

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)
AT DAR ES SALAAM

MISC. APPLICATION NO. 271 OF 2020

BETWEEN

MALINDELLY LIMITED & ANOTHER APPLICANTS

VERSUS

MONICA JOSEPH KILEO RESPONDENT

RULING

S.M. MAGHIMBI, J:

The application beforehand was lodged under the provisions of Section 91(1) & (2) and 94(1)(b)(i) of the Employment and Labor Relations Act [Cap 366 R.E. 2004] (ELRA) and Rules 24(1), (2),(3) and 56(1) of the Labour Court Rules [G.N. No. 106 of 2007] ("LCR"). The applicant is moving the court to grant an order extending time within which he can file Revision against the decision of Commission for Mediation and Arbitration ("The CMA") in Labour dispute number CMA/DSM/KIN/R.94/17. The application was lodged by both a Notice of Application and Chamber Summons which was supported by an affidavit of Bakari Athumani Ndeke, learned advocate representing the applicant, dated 02nd July, 2020. On the other hand, the respondent opposed the application through a counter affidavit sworn by her in person on the 14th August, 2020. Before this Court, the respondent was represented by Mr. Madaraka Ngwije from CHODAWU. The application was disposed by way of written submissions following an order of this court dated, 15/04/2021. Both sides abided to the schedule of submissions hence this ruling.

in her endeavour to support the application, the ground of delay as reported was attributed to the trouble they had with electronic filing to this court. In his submissions to support the application, Mr. Ndeke submitted that the award was delivered on the 27th April, 2020 and revision was supposed to be filed within forty two (42) days from the date of delivery. That the last filing date should have been 19th June, 2020 but up to 02nd July, 2020 there were sixty (65) days since the award was delivered, thus it is therefore late for twenty three (23) days. He elaborated that the application for revision before this Honourable Court was delivered for admission in the early days of June, 2020. When it was delivered, he was informed by this Court's officers that the Labour Court has now embarked on the recent system of electronic filing for documents.

He continued to submit that although he had already applied for registration in the JSDS system, the account was not verified or ready to function despite several follow up and communication with Deputy Registrar of the High Court Land and Commercial Division. He submitted further that the same was for his fellow advocate, Raymond Swai who also had no account. That upon the said obstacle, he sought assistance from other firms but it ended in vain and his JSDS Account was verified on 01st July, 2020 and for another Counsel for the Applicants it was verified on the 02nd July, 2020. Upon having the account is when the application was filed.

Mr. Ndeke also raised a ground of illegality of the decision of the CMA. He submitted that in her decision and reasons for, among other reasons, the arbitrator stated that the Respondents (the Applicants herein), should have produced salary slips for at least six (6) months. He argued that there is no any legal requirement for this and that since it is among the reasons for

the decision (the award) which had to provide rights for the party, this was illegal and it needs to be looked into and determined by this Honourable court. he supported his submission by citing the decision of the Court of Appeal in Cosmas Faustine Versus The Republic, Court Of Appeal Of Tanzania At Bukoba, Criminal Application No. 76/04 Of 2019, Mwandambo, J.A (Unreported), while referring the case of Lyamuya Construction Co. Ltd v. Registered Trustees of the Young Women's' Christian Association of Tanzania, Civil Application No. Civil Application No. 2 of 2010 (unreported) the Court stated that:

"...the Court can only grant an application for extension of time subject to the applicant meeting the following conditions namely; reason and lengthy of the delay, accounting for each day of delay, absence of negligence or sloppiness in preferring the application and, in fitting cases, existence of an issue of illegality sufficient public importance in the impugned decision..."

In reply, Mr. Ngwije submitted that the applicant is hopelessly time barred for not indicating the reasons for the delay. That the reason of illegality submitted by Mr. Ndeke cannot be raised at this stage because the applicant cannot challenge the decision of the CMA without leave of this court to do so after he first produce evidence for the delay. His prayer was that the application is dismissed.

Having considered the records of this application including the parties' submissions therein, I am satisfied that on the chronology of events submitted, the applicant's delay is not justified. For instance, the applicant has attempted to attribute the delay to technological failures within the JSDS filing system. He claimed to have been a delay in being supplied with

access to the e-filing system but he could not produce any evidence to show his efforts to have himself registered in the system. Therefore his submissions remain words from the bar, with no evidentiary value.

Further to the above, Mr. Ndeke also claimed to have been given access on the 02nd July, 2020. But this application was not lodged on the same day and he has not shown any evidence that he had attempted to file and failed or that he had made efforts to have his account activated by the judiciary. Apart from that, the applicant ought to have convinced the court as to why, while the electronic filing system was established by the judiciary in the end of the year 2018, he did not have any account for the said filing. I think the applicant is trying to blame the technology for his own failure to cope up with the emerging e-world.

The decision of the CMA was delivered on the 27th April 2020 and the 42 days stipulated under the LCR were to end on 01/06/2021. The application was filed on 01/07/2020 which is a month after the lapse of the limitation period, let alone the fact that it was 63 days from the date the decision was delivered. The applicant ought to have adduced strong credible reasons for such delay and in the absence of that, the delay is nothing but inordinate showing lack of seriousness on the part of the applicant.

That said, it is my finding that the applicant has failed to adduce sufficient cause for the delay. Owing to that, the application is hereby dismissed.

Dated at Dar es Salaam this 12th day of August, 2021



S.M MAGHIMBI
JUDGE