

IN THE HIGH COURT OF TANZANIA

(LABOUR DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS LABOUR APPLICATION NO. 519 OF 2020

BETWEEN

SHIRIKA LA ELIMU KIBAHA APPLICANT

VERSUS

BARUNA SUDI MUSA RESPONDENT

EX-PARTE RULING

Date of Last Hearing: 16/08/2021

Date of Ruling: 24/09/2021

I. ARUFANI, J.

This ruling is for the application filed in this court by the applicant, seeking for extension of time to file in the court an application for revision of the award of the Commission for Mediation and Arbitration (henceforth, the CMA) delivered in Labour Dispute No. CMA/PWN/KBH/712/2016 dated 30th January, 2019. The application is made under Rules 24 (1), (2) (a), (b), (c), (d), (e) and (f), 3 (a), (b), (c) and (d), and 56 (1) of the Labour Court Rules, GN. No. 106 of 2007. The application is supported by chamber summons and an affidavit sworn by Anathe Nnko, the applicant's Principal Officer.

The respondent was served as proved by the affidavit sworn by the court's Process Server namely Fredy Ndimbo dated 24th March, 2021. After the respondent being duly served and failed to appear in the court, the counsel for the applicant namely Philemon Msegu prayed and allowed to argue the application ex parte. The counsel for the applicant prayed to adopt the affidavit supporting the application and continued to tell the court that, after the decision of the CMA the applicant was aggrieved by the decision and on 15th February, 2019, they filed in the court Labour Revision No. 80 of 2019 to challenge the award of the Commission.

He went on telling the court that, on 3rd August, 2020 the Labour Revision No. 80 of 2019 was struck out by the court on ground of being incompetent as the affidavit supporting it was found to be defective. The counsel for the applicant argued that, the time spent by the applicant in prosecuting the revision which was struck out by the court and the time spent in following up the ruling of the court which struck out the revision caused the applicant to delay to refile in the court the proper application for revision of the award issued by the CMA.

He submitted that, as the revision was filed in the court within the time prescribed by the law and it was determined on technicality and

not on merit, he believes that is a good cause for the court to grant the applicant extension of time to refile in the court the proper application for revision of the award issued by the CMA. To bolster his submission, he referred the court to the case of **Janeth David Humphrey V. Moshi University College of Co-operative and Business Studies (MUCCOBS)**, Misc. Labour Application No. 9 of 2020, HCLD at DSM (unreported) where the court granted extension of time after seeing the application was struck out on technicalities and not on merit. In fine he prayed the court to grant the applicant leave to refile the application for revision of the award issued by the CMA.

Having carefully considered the submission made to this court by the counsel for the applicant and after going through the affidavit supporting the application the court has found the issue to determine in this matter is whether the applicant has managed to satisfy the court was delayed by good cause to file in the court the revision is seeking for leave of the court to refile the same in the court out of time. The court has framed the above issue after seeing that is what is required by Rule 56 (1) of the Labour Court Rules which states as follows:-

*"The Court may extend or abridge any period prescribed by these Rules on application and on **good cause** shown, unless the court is precluded from doing so by any written law".*

The term "*good cause*" used in the above quoted provision of the law which a party seeking for extension of time is required to show to move the court to grant him or her extension of time is not defined in the Labour Court Rules or any other labour law. However, our courts have tried to define it in number of cases and one of those cases is **Bertha V. Alex Maganga**, Civil Reference No. 7 of 2016 where the Court of Appeal stated as follows:-

*"Whilst it may not be possible to lay down an invariable definition of **good cause** so as to guide the exercise of the court discretion, the court is enjoined to consider, inter alia the reasons for the delay, length of the delay, whether the applicant was diligent and degree of prejudice to the respondent if time is extended."* [Emphasis added].

Another case where guidelines to be used by the court when considering what amount to good cause for granting or refusing to grant extension of time were formulated by the Court of Appeal of Tanzania is the case of **Lyamuya Construction Company Limited V. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) cited in the case of **Barclays Bank Tanzania Limited** (supra) where it was stated that:-

(a) *The applicant must account for all days of the delay.*

- (b) *The delay must not be inordinate.*
- (c) *The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- (d) *If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

In addition to the guidelines laid in the above cited cases the court has found proper to state here that, grant or refusal to grant extension of time is entirely on discretion of the court and that discretion is required to be exercised judiciously. The above stated position of the law is being bolstered by what was stated by the Court of Appeal of Tanzania in the case **Ngao Godwin Losero V. Julius Mwarabu**, Civil Application No. of 2015, CAT at Arusha (unreported) where it was held that:-

"As the matter of general principle that whether to grant or refuse an application ... is entirely on the discretion of the court, but that discretion is judicial and so it must be exercised according to the rule of reason and justice".

That being the factors or guidelines the court is required to consider in determining the present application, the court has found it is required to be satisfied the applicant has managed to establish they

were delayed by good cause to refile in the court the application for revision intended to be refiled in the court. The court has found that, as argued by the applicant's counsel, the applicant filed in the court the revision which was registered as Labour Revision No. 80 of 2019 within the time but the revision was struck out on 3rd August, 2020 after being found it was being supported by a defective affidavit and the application at hand was filed in the court on 13th November, 2020.

The court has found that, it is true as argued by the counsel for the applicant that the application for revision filed in the court by the applicant within the time was struck out on technicalities and was not determined on merit. However, the court has found the applicant has not accounted for the delay of more than one hundred days of the delay from 3rd August, 2020 when the revision was struck out to 13th November, 2020 when the present applicant was filed in the court. The court has found the case of **Janeth David Humphrey** (supra) is distinguishable from the case at hand as all days of the delay were accounted for in that case while in the present case all days of the delay have not been accounted for.

The court has found the counsel for the applicant argued the applicant delayed to refile in the court the application for revision as

they were waiting for the copy of the ruling of the court. The court has failed to see any merit in the above argument as the counsel for the application has not stated how much time was spent in waiting for the ruling of the court and when it was supplied to them so as to say the applicant has accounted for the stated period of more than hundred days of the delay.

It is the view of this court that, failure to account for the all days of the delay is contrary to the guidelines laid in the case of **Lyamuya** (supra) which requires a party seeking for extension of time to account for all days of the delay. The requirement to account for all days of the delay was emphasized in the case of **Bariki Israel V. R.**, Criminal Application No. 4 of 2011 (unreported) which was quoted with approval by the Court of Appeal in the case of **Tanzania Coffee Board V. Rombo Millers Ltd.**, Civil Application No. 13 of 2015 (unreported) where it was stated inter alia that, in an application for extension of time the applicant is required to account for each day of the delay.

As the applicant has not managed to account for all days of the delay the court has found there is no justifiable cause to exercise its discretionary power to grant the order of extension of time sought from this court. Consequently, the application for extension of time to refile

the application for revision in the court is hereby not granted and the application is dismissed for want of merit. Order accordingly.

Dated at Dar es Salaam this 24th day of September, 2021.



I. Arufani

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JUDGE

24/09/2021

Court: The ex-parte ruling delivered this 24th September, 2021 in the presence of Mr. Justine Herman Kaseka and Mr. Philemon Msegu, Learned Counsel for the Applicant and in the absence of the Respondent.



W.S. Ng'humbu

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DEPUTY REGISTRAR

24/09/2021