

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

MISC. APPLICATION NO. 460 OF 2020

BETWEEN

STEWART MANOR INVESTMENT LIMITED APPLICANT

VERSUS

SAIDI ALLY KITWAMWANA RESPONDENT

RULING

S.M. MAGHIMBI, J:

The application beforehand was lodged under the provisions of Rules 24(1), (2) (a) (b) (c) (d) (e) and (f), (3) (a) (b) (c) and (d), 11(c) and Rules 55 and 56 (1) and (3) of the Labour Court Rules [G.N. No. 106 of 2007] ("LCR"). The applicant is seeking for an order of this court extending time within which he can file Revision of the Ruling and Arbitral Award issued on 03/01/2020 in dispute No. CMA/DSM/TEM/580/18/216/18 (Hon. Kokusiima L, Arbitrator). The applicant is further seeking for any other order that this Court may deem and just to grant.

The application was lodged by a Notice of Application and a Chamber Summons supported by an affidavit of Shabar Fazal Karmali, the Managing Director of the applicant company dated 11th August 2020. The respondent strongly opposed the grant of this application by a notice of opposition lodged under Rule 24(1), (2)(a-f) and 4 (a)&(b) of the LCR. By an order of

the court dated 19/04/2021, the application was disposed by way of written submissions. The applicant's submissions were drawn and filed by Mr. Martin Frank, learned advocate from G.Y.Hassam and Company Advocates while the respondent's submissions were drawn in gratis and filed by Ms. Janeth Kazimoto from the Legal and Human Rights Centre.

Starting with the affidavit to support the application, the ground of delay as deponed were mainly attributed to emerged pandemic Covid-19 which forced their offices to lockdown in April 2020. The deponent alleged that owing to the existing pandemic, he was forced to go into isolation and stopped other public contacts including contacts with his advocate. That he did so with an intention to reduce the rate of spread of the contamination of the pandemic Covid-19.

He also deponed that his advocate also informed him that their office was closed since the 06th April, 2020 until June 01st 2020 as an internal mechanism aimed at avoiding public contacts as a means of reducing the spread of the pandemic Covid-19. He annexed copies of the notices of close of offices as annexure SM1 4 to the affidavit. The legal issues identified by the applicant were as follows:

- a. Whether the closure of the office of the Applicant's advocate amounts to legal reasons for extension of time.
- b. Whether the applicant has sufficient cause to warrant her to be granted extension of time to revise the CMA award.
- c. Whether the fact that the ruling dismissing the application to set aside ex-parte award delivered on 06th June, 2020 was rightly so stated to have been delivered on 03rd January, 2020.

d. Whether the impugned ruling and award subject for revision is not free from illegality and irregularity.

In his submissions to support the application, Mr. Frank initially prayed that the contents of his affidavit to support the application be adopted. He then submitted that they had previously lodged a Misc. Labor Application No. 239/2020 ("the previous application") which was struck out on the 04th day of August, 2020 for improper affidavit, hence the current application. He pointed out that from the day when the impugned ruling was delivered to the date they filed the previous application, 130 days had lapsed. That the 42 days to file Revision in this court ended on 17/02/2020 hence the delay starts from 18th February, 2020.

He then submitted that at the end of the year 2019, there erupted Corona Virus Disease and declared in our country on 16th March, 2020. That following the erupt of the Covid 19, several precautionary measures were taken including this Honorable Court's activities being ceased or partially closed. That they had a client who passed away on 03/04/2020 which forced them to close their offices by issuing a public notice on 03rd day of April, 2020 while they were self-isolating and social distancing and that is how on 26th day of June, 2020 they lodged the application beforehand. On the same excuse of the pandemic Covid 19, Mr. Frank submitted that the applicant has shown diligence as she was not negligent in pursuing this matter because despite the pandemic, the previous application was lodged on the 26/06/2020. His prayer was that the application is granted.

In reply, Ms. Kazimoto admitted that the impugned award mistakenly reads 03/01/2020 instead of the 06/04/2020. She however submitted that on the

08/04/2020 when the respondent went to collect the award, he was informed that the applicant had collected his award. She then argued that if the applicant realized that such an award had errors, she should have applied for the correction therein as stipulated under Rule 30(1) and (2) of the Labor Institutions (Mediation and Arbitration) Rules, 2007 which provides for 14 days within which the applicant may make such an application.

