

**THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**MISCELLANEOUS APPLICATION NO. 634 OF 2018**

**BETWEEN**

**COSEKE TANZANIA LIMITED..... APPLICANT**

**VERSUS**

**LUCAS NGOWI ..... RESPONDENT**

**RULING**

Last order 3/9/2021

Date of Ruling 17/9/2021

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

On 1<sup>st</sup> September 2008, applicant employed the respondent as Business Development Manager and later on promoted him to the position of General Manager. On 12<sup>th</sup> December 2013 the applicant terminated employment of the respondent as a result the respondent referred Labour Dispute No. CMA/DSM/ILA/R.24/14/1025 to the Commission for Mediation and Arbitration henceforth CMA. On 11<sup>th</sup> February 2016 M. Batenga, Arbitrator delivered an award in favour of the respondent. In the said award, the arbitrator ordered the respondent be paid by the applicant TZS 20,400,000/= as twelve (12) month salary compensation, TZS 2,12,000/ as severance allowance and TZS 1,700,000/= as leave pay all amounting to

TZS 24,224,000/-. Applicant being aggrieved by the said award, has filed this application for extension of time within which to file an application for this court to revise the said award. The Notice of application in support of the application is supported by an affidavit of Elieza John Ngowi, the principal officer of the applicant. The respondent has opposed the application and has filed the counter affidavit to that effect.

When the application was called for hearing, Mr. Emmanuel Nasson, Advocate appeared and argued for and on behalf of the applicant while Mr. Ally Jamal, Advocate appeared and argued for and on behalf of the respondent.

Counsel for the applicant adopted the affidavit in support of the application and argued that there is only one ground for delay; namely, that the applicant was unaware of the award issued at CMA. He submitted that applicant became aware at the time when she was served with an application for execution No. 296 of 2018 by the respondent. Counsel conceded that the affidavit in support of the application is silent as to the date applicant was served with the said application for execution. That upon being served with that application, on 25<sup>th</sup> July 2018 she filed an application No. 333 of 2018 for extension of time but said application was struck out for being incompetent as it was supported by a defective notice

of application. That this court granted leave to refile a fresh application within 14 days from the date of that order hence this application. Counsel for the applicant conceded that Applicant was aware that the respondent has filed the dispute at CMA and in fact she participated fully in the hearing and filing of final submissions on 8<sup>th</sup> June 2015.

Counsel for the applicant submitted that time started to run against the applicant at the time when she became aware of the award. He cited the case of ***Serengeti Breweries Ltd vs. Joseph Boniface, Civil Appeal No. 150 of 2015, CAT*** (Unreported) to support his argument. Counsel went on that the award was issued 9 months after conclusion of hearing; therefore, it was not upon the applicant to go to CMA every day to see if the award has been issued or not. He finally prayed that the application be granted as it was not fault of the applicant for this delay.

On the other hand, counsel for the respondent adopted the counter affidavit and argued that applicant has failed to adduce good grounds for the delay and asked the court to dismiss the application. Counsel for the respondent submitted that it is not disputed by the applicant that she was present at CMA to the conclusion of hearing. Counsel submitted that parties made their final submissions on 21<sup>st</sup> May 2015 and the award was expected to be delivered on 22<sup>nd</sup> June 2015. But it was issued on 11<sup>th</sup>

February 2016. In May 2018 i.e., two years later, respondent filed application for execution No. 296 of 2018. Counsel submitted that Summons and award was served to the applicant on 1<sup>st</sup> July 2018 indicating that the said application was scheduled for mention. On 25<sup>th</sup> July 2018 applicant filed application No. 333 of 2018 seeking extension of time but the same was struck out. She filed the said application 24 days after being served with application for execution that was accompanied with the award. Counsel for the respondent was of the view that time started to run against the applicant from the date of delivery of the award as she didn't make any follow up of the award at CMA and further that she has failed to show evidence to the effect that she made follow up. Counsel for the respondent went on that, Applicant had a duty to make follow up of the award at CMA and that she is supposed to show that she diligently took action and account for each day of the delay. He cited the cases of ***Interchick Company Ltd vs. Mwaitenda Ahobokile Michael, civil application No. 218 of 2016 CAT*** (Unreported) and ***Tanzania Rent Car vs. Peter Kimuhu, civil application No. 226/01 of 2017, CAT,*** (unreported) to the effect that, in application for extension of time, applicant has to account for each day of delay.

