

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

**MISC. LABOUR APPLICATION NO. 195 OF 2020**

**BETWEEN**

**JACKSON MWENDI ..... APPLICANT**

**VERSUS**

**TUSIIME HOLDINGS (T) LTD .....RESPONDENT**

**RULING**

Date of Last Order: 12/05/2021

Date of Ruling: 16/07/2021

**About, J.**

This is an application for extension of time to file application for revision of the Arbitration award delivered by Hon. Ngalika E, Arbitrator in labour dispute No. CMA/DSM/ILA/R.549/2016. The application is made under the provision of section 94 (1) (a), 94 (3) (b) (ii) of the Employment and Labour Relations Act, [CAP 366 RE 2019] (herein referred as the Act) and Rule 24 (1), 24 (2) (a) (b) (c) (d) (e) (f), 24 (3) (a) (b) (c) (d) and Rule 56 (1) (2) (3) of the Labour Court Rules GN. 106 of 2007 (Herein Labour Court Rules).

The matter was argued orally. The applicant appeared in person, unrepresented whereas Mr. Lwisijo Ndelwa, Learned Counsel was for the respondent.

Arguing in support of the application the applicant narrated the background of the matter. He stated that, he was employed by the respondent as a Physics teacher in a two years contract commenced on 01/10/2010 and ended on 30/09/2012. He said, the contract provided for renewal upon expiry of the same, subject to employee giving six months' notice before its expiry. The applicant submitted that, he notified the respondent on his intention to renew the contract on the agreed period through a letter dated 29/06/2012, but no response was made thereto.

It was further submitted that, the applicant continued to work even after expiry of his fixed term contract. He stated that, the employer kept on promising him about renewal of his contract but, surprisingly on 29/10/2012 he was orally terminated from employment. It was submitted that being dissatisfied with the unfair termination on 24/06/2016 the applicant referred the matter at the CMA which was registered as trade dispute No. CMA/DSM/ILA/R.459/2016. He argued

that, he delayed to file the dispute at the CMA because of the respondent's continuous promises to pay the applicant dues. The applicant alleged that because of lack of knowledge he had to route his grievances to various places including the Regional Commissioner's Office, Dar es Salaam and President's Office, State House who in turn advised him to channel his grievances to proper forum.

It was submitted that, the delay to file an application for revision in this court is that his representative who was handling this matter, travelled for family constrains and handled the matter to who his whereabouts are unknown to date. He said, most of the time he had been assigned to attend National Confidential Special Duties of which the official Declaration of secrecy under sections 1, 2, 3 (a) (b) (c) and section 4 of The Government Security Act No. 03 of 1970 prevents him to disclose the matters.

It was argued that, the limitation for filing revision is six weeks from the date of ruling/award/order as provided under section 91 (1) of the Employment and Labour Relations Act, [CAP 366 RE 2019] (herein the Act) and in this case the degree of lateness is almost forty two (42) months with the applicant's reason for failing to file an application on

time are stated in his affidavit. It was stated that the applicant made follow up for legal assistance from representative without any accomplishment as a result he decided to prepare his application on his own. To support his submission, he cited the case of **Thomas Mjengi V. Republic**, [1992] TLR 157 which emphasized on the right to legal representation.

It was further submitted that, the applicant acted diligently in handling his case and he met all the conditions under Rule 56 of the Labour Court Rules. The applicant also cited number of cases including the case of **Tanga Cement Company vs. Jummone Musungwa & others**, Civ. Appl. No. 06/2001 to support his submission which will be considered in this decision cited in the case of **Arisony Gilman v. A to Textile Mills Ltd**, Lab. Div. ARS, Rev No. 06/2013.

On the basis of the above submission the applicant prays the application to be allowed for the interest of justice.

