

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 260 OF 2020

BETWEEN

DISMAS ADAM MWAIPOPO.....APPLICANT

AND

INSIGNIA LIMITED.....RESPONDENT

RULING

Date of Last Order: 10/02/2021

Date of Ruling: 05/03/2021

A. E. MWIPOPO, J.

This is application for extension of time to initiate review proceedings in this Court by lodging a Notice of Review against Order of the Court in Revision No. 646 of 2019 dated 14th May, 2020 out of prescribed time. Dismas Adam Mwaipopo, the applicant herein, applies to the Court for the Orders in the following terms:

1. That may this Court be pleased to extend time to the Applicant to initiate review proceedings by lodging a Notice of Review against the Order of the Court on Revision No. 646 of 2019.
2. Any other order(s) as this Court may deem just to grant.

The brief history of this application is that: The Applicant who was employed as a driver was aggrieved by the decision of his employer namely Insignia Limited to terminate his employment. The Applicant filed the labour dispute No. CMA/DSM/TEM/770/18 at Commission for Mediation and Arbitration (CMA) Dar Es Salaam Zone at Temeke. The dispute was struck out *suo motto* by the CMA on 22nd February, 2019, for incompetence with leave to file a proper application within 10 days. The Applicant filed an application for condonation with no. CMA/DSM/TEM/110/2018 which was dismissed on 21st June, 2019 for want of merits. The Applicant was not satisfied with the CMA decision and filed Revision Application No. 646 of 2019 which was dismissed by the Court on 14th May, 2020 for failure to serve the Respondent. Then, the Applicant filed the present application on 8th July, 2020.

The evidence available in the record shows that matter was fixed for hearing on 27th October, 2020, however only the Applicant appeared. The Court adjourned the hearing to 10th February, 2021 and ordered the Applicant to serve the Respondent with summons. When the matter came on 10th February, 2021, once again only the Representative for the Applicant namely Mr. Charles Leonard, Advocate appeared. Mr. Charles Leonard informed the Court that the Applicant served the Respondent with summons to appear for hearing since 23rd December, 2010, hence he prayed for the

order of the Court for the hearing of the Application to proceed in *ex parte* the prayer which was granted. Then the Applicant's proceeded to submit in support of the application.

The Counsel for the Applicant averred that the present application was filed without negligence on their part. The Revision No. 646 of 2019 was dismissed by the Court on 14th May, 2020 following non-appearance of both parties. The Applicant non-appearance on the respective date was caused by confusion in the summons which shows that the matter was fixed for hearing on 14th May, 2020 at 11:00 hours but the Court called it earlier and adjourned the matter to 23rd June, 2020. The information about the adjournment was received by the Applicant from the Court Clerk on the same date. On 16th June, 2020 the Applicant received the parcel from the Court containing the order of the Court dismissing the Revision Application dated 14th May, 2010. The reason for dismissing the Revision was that the Applicant failed to prove the service of Notice of Application to the Respondent. However, the Respondent had already been served with Notice of Application since 26th September, 2019 as the Affidavit shows.

The Counsel submitted further that following the dismissal order the Applicant Counsel communicated the Court order to the Applicant on 17th June, 2020 for instruction to file the present application. The Applicant who was in Tanga travelled to Dar Es Salaam on 19th June, 2020 and he met with

1
the Counsel on 22nd June, 2019 as the following date to wit 20th and 21st June, 2020 were weekend. By 25th June, 2020 which was the deadline to file the review the Applicant Counsel was still preparing the application. The application for Review was filed on 8th July, 2020. He is of the view that the Applicant has shown due diligence in pursuing this application and there is chance of success in the review. Then, the Applicant Counsel prayed for the Court to allow the application and extend the time to file application for review out of time.

From the Applicant's submission, the issue for determination is whether the Applicant provided sufficient reason for the Court to grant him extension of time to file the application for review out of the time.

As a general principle, the Court has discretion to grant an application for extension of time upon a good cause shown. This was the position taken by the Court of Appeal in the case of **Tanga Cement Company vs. Jumanne D. Masangwa and Another**, Civil Application no. 6 of 2001, (Unreported), where the Court of Appeal 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."

The evidence available in the present application shows that the Court dismissed the Revision No. 646 of 2019 in absence of the parties on 14th

May, 2020 for failure to serve the Respondent. In the submission, the Applicant's Counsel stated that he received the Order of the Court dismissing the Revision on 16th June, 2020 through post office and by 25th June, 2020 which is the last date to file the Review application he was still preparing the application as a result he filed the present application for extension of time on 8th July, 2020.

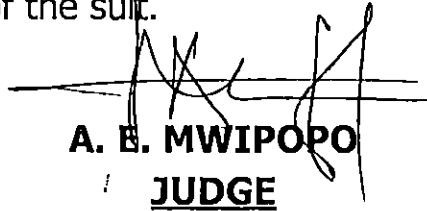
The Labour Court Rules, G.N. No. 106 of 2007 provides in Rule 27(1) that the review shall be instituted by filing a written notice of review to the Registrar within 15 days from the date of the decision to be reviewed was delivered. In the present case, the decision to be reviewed was delivered on 14th May, 2020 in the absence of the parties hence the Applicant was not aware of it. The copy of the Court Order was served to the Applicant on 16th June, 2020 according to Applicant submission. I'm of the opinion that the date of service of Court Order is the date the Applicant became aware of the Court Order. As a result the Review was supposed to be instituted within 15 days from the date the Applicant became aware of the Court decision. The 15 days came to an end by 30th June, 2020.

The applicant reason for the delay is that from 22nd June, 2020 he was preparing his application for review. However, the G.N. No. 106 of 2007 provides in rule 27(1) that the review shall be instituted by filing a written notice of review. The Rules provides further in rule 27(5) that the notice to

review shall substantially be as prescribed in Form No. 6 in the schedule to the Rules. The Form No. 6 found in the schedule to the Rules need just few particular such as case or complaint number, parties, the decision maker, date of decision, address for service of applicant and the persons intended to be served with copies of the notice. The notice has to be signed by Applicant, Advocate or Representative of the Applicant which means that even in absence of the Applicant, the Counsel has right to sign the notice after obtaining the instruction to institute review application. Since the Applicant's counsel obtained instruction to file application for review on 22nd June, 2020 then the counsel was in position to file the Notice of review within time. Thus, the reason advanced by the Applicant's Counsel that he was preparing the application for review until the present application for extension of time was filed out of time is not sufficient and has no basis. The present application was filed on 8th July, 2020 which is 9 days late. The applicant was supposed to account for the delay for each of 9 days delayed.

In the case of **Tanzania Ports Authority Vs. Pembe Flour Mills Ltd, Civil Application No. 49 of 2009**, the Court of Appeal of Tanzania at Dar es Salaam, held inter alia that, the applicant was duty bound in law to account for the delay of filing the application for extension of time. Since the delays were not accounted for, the Court of Appeal dismissed the application. In the present case the Applicant have failed to account for each days delayed and as result I find out that the Applicant failed to provide sufficient reason for extension of time.

Therefore, I hereby dismiss the present application for want of merits.
No order as to the cost of the suit.

A handwritten signature in black ink, appearing to be 'A. B. Mwiipo', is written over a horizontal line. The signature is stylized and somewhat cursive.

A. B. MWIPOPO
JUDGE

05/03/2021