On the delay to file revision, Ms. Kazimoto submitted that the applicant has failed to account for each day of delay arguing that the 42 days within which he could lodge an application for revision lapsed on 17th May, 2020. The previous application was filed 38 days later.

On the advanced reason of the break out of the pandemic Covid 19, Ms. Kazimoto submitted that if at all the offices of his attorney were closed; they could have communicated to this Honorable Court as the court did not close its doors. She pointed out that in fact, most of the advocates used e-filing system which needs not anybody to physically go to the court.

She then submitted further that the respondent was unfairly terminated and he has no earnings to sustain him during this time while the applicant wishes to file revision at the time he wants. She argued that the principles of law are not selective but they bind all and the rules of court must be obeyed. She cited the case of **Ratnam Vs. Kumaraswamy, (1964) All E.R 944** where it was emphasized that rules of court must prima facie be obeyed.

She further pointed out that the applicant alleges to have closed offices from April, 2020 to June, 2020 while the notice to show cause on Execution

Application No. 285/2020 filed by the respondent was signed by the applicant's office on 11th May, 2020 and received by the applicant's receptionist names Siasa Salim. She then questioned the controversy on how the applicant's office alleged to have been closed from 03rd April, 2020 till June 2020 could receive and sign some documents delivered to the office in May, 2020. She concluded her submissions by praying that the applicant be dismissed in its entirety.

Having considered the records of this application including the parties' submissions for and against the application, my finding are as hereunder; to begin with, I have noted that the applicant's main reasons for the delay are attributed to the first wave of the pandemic Covid-19 where they were forced to close their offices. With respect to the learned Counsel, the wave hit the whole world let alone the applicant. But the question is what did the world do? The world resorted to alternative methods of making sure that we did not go to a standstill. I remember the words of His Excellency, the late President Magufuli that "*Korona haitakwisha, tujifunze kuishi nayo*". So the world including Tanzania resorted to various measures to tackle the spread of the pandemic while at the same time not putting life to a standstill. Many organizations resorted to working at home but life and business continued.

As for Tanzania, we did not and never had a total lockdown policy hence business was ongoing with precautionary measures laid by the World Health Organization being observed. Narrowing it down to the judiciary, we adopted different measures to tackle the spread of the pandemic while at the same time ensuring that administration of justice never stopped. The measures included the use of e-filing system, hearing cases by virtual

mode and video conferencing and disposal of cases by written submissions; just to name a few. But all in all, the Court Doors never shut down.

The above background is narrated so that the applicant may know that existence of the pandemic cannot be misused to escape the hands of justice for those who are not ready to abide to the rules of the Court. Rules are made so that they can be followed. After all, it is the spirit that litigation must come to an end, a spirit that has made the enactment of laws, rules and regulations setting limits within which certain matters can be brought to courts. Those limits are however, subject to some flexibility by kindness of the law where upon sufficient grounds being adduced, these time limits may be extended. However in exercising the jurisdiction to extend time limits, courts are tasked with the duty to see whether sufficient grounds have been adduced to justify the delays even of a single day. In the absence of sufficient grounds, that discretion cannot be exercised.

At this juncture, I am settled that the reason of the pandemic Covid-19 is not sufficient to warrant the extension of time. Even if I were to believe the applicant of the closure of their offices, this ground has been defeated by the evidence in the submission of Ms. Kazimoto that the notice to show cause on Execution Application No. 285/2020 filed by the respondent was signed by the applicant's office on 11th May, 2020 and received by the applicant's receptionist names Siasa Salim. The applicants did not counter this submission instead, they admitted that the first application was filed on the 26/06/2020 while as a matter of fact, the offices was not shut down as of 11th May 2020. It is hence conclusive that the applicant has failed to explain the period from 6th April, 2020 when the decision of the CMA was

delivered to the 26th June, 2020 when the initial application was lodged. To be more precise, the period for filing the application ended on 18th May, 2020, the application was filed 26th June, 2020 more than a month after the expiry of the time set by the law. There is however evidence that on 11th May, 2020 the applicant's offices were open and they received documents hence the applicant's ground of isolation crumbles, and no further reason is adduced for the delay.

It is on the above grounds that I find the applicant to have failed to adduce sufficient reasons to warrant this court's jurisdiction to extend time. Consequently, the application is hereby dismissed.

Dated at Dar-es-salaam this 26th day of August, 2021.



A handwritten signature in blue ink, appearing to read "S.M. Maghimbi". The signature is written over a horizontal dotted line.

S.M. MAGHIMBI.
JUDGE.