

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

MISCELLANEOUS APPLICATION NO. 341 OF 2020

BETWEEN

UNIVERSITY OF DAR ES SALAAM APPLICANT

VERSUS

BENEDICT AMBROSE RESPONDENT

RULING

Date of Last Order: 23/06/2021

Date of Ruling: 23/07/2021

L.J. Itemba, J.

Before me is an application for extension of time within which the applicant be allowed to file an application for revision of the decision given by Hon. U.N. Mpulla, the Arbitrator in Labour Dispute No. CMA/DSM/KIN/R69/14/1197 in the Commission for Mediation and Arbitration (CMA) at Dar es salaam, dated 12th November 2019.

During the hearing, the applicant was represented by Ms. Janeth Makondoo, Senior Legal Officer assisted by Mr. Livin Mosha State Attorney trainee, while the respondent was represented by Ms. Agnes Ndanzi.

Based on Court records and both parties' submissions, I have gathered the following; The applicant herein filed before this Court, a Revision Application No. 958 of 2019. On 20th July 2020, the said application was struck out with leave to refile within 14 days. Therefore, the deadline for refiling was 3rd August 2020.

On 29th July 2020 the applicant's counsel submitted her application through the Judiciary e-filing system and entered her personal credentials Otilia Nyamwiza Rutashobya instead of that of the applicants', University of Dar Es Salaam. The application was later rejected by the Registrar.

On 4th August 2020 the applicant's counsel filed a new revision application with the correct credentials but the window of 14 days leave had already lapsed since 3rd of August. The applicant's counsel requested the Court Registrar to delete the said application as it was already out of time by one day.

Based on that, the applicant's counsel was supposed to apply for leave to file application out time however, she fell sick between 3rd and 7th of August 2020. Following these circumstances, on 11th of August 2020 the applicant filed this application.

The application is supported by the case of **Lyamuya Construction Co. Ltd v. Board of Registered Trustee of Young Women Christian Association of Tanzania**, Civil Appl. No. 2/2010 (unreported) which mentions conditions for the Court to consider before granting an extension of time. It provides that;

- i. The applicant must account for all the period of delay.*
- ii. The delay should not be inordinate.*
- iii. The applicant must show diligence and not negligence or sloppiness in prosecutions of the actions he intends to take.*
- iv. If there are sufficient reasons and point of law the legality ought to be challenged.*

The applicant's counsel added that another ground of this application is illegality; that the arbitrator awarded the respondent Tshs. 131,415,384/= which includes Tshs. 50,000,000/= as general damages, without legal base and in total disregard of evidence adduced during hearing. In this, she relied on the cases of **Attorney General v. Tanzania Ports Authority & Another**, Civil Appeal. No. 87/2016 CAT, DSM (unreported) and **Principal Secretary, Ministry of Defence and**

National Service v. Devram Valambhia (1992) TLR 185 which *inter alia* stated that "claim of Illegality constitute sufficient reason, whether or not a reasonable explanation has been given by the applicant to amount for the delay".

She submitted that, as she has appropriately accounted for the delay and because there is illegality, the application should be granted.

Ms. Ndanzi, counsel for the respondent strongly opposed the application. She stated that the act of the applicant filing a fresh application on 11/8/2020 was contrary to Court orders and contrary to Rule 56(2) of Labour Court Rules GN 106/2007. She added that due to negligence, the applicant filed an incompetent application which was struck out and negligence can never be used as a ground to convince the Court to extend time for filing an application. She referred the Court to the case of **Registered Trustee of Simbusiso Foundation V. Angelus B. Ngatunga**, Misc. Appl. No. 5/2015 part 2 which provided that "pursuing an incompetent application is not a good cause for delay."

She distinguished the case of **Lyamuya Constructions** (supra) cited by the applicant, stating that the 4 criteria mentioned in the case

does not fit in the matter at hand. That, one of criteria is due diligence and applicant was not diligent because when she was uploading the application through e-filing system, she entered her name instead of the applicant's.

On the issue of the applicant's counsel being sick she submitted that the applicant's counsel went for treatment on 3rd of August, 2020 which was the last date of filing. However, she had time before the last date to file her application. She added that the applicant is a body corporate, and therefore it does not depend on only one person and that even the notice of representation has two names Otilia Nyamwiza and Petro Eusebius Mselewa.

Ms. Ndanzi stressed that this matter has taken a long time without being finalized and prayed that the application be dismissed.

The Court has considered submissions by both parties, and found that the issue for determination is whether the applicant advanced good cause for the delay for this Court grant extension of time to institute the intended revision. It has also been noted as mentioned by the counsel for the respondent, that this matter has taken more than 10 years without being finalized. It would have been reasonable if it was finalized at the

earliest opportunity, unfortunately, as the facts reveal, this has not been the case.

With regards to extension of time limits, Rule 56 (1) of the Labour Court Rules, GN 106 of 2007 states 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.'*

The law principally provides that a good cause must be established by the applicant before the Court grant an extension of time. In the case of **Tanga Cement Company Ltd v Jumanne D. Masangwa & Another**, Civil Application No. 6 of 2001 the court held that:

'What amount to sufficient cause has not 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 delay; lack of diligence on the part of the applicant.'

There is no dispute that on 20th July 2020 this Court granted 14 days leave for the applicant to file a revision application. The deadline was on 3rd

of August 2020. By 29th July 2020, the applicant managed to file her application through e-filing system as shown in Annexure UD/BA/3. The applicant however used the wrong credentials and her application was rejected.

Being guided by the conditions in cases of **Lyamuya constructions** and **Tanga Cement Company Ltd** (supra), It is this Courts view that considering the situation, the “wrong credentials” error happened when the applicant was filing the application on 29th July 2020 and at that moment the applicant was within the prescribed time. The applicant realized about the non-correspondence between the hard copy and the online copy on 3rd August 2020 when the hard copies were submitted before this Court. By then, it was already too late because that was the last day to refile the application, based on the 14 days leave granted.

The applicant has submitted that she was sick between 3rd and 7th August 2020. She managed to prepare this application for extension of time and filed it on 11/8/2020 that is 4 days after being back at the office.

In other words, the applicant would have managed to file the application within time if it was not for the error made in the online

system; which was a technical issue and for herself getting sick thereafter; which was a situation out of her control.

Based on this sequence of events, I think the applicant was promptly enough, was not being negligent and has managed to account for the period of delay.

It is also my considered view that the applicant is late by 8 days only, under the circumstances of this case, this delay is not inordinate.

On the issue of illegality, the arbitrator has explained clearly that the reason for awarding Tshs. 50,000,000/= as damages is due to the fact that there was an order for retrial which prolonged the case, something which must have created difficulties to the respondent who was out of his employment for a long time. This was the justification which the applicant thinks should be re-assessed.

Based on the reasons for the delay addressed by applicant and for purposes of assessing damages, I find that there are sufficient grounds to grant the application as prayed for in the Chamber summons. I therefore grant the application for extension of time within which to file for revision.

The application for revision shall be filed within 15 days from the date of delivering this ruling. There are no orders to costs.



L.J. Itemba

JUDGE

23/07/2021

Labour Court TZ.