

THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 19 OF 2021

BETWEEN

TETREM NETWORK OF SCHOOL LIMITED APPLICANT

VERSUS

MOHAMED NKYA..... RESPONDENT

RULING

Last order 11/10/2021

Date of Ruling 13/10/2021

B.E.K. Mganga, J

The respondent was an employee of the applicant. The relationship between the two went sour as a result on 20th October 2015 applicant terminated employment of the respondent. Aggrieved by termination, respondent filed Labour dispute No. CMA/DSM/ILA/R.588/15/1103 at CMA. On 22nd December 2017 an award was issued in favour of the respondent.

On 21st January 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 John Soah, the principal officer of the applicant. In paragraph 5 of the affidavit, applicant has deponed that applicant's application was struck out for non-appearance of her counsel and in paragraph 7 the deponent

deponed that her counsel made application for revision out of time as he did not appear to the scheduled date of the court. In paragraph 10, the deponent deponed that the delay to file revision application was not deliberate. The application was resisted by the respondent who filed a counter affidavit.

When the application was called for hearing on 11th October 2021, Mr. Hippolity Sufei, the Management adviser of the applicant appeared and argued the application on behalf of the applicant while Mr. Mecky Humbo, an officer from RAAWu, a trade union appeared and argued for the respondent.

Arguing the application for and on behalf of the applicant, Mr. Sufei submitted that applicant was aggrieved with the award as a result she directed Bahati Akioo, advocate to file application for revision No. 241 of 2019 but the same was filed out of time and without the knowledge of the applicant. That, the decision to dismiss her said revision application No. 241 of 2019 for being out of time was made *ex parte* on 31st October 2019. He submitted that said advocate told them lies on the status of their application. Applicant was later on, informed that her application was dismissed as a result she filed this application. Mr. Sufei submitted that applicant filed stay of execution application No.

37 of 2020 and that the same was granted on 29th July 2021. He therefore prayed that application be granted.

Mr. Humbo, advocate for the respondent countered the submission made on behalf of the applicant that failure to get information from her lawyer is not a good ground for extension of time. Counsel submitted that applicant had a duty and power to follow up the said advocate and get information of what was going on if at all they were serious with their revision. He submitted further that applicant was negligent as she didn't closely follow up the matter to her advocate. He therefore prayed the application be dismissed for lack of merit.

In rejoinder, Mr. Sufei had nothing to add.

In this application for extension of time, I have been asked to exercise my discretion. The discretion I am called to exercised has to be done judiciously as it was held by the Court of Appeal in the 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 22nd December 2017. In the affidavit in support of the notice of application, there is no affidavit of the said Bahati Akioo advocate as such, submission that the said advocate lied to the applicant on the status of Revision application No 241 of 2019 is unsubstantiated. To put it in other words, all claims or blames thrown towards the said Bahati Akioo is mere submission from the bar, which at any rate cannot be regarded as evidence. If applicant wanted this court to act on such information, she was supposed to put it in the affidavit in support of the application. Be as it may, this court cannot act on allegations put forward against Bahati Akioo advocate as there is no his affidavit to confirm what is alleged by the applicant. I am cautious with that allegation because the said advocate has not been afforded right to be heard and further that if proved to be true, it may amount to professional misconduct, which in turn, may affect his professional carrier. Extension of time based on what is alleged by the applicant that her advocate told lies on the status of the revision, in my view, is to open wide the door and allow a swarm of flies of every kind to enter in the temple of justice and chase away the inhabitants therein. I am of that view, because this will open a room for every type of allegations against advocates especially when applicants lose their cases even when they were insensitive in taking an action. For that reason, I

reject all allegations put forward by the applicant as grounds for the delay.

In the case of **Tanzania Fish Processors Ltd v. Christopher Luhangula**, Civil Appeal No. 161 of 1994, CAT (unreported) it was held by the Court of Appeal 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...**"*

Mr. Sufei has submitted that applicant filed application for stay of execution No. 37 of 2020 and that the same was granted on 29th July 2021. I understood him that he wanted to impress me as averred in the affidavit in support of the application that applicant will suffer if this application will not be granted. In my view, and in contrary to that, granting this application will cause injustice to the respondent who, all that time since 2017 has failed to execute the award. The said application for stay of execution, in my view, has clogged speedy administration of justice. It was filed as a delay technique so to speak. That cannot be allowed.


In application for extension of time, applicant has to give sufficient cause for the delay and account for each day of delay. Applicant has

failed to give sufficient cause for delay and has failed to account for each day of delay from 22nd December 2017 to 21st January 2021, the date of filing this application. The delay itself, in my view, is inordinate. This takes me home and dry and find that there is no sufficient grounds for me to exercise my judicial discretion in granting extension of time to the applicant.

For the foregoing, this application stands to be dismissed.

It is so ordered.




B.E.K. Mganga

JUDGE

13/10/2021