

THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 69 OF 2021

BETWEEN

VIOLET MALABA..... APPLICANT

VERSUS

AGA KHAN EDUCATIONAL SERVICE TANZANIA..... RESPONDENT

RULING

Last order 06/09/2021

Date of Ruling 13/10/2021

B.E.K. Mganga, J

The applicant was an employee of the respondent. The relation between the two went sour as a result on 15th April 2019 respondent terminated employment of the applicant. Aggrieved by termination, applicant filed Labour dispute No. CMA/DSM/ILA/442/19/220 at CMA. On 24th August 2020 an award was issued in favour of the respondent. On 18th March 2021 applicant filed this application seeking to extend time within which to file a revision with a view of revising the said award.

The application is supported by an affidavit of Aliko Harry Mwanamanenge, applicant's Advocate. Opposing the application, the counter affidavit of Fauzia Karro respondent's Human Resources Manager was filed.

When the application was called for hearing on 6th September 2021, Mr. Matinde Waisaka, Advocate, appeared and argued for and on behalf of the applicant, while Mr. Arnold Luoga, Advocate appeared and argued for and on behalf of the respondent.

Arguing the application for the applicant, Mr. Waisaka submitted that applicant was out of time for 163 days as CMA award was issued on 24th August 2020 and he was supposed to file revision application on 5th October 2020. He further submitted that the delay was attributed by lack of money to engage an Advocate till 13th October 2020 when she raised money for the same. That it was difficult for applicant, who is an employed, to get money to engage an advocate. That after obtaining money, an advocate spent three days in drafting documents for filing extension of time, hence the application was file on 19th October 2020 and registered as Misc. Appl. No. 501 of 2020 which later on was struck out for being filed contrary to Rule 24(3) of the Labour Court Rules, G.N No. 106 of 2007 with the leave to refile. That on 11th March 2021 the applicant filed this application. To bolster his submission, he cited the case of **John Peter and Another v. The Republic**, Misc. Criminal Application No. 123 of 2020, High Court of Tanzania, at Mbeya (unreported) to impress the court to grant extension of time.

Counsel for applicant submitted that the applicant in bonafide, prosecuted Misc. Appl. No. 501 of 2020 but due to technical, the same was struck out. In such circumstances, counsel was of the view that, it is a sufficient reason for extension of time. Supporting his argument, he cited the case of **Benedict Shayo v. Consolidated Holdings Corporation**, Civil Application No. 366 of 2017, CAT (unreported).

Mr. Luoga, advocate for the respondent countered the submission made on behalf of the applicant that the reason of financial difficulties lacks merits. Counsel submitted that applicant has failed to show how she manage to raise money for engaging an advocate and how much was paid. The Counsel submitted that the case of **Benedict Shayo** (supra) is distinguishable in the circumstances of this application. He thus prayed for the application to be dismissed.

In this application for extension of time I have been asked to exercise my discretion. The discretion I am called to exercise has to be done judiciously as it was held by the Court of Appeal in case of **Zaidi Baraka and 2 others v. Exim Bank (T) Limited, Misc. Commercial cause No. 300 of 2015, CAT** (unreported) and **MZA RTC Trading Company Limited v. Export Trading Company limited, Civil**

Application No. 12 of 2015 (unreported). In the **MZA RTC** case, 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 case of **Regional Manager, Tanroads Kagera v. Ruaha Concrete Company Ltd, Civil Application No. 96 of 2007, CAT** (unreported) the Court of Appeal held that in determination of an application for extension of time, the court has to satisfy as to whether the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted. In the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No.2 of 2010** (Unreported) the Court of Appeal held that in application for extension of time, applicant has to account for all period of delay, the delay should not be inordinate, applicant must show diligence and not apathy, negligence or sloppiness in prosecution of the action that he intends to take and that the court can consider illegality of the decision sought to be challenged.

The question before me is whether applicant has met conditions stated in ***Regional Manager, Tanroads Kagera*** (supra), and ***Lyamuya's case***, supra.

It is clear that the award was issued on 24th August 2020 and the present application was filed on 18th March 2021. Counting from the date the award was delivered to the date of filing this application is 208 days. In terms of Section 91(1)(a) of the Employment and Labour Relations Act, [Cap 366 R.E 2019], applicant was supposed to file application for revision within 42 days. In computation, applicant filed this application 166 days out of time.

The question before this Court is whether grounds raised by the applicant warrant this Court to exercise its jurisdiction of extending time.

Having gone through the record I noted that there is no any evidence adduced by the applicant as to how she raised money. She didn't indicate in her affidavit as to whether she got another employment or not for the same to have merits. She is the one who raised this ground and therefore she was bound to put it clear for the court to exercise its discretion. Mere allegation that she did not have money as she lost her job without more evidence, in my view, is not sufficient to warrant the court to exercise its power. It is uncertain as to the amount of money she needed for that purpose. If at all she did not

have money, she was supposed to approach legal aid clinics that could have helped in drafting necessary documents for free. I therefore find that lack of money as deponed by applicant not sufficient ground for extension of time.

Regarding the allegation that Miscellaneous Application No. 501 of 2020 was bona fide lacks merits too as the same was filed out of time. Applicant never bothered even to attach a copy of the alleged struck out application to enable this Court to ascertain. The story could have been different if the said application was made within time and later on struck out on technical ground. Nothing was mentioned by the applicant as cause of delay for seven (7) days after Miscellaneous Application No. 501 of 2020 was struck out. These seven days were not accounted by the applicant in her affidavit. For that reason, I am therefore not prepared to accept that submission.

In the case of **Tanzania Fish Processors Ltd v. Christopher Luhangula**, Civil Appeal No. 161 of 1994, Court of Appeal of Tanzania, at Mwanza, wherein it was held that:

*"The question of Limitation of time is fundamental issue involving jurisdiction ...it goes to the very root of dealing with civil claims, limitation is a material point in the speedy administration of justice. **Limitation is there to ensure that a party does not come to Court as and when he chooses...**"*

Applicant has failed to give sufficient cause for delay and has also failed to account for each day of delay. For the fore going and, in the upshot, this application stands to be dismissed.

It is so ordered.



B.E.K. Mganga

JUDGE

13/10/2021