

**THE HIGH COURT OF TANZANIA**  
**LABOUR DIVISION**  
**AT DAR ES SALAAM**  
**MISCELLANEOUS APPLICATION NO. 331 OF 2020**

**BETWEEN**

**JOYCE MAPUNDA AND 7 OTHERS ..... APPLICANTS**

**VERSUS**

**KIOO LIMITED..... RESPONDENT**

**RULING**

Last order 19/8/2021  
Date of Ruling 10/9/2021

**B.E.K Mganga, J**

Applicants have made this application praying for extension of time within which to file an application to revise an Award issued by Mataris, Arbitrator, on 10<sup>th</sup> August 2018 in Labour dispute No. CMA/DSM/TEM/178/2016. The application is supported by an affidavit of Joyce Mapunda, 1<sup>st</sup> applicant after being granted leave in Miscellaneous application No. 486 of 2018 to represent other applicants on 13<sup>th</sup> December 2019. The respondent filed a counter affidavit sworn by Nerei Masawe, her principal officer to oppose the application.

When the application was called for hearing, Mr. Peter Mnyani, the personal Representative of the applicant appeared and argued the application on behalf of the applicants. On the other side, M/s. Mary Pancras, Advocate, appeared and argued on behalf of the respondent.

Arguing in support of the application, Mr. Mnyani adopted the affidavit of Joyce Mapunda and submitted that applicants were employees of the respondent and that they were unfairly terminated on 1<sup>st</sup> day of April 2016. That, on 10<sup>th</sup> August 2018, Matalis. R, arbitrator issued an award that conflicts a ruling of the same Commission for Mediation and Arbitration dated 17<sup>th</sup> February 2017 issued by Batenga, Arbitrator, as to who is the employer of the Applicants. Prior to the ruling by Batenga, Arbitrator, an objection was raised as to the inclusion of KB Technics as 2<sup>nd</sup> respondent while Kioo Ltd was the 1<sup>st</sup> respondent. Upholding the objection, in her ruling, Batenga, Arbitrator, held that applicants have no cause of action against KB Technics. Personal representative for the applicants went on that, in the award, Matalis, arbitrator, held that applicants have a cause of action against KB Technics and not Kioo Ltd. He concluded that, this need to be resolved by this court. The award and the ruling by Batenga, Arbitrator, were both annexed to the affidavit in support of the application.

Submitting on reasons for delay, Mr. Mynani argued that after termination of their employment, applicants moved to different places within the country and that there was a struggle to seek leave of this Court in terms of Rule 44(2) of Labour Court Rules, GN. No. 106 of 2007. He argued further that applicants were served with the award on 28<sup>th</sup> August 2018 as a result on 03<sup>rd</sup> October 2018 they filed Miscellaneous application No. 486 of 2018 seeking leave for Joyce Mapunda to represent other applicants and that leave was granted on 13<sup>th</sup> December 2019. He submitted that, on 15<sup>th</sup> January 2020 they filed miscellaneous application No. 16 of 2020 seeking for extension of time to file an application for Revision. That, the said application was struck out for procedural irregularities on 17<sup>th</sup> July 2020. He argued that the ruling striking the said application was served to the applicant on 28<sup>th</sup> July 2020. He argued that between 31<sup>st</sup> July 2020 and 2<sup>nd</sup> August 2020 it was holiday. He accounted that from 29<sup>th</sup> July 2020 to 3<sup>rd</sup> August 2020 applicants were mobilizing themselves on how to obtain legal representation. He submitted that, applicants filed this application on 5<sup>th</sup> August 2020. He concluded that the delay was due to technical irregularities and that applicants were scattered at different places within the country and that there are sufficient grounds for delay.

On her part, Ms. Pancras, counsel for the respondent adopted the counter affidavit and resisted the application. She went on that from the date of collection of the award to the date of filing representative suit is 44 days. She argued that applicants filed application for extension of time on 15<sup>th</sup> January 2020 after 77 days has elapsed. She conceded that applicants applied before this court on 3<sup>rd</sup> October 2018 for Joyce Mapunda to represent other applicants and that leave was granted on 13<sup>th</sup> December 2019. She argued that from the date leave was granted to the date of filing application for extension of time i.e., 15<sup>th</sup> January 2020 is 33 days. Their application for extension of time was struck out on 17<sup>th</sup> July 2020 and served with ruling on 28<sup>th</sup> July 2020. She argued that they filed this application on 5<sup>th</sup> August 2020 and that this was 5 days later.

Counsel for the respondent conceded that in the ruling dated 17<sup>th</sup> December 2017 Batenga, Arbitrator, held that applicants were supposed to file a dispute against M/S. Kioo Limited. On the other hand, in the award dated 10<sup>th</sup> August 2018 at page 6 the Arbitrator held that applicants were not employee of M/S Kioo Limited rather, by KB Techniques. She conceded that the ruling by Batenga did not finalize the complaint by the applicants which why, parties were called to bring evidence. She challenged the argument that applicants were scattered as baseless as there are other

means of communication such as phone. She insisted that applicants have failed to adduce good reasons for delay. In her view, technical delay argued, are not good cause for the delay. She therefore argued that applicants are supposed to account for each day of delay as it was held in the case of **Elfazi Nyatega and 3 others vs. Caspian Mining Limited**, Civil Application No. 44/08 of 2017, CAT (Unreported) Mwanza and the case of **Kioo Limited vs. Hamis Salehe**, Miscellaneous No. 281 of 2019. She therefore prayed for dismissal of the application.

Mr. Mnyani had no much in the rejoinder other than repeating prayers that the application be granted for this court to determine who is the employer of the applicants.

In the application at hand, I have been called to extend time. I am alive to the position that extension of time is a discretionary exercise that has to be exercised judiciously. This is a long-established principle by the Court of Appeal, the highest court in the hierarchy in our country. It has so been repeated several times. One of the cases to that point is **MZA RTC Trading Company Limited v. Export Trading Company limited, Civil Application No. 12 of 2015** (unreported) wherein the Court of Appeal held:-

*" an application for extension of time for the doing of any act authorized ...is on exercise in judicial discretion... judicial discretion is the exercise of judgment by a judge or court **based on what is fair, under the circumstances and guided by the rules and principles of law ..."***

In the application at hand, both the personal representative of the applicants and counsel for the respondent are at the same footing that there is a conflict between the ruling delivered by Batenga, arbitrator on 17<sup>th</sup> December 2017 and the award issued by Matalis. R, Arbitrator 10<sup>th</sup> August 2018 on who is the employer of the applicants. This issue can only be resolved by this court on revision otherwise applicants will have no rescue and their rights cannot be determined. Guided by the principles in the **MZA TRC case** (supra) and considering the circumstances in the application at hand, I allow the application and order that applicants should file their intended Revision application within 30 days from today.

It is so ordered.



B.E.K. Mganga  
**JUDGE**  
10/09/2021