

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**REVISION APPLICATION NO. 451 OF 2020**

**TANZANIA ZAMBIA RAILWAYS AUTHORITY.....APPLICANT**

**AND**

**GERALD S. MSOVELA .....RESPONDENT**

**RULING**

Date of Last Order: 4/08/2021

Date of Judgment: 19/08/2021

**B. E. K. MGANGA, J.**

On 19<sup>th</sup> March, 2019, the respondent who was an employee of the applicant filed to the Commission for Mediation and Arbitration henceforth CMA Complaint No.107/2019/49/2019 at Temeke claiming terminal benefits after retirement. On 10<sup>th</sup> June, 2020 the Arbitrator (Kokusiimas, L) issued an award in favour of the respondent. The applicant being aggrieved with the said award, filed Labour Revision Application No. 288 of 2020 before this court. On 5<sup>th</sup> October, 2020 when the said application was called before my learned sister, Z.G. Muruke, J, Mr. Joseph Assenga, counsel on behalf of the respondent raised a preliminary objection that the application

was in contravention of Rule 24(1) of Labour Court Rules, GN. No. 106 of 2007 as the notice showed that it was the respondent who initiated the revision, which was not the case. Mr. Marko Mabala advocate for the Applicant conceded to the preliminary objection, and prayed the application be struck out. In his words, Marko Mabala stated:-

*"...I concede that, the objection raised by the respondent has merits. I pray that, application be struck out pending refiling, that's all".*

Upon that admittance, the court recorded:-

*"Order: upon concession by... counsel Marko Mabala on preliminary objection raised by respondent, that notice of application is defective as it shows it is respondent who has moved the court, instead of the applicant. Revision application is supported by defective notice of application, thus incompetent application. Revision application number 288/2020 is struck out for being incompetent."*

*Sgd*

*Z.G. Muruke*

*Judge*

**05/10/2020.**

On **3<sup>rd</sup> November 2020**, the applicant filed this application praying for (i) extension of time within which he may move the court for application for revision against CMA decision<sup>2</sup> dated 10<sup>th</sup> June, 2020 in labour dispute No. 107/2019/49/2019; and (ii) upon being granted extension of time, the court be pleased to call, revise, and set aside the

award delivered by the Commission for Mediation and Arbitration for Temeke at Temeke in Labour Dispute No. 107/2019/49/2019 by Kokusiima, Arbitrator dated 10<sup>th</sup> June, 2020. The applicant indicated in the chamber summons that the application is made under section 91(1)(b), 91(2)(b), and 94(1)(b)(i) of the Employment and Labour Relations Act, No. 6 of 2004; Rules 24(1), 24(2)(a), (b), (c), (d), (e), (f), 3(a), (b), (c), (d), 24(11)(b) and Rule 28(1)(a), (b), (c), (d), (e), and 28(2) of the Labour Court Rules, GN. No. 106 of 2007, Rule 55(1) and (2) of the Labour Court Rules, GN. No. 106 of 2007, Rule 56(1) of the Labour Court Rules GN. No. 106 of 2007 and section 14(1) of the Law of Limitation Act, 1971 and any other relevant provisions of the law.

On 24<sup>th</sup> November 2020, Joseph Assenga, counsel for the respondent filed in court a preliminary objection attacking competence of the application on the ground that it is omnibus as it lumped together the application for extension of time and application for revision. On 24<sup>th</sup> August, 2021, the respondent, withdrew the preliminary objection so that parties can be heard on merit as the applicant cited in the notice of application the provisions that are properly moving the court for both prayers of extension of time and revision.

In arguing the application, Mr. Marko Mabala, counsel for the applicant submitted that initially the applicant filed application for revision within time but the same was struck out as the notice of application was found to be defective. He relied on paragraph 8 of Peter Kwirin, a senior Human Resources Officer of the applicant to that effect. He however conceded that, apart from the said paragraph 8 of the affidavit in support of the application, there is no any other reason adduced for the delay warranting extension of time. He prayed the order of extension of time be granted so that application for revision No. 451 of 2020 can be heard.

