

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

MISC. LABOUR APPLICATION NO. 367 OF 2020

BETWEEN

MARIAN BOYS HIGH SCHOOL APPLICANT

VERSUS

RUGAIMUKAMU RWEKENGU RESPONDENT

RULING

S. M. MAGHIMBI, J.

The applicant lodged the present application praying for extension of time within which to file an application for revision against the decision of the Commission for Mediation and Arbitration ("CMA") delivered on 29/06/2020. The Award emanated from Labour Dispute No. CMA/PWN/BAG/29/2019/03 ("the Dispute"). The application is made under the provisions of Rule 24 (1), 24 (2) (a) (b) (c) (d) (e) (f), 24 (3) (a) (b) (c) (d) and Rule 56 (1) of the Labour Court Rules G.N 106 of 2007 ("the Rules"). The application was supported by an affidavit of Jacqueline Rogath Massawe dated 19th August, 2020.

The application was disposed by way of written submissions. The applicant was represented by Ms. Jacqueline Rogath Massawe, Learned

Counsel from M.R.M. Lamwai & Co. Advocates whereas Ms. Prisca Mussa Mtanga, Learned Counsel from Mtanga Law Chambers was for the respondent.

To begin with, in her reply submissions, Ms. Massawe notified the court that the respondent did not comply with the schedule of filing written submissions. She stated that the respondent was ordered to file his reply submission by 25/08/2021, however, the submission were filed on 27/08/2021. Ms. Massawe argued that failure to file written submission as directed by the court is synonymous with being absent on the hearing date without notice thus, the matter be heard ex-parte. To support her submission, she cited the case of **Monica D/O Dickson v. Hussein J. (Kny Chama Cha Wafanyabiashara), PC Civil Appeal No. 04 of 2019**. She therefore urged the court to proceed ex-parte.

I have noted Ms. Massawe's concern, the records reveal that on 29/07/2021 the court ordered the matter to proceed by way of written submissions. The applicant was to file her submission in chief by 11/08/2021, reply was to be filed by 25/08/2021 and rejoinder by 01/09/2021. As rightly submitted by Ms. Massawe, the respondent filed his submission on 27/08/2021, after two days from the time scheduled. Ms. Mtanga knew that her submission was filed out of time but she did

not take any initiative to seek leave of the court before filing the same.

On such circumstance I borrow wisdom of my Learned Sister Mongella J in the case of **Monica D/o Dickson** (supra) where she held that:-

'...it is a settled principle that failure to file written submission as ordered by the court is a manifestation of failure to prosecute the case. Failure to file written submission on the dates scheduled by the court is as good as non-appearing on the date fixed for hearing and need not be overemphasized. The applicant and his advocate failed to submit written submission on the date fixed, something which is tantamount to non-appearance on the date of hearing.'

On the basis of the above decision, since in the present application the respondent filed written submission out of the time framed by the court without leave, he has failed to appear on the date fixed for hearing. That being the case, his submission is hereby disregarded and the matter is proceeding ex-parte as per Rule 37 (1) of the Rules.

Arguing in support of the application, Ms. Massawe submitted that the application for revision was prepared and filed electronically on time and the same was admitted by Hon Deputy Registrar. That while submitting the hard copies for further registration process, they noted that the applicant's name entered in the electronic filing system is different from the names in the submitted documents. Ms. Massawe

submitted that the applicant's advocate made follow up to the Hon. Registrar for the assistance but it was an error which cannot be rectified electronically. Therefore, the applicant's advocate decided to file another application which was out of time thus, she filed the present application.

Ms. Massawe argued that granting extension of time is the discretion of the court but it must be exercised judiciously. To cement her submission, she cited the case of **Judith Emmanuel Lushoka v. Pastory Binyura Mlekule & 2 others, Misc. Land. Appl. No. 74 of 2018**. She submitted further that generally speaking an error or mistake of an advocate is not sufficient cause for grant of extension of time but despite the general rule, on some circumstances, the court may grant extension of time even if there some element of negligence on the part of an advocate. To buttress her submission, she referred the court to the case of **Kambona Charles (as administrator of the estate of the late Charles Pangani) v. Elizabet Charles**, CAT Dsm Civ. Appl. No. 529/17 of 2019. Ms. Massawe then submitted that the delay to file the intended revision application is not deliberate or actuated by laxity. That the delay was attributed by the applicant's advocate accidentally entering the wrong name of the applicant in the electronic filing system.

Ms. Massawe submitted that the applicant accounted for each day of the delay. She submitted further that the award subject of this application has a lot of irregularities and illegalities on the ground that hearing of the condonation application was conducted by different mediators. That the first arbitrator heard the matter to its finality and the second one delivered the decision.

Having considering the applicant's submission and court records, I find that the applicant has adduced sufficient reason for the delay. The court's power to grant extension of time in application of this nature is derived from rule 56 of the Labour Court Rules where good cause must be shown for the grant of the relevant application. What amounts to sufficient or good cause have been discussed in a number of cases including the Court of Appeal case of **Valerie McGivern v. Salim Fakhrudin Dalal**, Civ. Appl. No. 11 of 2015, Tanga where Mjasiri J held that

'The law is settled. This court has held in a number of cases that no particular reason or reasons have been set out as standard sufficient reasons. What constituted good cause cannot therefore be laid down by any hard and fast rule. The term good cause is relative one and is dependant upon the circumstances of each individual case.'

The applicant's reason for the delay to file the intended revision application is found at paragraphs 3, 4, 5 and 6 of the affidavit supporting the application. In the relevant affidavit the applicant deponed that after being aggrieved by the CMA's award his advocate prepared the documents and filed them on 10/08/2020 and they were admitted on the same date as reflected at annexure A3. He further stated that while submitting the hard copies at the registry office, it was discovered that the applicant's name was wrongly entered in the system. That the applicant's name appeared in the system was Dawson Msongaleli instead of Marian Boys High School. That following such error, efforts were made to correct the same without success until when the applicant was advised to file fresh application but he was out of time already.

I have gone through the annexures attached by the applicant and indeed the annexure A3 shows that on 10/08/2020 the applicant filed his application for revision electronically where in the said application the applicant's name was written as Dawson Msongaleli. By simple calculation it is undoubtful that the erroneous application filed on 10/08/2020 was filed timely. As stated above the applicant's Counsel made several efforts to rectify the erroneous application without success

until he decided to start afresh. The present application was filed on 21/08/2020, eleven days after the erroneous application was filed. Under such circumstances, it is my view that the applicant did not sleep on his right, he filed his first application for revision on time and, after it was discovered that the error in the electronic filing system cannot be rectified, he immediately filed the present application. Thus, the applicant's effort cannot be ignored by the court.

In the result, for the reasons stated herein above, I find the applicant managed to advance good cause to justify extension of time to file revision application as prayed. The application is therefore granted and time is extended for the applicant to lodge the intended application. The intended revision shall be filed in court within fourteen (14) days of the date of this ruling. For the sake of clarity, the intended Revision shall be filed on or before 13/10/2021.

Dated at Dar-es-salaam this 29th day of September, 2021



[Handwritten signature]

S.M. MAGHIMBI

JUDGE