

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**Misc. APPLICATION NO. 304 OF 2020**

**JAMES KAPYATA..... APPLICANT**

**VERSUS**

**MCC LIMITED..... RESPONDENT**

**RULING**

6<sup>th</sup> October & 26<sup>th</sup> November 2021

**Rwizile J.**

This is an application for extension of time to file a labour complaint. It happened as a matter of fact, that the applicant was employed by the respondent. Upon reaching the retirement age, he was paid all his retirement benefits except the golden handshake as per the collective bargaining agreement. He filed a dispute with commission which after failure of mediation proceeded to hear and determined the dispute. The award was set aside by this court on ground of jurisdiction on 3<sup>rd</sup> July 2020. This application was filed on 21<sup>st</sup> July 2020, applying for extension of time to file a complaint. He has filed the application based on two

*grounds; whether there is sufficient good cause for delay and what reliefs are the parties entitled to;*

The applicant has been represented by Mr. Evans R Nzowa advocate of G & C Law Chambers. He argued this application by way of written submissions. He argued that based on para 3.7 and 3.10 of the affidavit supporting the application, the reasons for delay are clear that the applicant was all the time pursuing the application in court, upon filing CMA/DSM/TEM/253/2016 and Revision No. 198 of 2019. In his view, the delay was not caused by the dilatory conduct of the applicant. He was, according to him, all the time fighting for his rights in court. He lastly concluded that the applicant, has shown good ground for extension of time.

For the respondent, Mr. Fredrick Mbise learned advocate of Amicus Attorneys, submitted that the applicant has failed to prove that he has brought his application promptly, has not shown any valid reason for delay and that the applicant lacks diligence, as held in the case of **Kibo Hotel Kilimanjaro limited vs the Treasury Registrar (Being Legal Successor to PSRC) and Another**, Civil Application No. 502/17 of 2020, CA, (unreported). The learned advocate went on submitting that the

applicant has had enough time to prosecute the application at the Commission and in this court. In his view, the applicant has exercised his right, and therefore filing this application is not a good ground for extension of time. He asked this court to dismiss the application.

Having heard submissions from both parties, it is important to note here, that it is trite that, granting or refusing extension of time is an absolute discretion of the court. For the same to be granted, one must show sufficient cause and account for each day of delay.

This position was reached in the case of **Benedict Mumello vs Bank of Tanzania**, Civil Application No. 12 of 2012, where the Court of Appeal held inter alia that:

*"...It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse, extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause..."*

In the case of **Wambura N. J Waryuba vs The Principal Secretary Ministry for Finance and Another**, Civil Application No.320/01 of 2020, again the Court of Appeal held that;

*"...It is essential to reiterate here that the Court's power for extending time ... is both wide-ranging and discretionary but it is exercisable judiciously upon good cause being shown.*

However, in the case of **Lyamuya Construction Co. Ltd vs Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No 2 of 2010, the Court of Appeal laid down three principles to be considered as hereunder;

- i. The delay should not be inordinate;*
- ii. The Applicant should show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take;*
- iii. If the Court feels that there are other sufficient reasons such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged*

The same principles have been consistently applied by the courts whenever the occasion arises, see also the cases of **Ngao Godwin Losero vs Julius Mwarabu**, civil application No. 10 of 2015 and **Finca (T) Ltd and another vs Boniface Mwalukisa**, Civil Application No. 589/12 of 2018, CA, unreported.

Having reviewed the records and submissions, it is clear that the applicant has shown he has been at the Commission and later in the revision process before court. Based on the principles stated above, I am of the considered view that the applicant has spent his time diligently prosecuting his case. This has in many respects been named as a technical delay. The time that he was not prosecuting the case is in between 3<sup>rd</sup> and 21<sup>st</sup> July 2020 when the Revision No. 198 of 2019 was decided and so paved the way to this application. This time, in my view, is not inordinate. That being the case, the application is therefore granted. The applicant is given 21 days to file the intended application. Since this is a labour dispute, I make no order as to costs.



**A.K.Rwizile**

**JUDGE**

**26.11.2021**