Responding to the application Mr. Lwijiso Ndelwa submitted that, the applicant did not disclose sufficient reason to warrant an extension of time. It was stated that, the applicant's affidavit and its annexure show apathy, negligence, lack of diligence and sloppiness by the

applicant in pursuing the instant matter. It was added that the delay is inordinate and the applicant did not account for everyday of delay.

Respondent's counsel stated that, at paragraph 1.4 of the applicant's affidavit he deponed that, he failed to file an application for revision on time because the dispute was pending at the Regional Commissioner's Office, State house and the Commission for Human Rights and Good Governance as indicated in annexure B-2. He added that, after the ruling of the CMA on 30/11/2017 the applicant wrote a letter to the Office of the Regional Commissioner, Dar es Salaam seeking for intervention of the matter.

It was further submitted that, in a letter dated 16/06/2017 (annexture C2) the State House advised the applicant to persue his claims to the Court, however he ignored the advice and sat idle until 01/06/2020 when he filed the present application, after a period of 36 months. It was argued that, the applicant decided to persue a political solution of settling the dispute rather than filling a revision before this Court. It was argued that, the path which the applicant opted from the beginning does not constitute a reason for extension of time as it is the position in the case of **Helen Jacob v. Ramadhan Rajabu** [1996] TLR

139 and the case of **Registered Trustees of the Archdiocese of Dar es Salaam v. the Chairman Bunju Village Government and 11 others**, Civ. Appl. No. 147 of 2006.

As to the allegation that the applicant was assigned government national special confidential duties, it was strongly submitted that there is no evidence to prove the same. Regarding the reason of seeking legal assistance, it was submitted that, the ground is new at this stage because it was not raised in the applicant's pleadings, but he did in his submission before this court. It was added that, allegation that the applicant lost assistance is unknown to this Court thus because there is no proof. As to the authorities referred to the court regarding to right to legal representation it was strongly submitted that, the same are distinguishable in this matter.

In the upshot it was submitted that, the applicant failed to advance sufficient reasons to warrant an extension of time for the delay of 1261 days. He therefore prayed for the application to be dismissed.

In rejoinder, the applicant reiterated his submission in chief. He mentioned his former Legal Representative as one Dickson Buberwa C/o Global Law Chamber.

After considering the rival submission of the parties and court records, it is clear that the only issue for determination before the court is whether the applicant advanced sufficient reasons to justify the delay to file the intended revision application.

This court powers to extend time in applications of this nature is derived under Rule 56 (1) of the Labour Court Rules which provides as follows: -

*'The Court may extend or abridge any period prescribed by these Rules on application and on good cause shown, unless the court is precluded from doing so by any written law'*

As stated in the provision above, the person seeking for extension of time must show good or sufficient cause. What amounts to sufficient or good cause have been discussed in a number of cases including the Court of Appeal in the case of **Arisony Gilman vs. A to Textile Mills Ltd** (supra): -

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

Again, in the case of **Blue Line Enterprises Ltd Vs East African Development Bank**, Misc. Application No. 135 of 1995, the Court held that: -

*'...it is trite law that extension of time must be for sufficient cause and that extension of time cannot be claimed as of right, that the power to grant this concession is discretionary, which discretion is to be exercised judicially, upon sufficient cause being shown which has to be objectively assessed by Court.'*

In the instant matter, the impugned decision was delivered on 28/10/2016 and the applicant filed the present application on 01/06/2020. The limitation period for filing revision application against Arbitrator's award is 42 days pursuant to section 91 (1) (a) (b) of the Act. Therefore from 28/10/2016 when the award was delivered to 01/06/2020 when the applicant filed the present application is almost forty two months (42) as correctly calculated by the applicant. In his submission the applicant stated that his reason for the delay is deponed



on his affidavit, as reflected vividly at paragraph 1.4 of the same which provides as follows: -

