Swahili newspaper. The Applicants failed to make the announcement as ordered by the Court and they approached the Court to allow them to make announcement in one newspaper on 8th June, 2020 and the Court allowed their prayer. Thereafter, the Applicants did make announcement in the Uhuru Newspaper on 28th October, 2020 and filed the present application for extension of time on 20th October, 2020. The personal representative argued that the delay to file revision application was due to fulfilment the conditions set by the Court to announce the order of the Court in two Swahili newspaper while the Applicants failed to afford it. The representative cited several cases to support the position including the case of **Ally Sacha Bakari and Others V. NHC**, Misc. Application No. 344 of 2016, High Court Labour Division, (Unreported) and **James Mgaya and 3 Others V. TTCL (T) Ltd**, Misc. Application No. 04 of 2016, High Court Labour Division, at Mwanza, (Unreported). He then prayed for the Court to allow the Applicants to file their revision out of time.

From the submission, the issue for determination is whether the Applicants have provided sufficient reasons for the Court to grant them

extension of time to file the revision application out of the time prescribed by the law.

It is settled that the Court has discretion to grant an application for extension of time upon a good cause shown, [See. **Tanga Cement Company vs. Jumanne D. Masangwa and Another**, Civil Application no. 6 of 2001, Court of Appeal of Tanzania, (Unreported); **Abdallah Salanga & 63 Others v. Tanzania Harbours Authority**, Civil Reference No. 08 of 2003, Court of Appeal of Tanzania, (Unreported); and **Praygod Mbagha V. Government of Kenya Criminal Investigation Department and Another**, Civil Reference No 4 of 2019, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported)].

The reasonable cause or good cause is a relative word dependent upon party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion [see. **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13 of 2010, Court of Appeal of Tanzania, (Unreported); and **General Manager Tanroads Kagera vs. Ruaha Concrete Company Ltd**, Civil Application No. 96 of 2002, Court of Appeal of Tanzania, at Dar Es Salaam,

(Unreported)]. The reasonable or sufficient cause must be determined by reference to all the circumstances of each particular case.

In the case of **Dar Es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported), the Court observed that:

"What amounts to sufficient cause has not been defined. From decided cases a number of factors have to be taken into account including whether or not the application has been brought promptly. The absence of any explanation for delay lack of diligence on the part of the applicant."

The same position was stated 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), the Court 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 judicially, 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 present case the Applicants narrated what happened after the Commission issued its award until when the present application for

extension of time to file revision was filed. The Applicants filed application for representative suit (Misc. Application No. 482 of 2019) which was granted on 20th April, 2020 while the 42 days' time limitation provided by the law for filing of revision application has already expired. The leave was granted on condition that the same has to be announced in two Swahili newspaper and the Applicants failed to pay for the announcement and they prayed to the Court to allow them to make one announcement in the Swahili newspaper the prayer which was granted on 15th July, 2020. They were able to make the announcement on 28th October, 2020 and the present application was filed on 20th October, 2020. This evidence clearly shows that the Applicants filed the present application before fulfilling the condition which was set by the Court. There is no explanation as to why they decided to file the application of time on 20th October, 2020 which is almost 96 days from the date the Court granted leave to the Applicants to make a single announcement in the newspaper instead of two announcement which was ordered earlier on.

Further, there is no explanation as to why the announcement was made in the Swahili newspaper on 28th October, 2020 which is more than 100 days from the date they were granted leave to make one announcement in Swahili newspaper by the Court on 15th July, 2020. In

absence of the explanation, the Court is not in position to know the reason for the delay. The Applicants are duty bound by the law to account for the delay of filing the application for extension of time.

It is a settled law that in the application for extension of time the Applicant is supposed to account for each and every day of the delay [see. **Tanzania Ports Authority vs. Pembe Flour Mills Ltd, Civil Application No. 49 of 2009**, the Court of Appeal of Tanzania, at Dar es Salaam, (Unreported); and **AZIZI MOHAMED V. THE REPUBLIC, CRIMINAL APPLICATION NO. 84/07 OF 2019**, Court of Appeal of Tanzania, at Mtwara, (Unreported)].

In the in the case of **Said Nassor Zahor and Others vs. Nassor Zahor Abdallah El Nabahany and Another**, Civil Application No. 278/15 of 2016, the Court of Appeal of Tanzania, (unreported), it was held that, I quote;

"...any applicant seeking extension of time is required to account for each day of delay."

In the matter at hand the Applicant's representative has accounted for the delay from the date of delivery of the Commission award up to the date which this Court granted leave for to them to announce the order once in the Swahili newspaper. From there onwards there is no explanation

as to the reason for late announcement of the order in the newspaper and delay in filing of the present application for extension of time. This means that they failed to account for each day of the delay.

Therefore, I find the Applicant failed to provide sufficient cause for the Court to extend time to file the intended revision application out of time. Consequently, I hereby dismiss the application accordingly. Each party to the application to take care of its own cost of the suit.

A handwritten signature in blue ink, appearing to read 'A. E. Mwiipo', written over a horizontal line.

A. E. MWIPOPO

JUDGE

25/06/2021