Opposing the application, Mr. Joseph Asenga, counsel for the respondent submitted that, the affidavit by the applicant has not shown reasons for delay for extension of time to be granted. He submitted further that, in order for extension of time to be granted as provided for under Rule 56(1) of the Labour Court Rules, GN. No. 106 of 2007, the applicant has to show good cause for delay of which, she has failed. He cited the case of ***Serious Microfinance Tanzania v. Anasikia Lupakisyo, High Court Labour Revision No. 6 of 2019*** (unreported) in which this Court (Mashauri, J,) held that the applicant has to account for the delay. He argued that the applicant has failed to account for delay of about 30 days

from the date the application was struck out to the date of filing this application. Counsel for the respondent submitted further that, the application has violated the provision of Rule 24(3)(b) the Labour Court Rules, GN. NO. 106 of 2007 as the affidavit in support of the application of the applicant does not contain the relief of extension of time. He finally prayed the court to dismiss this application for revision as it was filed out of time and without leave of the court. He cited the case of Barclays Bank Tanzania v. Phylisiah Hussein Mcheni, Civil Appeal No. 19 of 2016, CAT, (unreported).

In rejoinder, Mr. Mabala, counsel for the applicant maintained that paragraph 8 of the applicant's affidavit in support of the application shows good cause for the delay. He conceded that the delay from the date the application was dismissed to the date of filing this application has not been accounted for in the affidavit in support of the application by the applicant. He invited the court to extend time based on illegalities of the award. When he was asked by the court as to whether illegality was one of the ground for extension of time, he readily conceded that it was not. He finally prayed the court to strike out revision No. 451 of 2020 for being out of time with leave to refile.

It is clear from submissions of both counsel that the application for revision No. 451 of 2020 was filed out of time and without leave of the court. The applicant was supposed to apply for extension of time first before filing this application. Instead, he opted to file application for extension of time and revision all together. As correctly submitted by counsel for the respondent and conceded by counsel for the applicant, the affidavit in support of the application does not contain sufficient cause for the delay. The only paragraph in the affidavit in support of the application by the applicant is paragraph 8 wherein the deponent has averred:-

*8. this application for revision was at first lodged in time but struck out for technical reasons. The court order dated 05.10.2020 in relation to revision No. 288 of 2020 is hereby attached and marked TZRA2 to form part of this affidavit."*

In my view, the applicant had technical delay in her mind as a ground for delay. Indeed, in some situations technical delay is a good ground for extension of time. But in the application at hand, the applicant has failed to account for the delay from 5/10/2020, the date Revision Application No. 288 of 2020 was struck out to 3/11/2020, the date of filing this application. The applicant was supposed to account for each day of delay as it was held by the Court of Appeal in the case of **Tanzania Fish**

***Processors Limited v. Eusto K. Ntagalinda, Civil Application No. 41/08 of 2018*** (unreported).

I have read the affidavit in support of the application and find that it does not contain a relief for extension of time as was correctly submitted by counsel for the respondent. That is in violation of Rule 24(3)(d) of the Labour Court Rules, GN. No. 106 of 2007 that requires the affidavit in support of the application to contain relief sought. The relief sought in paragraph 8 of the affidavit in support of the application by the applicant relates only to revision. It is my view that at the time of filing the application, the applicant did not consider herself being out of time which is why she failed account for delay or give sufficient reasons for delay and seek relief of extension of time.

Extension of time can be granted based on the issue of illegality. As the same was not pleaded as conceded by counsel for the applicant, it cannot detain me. I hereby reject it. For all said and done, the applicant has failed to adduce good reasons for delay and has failed to account for that delay. I therefore, reject the prayer for extension of time.

Counsel for the applicant has prayed that this application be struck out with leave to refile. That prayer has no leg to stand. It is bound to fail.

The application or a case that is filed out of time is liable for dismissal and not to be struck out. This position was clearly given out by the Court of Appeal in the case of Barclays Bank Tanzania, supra. That being the position of the law, I hereby dismiss this application for revision for being time-barred.

It is so ordered.



  
**B.E.K. MGANGA**  
**JUDGE**  
**27/08/2021**