Counsel for the respondent argued in alternative that, if it has to be assumed that applicant became aware of the award on 1<sup>st</sup> July 2018, then, the affidavit in support of the application is silent and has failed to account from that date she was served with application for execution No. 296 of 2018 to the date she filed application No. 333 of 2018 that was struck out. Counsel for the respondent insisted that applicant has failed to account for the delay for this Court to use its discretion to extend time. Counsel for the respondent was of the view that the applicant is intending to delay execution application filed by the respondent and therefore prayed the application be dismissed.

In rejoinder, counsel for applicant, disputed the allegation of being served with the award on 11<sup>th</sup> December 2016. He however conceded that applicant was served with the summons and award on 1<sup>st</sup> July 2018 and that affidavit in support of the application does not show any step taken by the applicant to ensure that she can be issued with an award after being served with application for execution on 1<sup>st</sup> July 2018. Counsel reiterated his pray for the application to be granted.

In this application for extension of time, I am asked to exercise my discretion. That discretion has to be exercised judiciously as it was held by the Court of Appeal in case of ***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 ..."***

It has been held several times by the Court of Appeal that in application for extension of time, the applicant has to account for each day of delay, has to adduce good cause of delay, has to show that he /she was diligence in dealing with the matter, has to show that there is illegality in the impugned decision, court has to consider length of delay, reasons for the delay, arguable points on appeal and degree of prejudice to the respondent if time is extended. Some of the cases to that position are ***James Anthon Ifanda vs. Hamis Alawi, Civil Application No. 482/14 of 2019, CAT, (unreported), Gabriel Mathias Michael and another v. Halima Feruzi & 2 others , Civil Application No. 588/17 of 2019, CAT, (unreported), Dar es salaam, Ngao Godwin Losero v. Julius Mwarabu, Civil Application No. 10 of 2015, CAT (unreported), Cosmas Faustine v. Republic, Criminal Application No. 76/04 of 2019, CAT, (unreported), Bukoba, Interchick Company Ltd, supra, and Tanzania Rent Car , supra.***

Counsel for the respondent initially submitted that time started to run against the applicant from the date the award was delivered. With due respect, in the strength of the decision of the court of Appeal in the ***Serengeti case*** (supra), that is not the position. Time cannot run from the date it was delivered taking into consideration of the circumstances in the application at hand where the award was delivered about a year later. Under normal circumstances, in absence of proof that parties were notified by the arbitrator date of delivery of the award, it is not expected a person to be attending daily at CMA just to ask as to when the award will be delivered. In my view therefore, time cannot, in the circumstances of the application at hand to run against the applicant from the date it was delivered.

That being the position, time started to run from the date applicant became aware of existence of the award in question namely from 1<sup>st</sup> July 2018 when she was served with an application for execution No. 296 of 2018 that was accompanied with an award and summons. In paragraph 11 of the affidavit in support of the application, the applicant has deponed that she filed Miscellaneous Application No. 333 of 2018 and that the same was struck out but she has failed to show the date she filed the same and the date she became aware of the award. This is the only paragraph in the

affidavit in support of the application that seems to be material to the application at hand. There isn't any paragraph showing when she was served with the award and steps taken thereon. In short, even that paragraph is of no help as it does not account for delay from the date she was served with the award and summons to attend Execution application No. No. 296 of 2018. For the fore going, the application is hereby dismissed for want of merit.

It is so ordered.



A handwritten signature in black ink, appearing to read 'B.E.K. Mganga'.

B.E.K. Mganga

**JUDGE**

17/09/2021