*'Paragraph 1.4. That, I wanted to file application for revision within time of which was not specified by the Arbitrator of the Commission for Mediation and Arbitration (CMA) and the dispute had been still pending with the Regional Commissioner's Office, Dar es Salaam, The President's Office (State House) and The Commission for Human Rights and Good Governance Office. Moreover, I had been assigned on Governmental National Special Confidential Duties most of the time as far as the Government Security Act No. 3 of 1970 under sections 4 (1) (a) (b) (c) (d), 4 (3) (4) and 5 (1) (2) and The Official Declaration of Secrecy under sections 1, 2, 3 (a) (b) (c) and 4 of the said Act prescribe of which must be adhered. Furthermore, the person who was assisting me in legal issues traveled due to family constrains and whose whereabouts is still unknown to date.'*

In the above quoted paragraph, the applicant stated three reasons which prevented him from filing the application for revision on time. The first reason is that the matter was still pending with the Regional Commissioner's Office, Dar es Salaam, The President's Office (State House) and The Commission for Human Rights and Good Governance Office. In my view the fact that the applicant decided to pursue his

matter politically is not a good ground for the grant of the application at hand. This is also the position in the case of **Helen Jacob v. Ramadhan Rajabu** (supra) where it was held that: -

*'A political solution out of court does not constitute any explanation for failing to appeal in time.'*

In his written submission the applicant stated that, soon after termination he referred his matter to the Regional Commissioner's Office then proceeded up to the President's Office where he was advised to channel his dispute in the proper forum thus, he referred the matter to CMA. The applicant's submission shows that his matter to political offices was closed but when the dispute was again dismissed at the CMA, he decided to refile the same in wrong forum. The applicant's action indicates that he wished his matter to be finalized politically and not through quash judicial or judicial systems available in this country.

The second reason for the delay is that, the applicant was assigned national confidential duties. As rightly submitted by the respondent's Counsel it is uncertain when the applicant was assigned the alleged duties. In my view, despite the fact that the applicant was assigned undisclosed special duties or not, the claimed assignment does

not preclude him from making follow up of his case. The circumstances of this case shows that, the applicant was reluctant to take action and pursue his right because he never took consideration of the law of limitation as correctly submitted by the respondent's Counsel.

The applicant also alleged that the delay was also caused by his representative who travelled due to family problems. In my view such reason is baseless and not sufficient to warrant the grant of the application at hand. Since the applicant knew that his representative had travelled, he was to make his own initiatives and make follow up of his case but he failed to do so.

It has been decided in a number of cases that, delay of even a single day has to be accounted for. This is also the position in the case of **Bushiri Hassan vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) where the Court of Appeal held that; I quote;

*'Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken.'*

In the circumstances of this case, it is my view that, the applicant failed to account for the delay of all 42 months which he took to file this

application. The applicant's main reason for the delay was that, he was pursuing the matter through political and administrative channels of which in my view does not justify the court to grant the application. It should be emphasized to the general public that, they have to respect and adhered to the principle of separation of powers. They should be mindful that the judicial functions are only performed by the Judiciary arm, they cannot be hijacked by other state aims, to wit the executive or legislature and even politician as the applicant with confidence believed so. In a situation where the law specifically confers power to any of those organs to perform a certain function, the citizens or any person involved need to respect and followed it to the letters without any excuse of ignorance of law.

It should also be noted that, litigations have to come to an end so as to release or allow parties to engage themselves in other productive activities, which is the object of our labour laws, to wit the Act. The contested decision in this matter was delivered on 28/10/2016 and the record shows that the applicant was terminated on 29/10/2012 and to date the applicant is still seeking an opportunity to challenge the employer's decision. In my view the delay in this case is inordinate and the applicant failed accounted for his delay as discussed above.

Therefore, my hands are tied up because the applicant did not show sufficient reasons for his delay to file the intended revision application.

In the result, I find there is no sufficient reasons to extend time to the applicant as he prayed. Hence, this application lacks merit and is accordingly dismissed.

It is so ordered.



I.D. ABOUD.

**JUDGE**

16/07/2021

Labour Court Tz.