

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

MISCELLANEOUS LABOUR APPLICATION NO. 167 OF 2022

*Arising from the award of the Commission for Mediation & Arbitration of DSM at Ilala
(L. Chacha: Arbitrator) Dated 18th October 2021 in Labour Dispute
No. CMA/DSM/ILA/679/2020/296)*

ENOCK KAMBOI LAZARO.....APPLICANT

VERSUS

VAGILANTE SECURITY LIMITED.....RESPONDENT

RULING

K. T. R. Mteule, J.

6th October 2022 & 07th November 2022

This is an application seeking for extension of time to file an application for revision of the decision of the Commission for Mediation and Arbitration of Dar es Salaam, Ilala (CMA) in **Labour Dispute No. CMA/DSM/ILA/679/2020/296** dated 18th October 2021. This application is supported by the applicant's affidavit, who deponed the facts comprising what he asserts to be the reason for the delay. According to the affidavit the delay was due to the fact that, after receiving the CMA award the applicant was not available in Dar es salaam. It is deponed in the affidavit that the Applicant failed to file revision application within a time on the reason that he encountered

family responsibilities of transferring his family to his home place. That due to the aforesaid family responsibilities the Applicant failed to file revision application on time.

In opposing the application, counter affidavit of the respondent was filed in which the facts in the affidavit were disputed. It is deponed in the counter affidavit that the applicant's reason that he was not available as he was not in Dar es salaam is not sufficient ground to warrant this Court to extend time.

The application was heard by a way of oral submissions where the applicant was represented by Mr. Muhindi Saidi, Personal Representative while the Respondent was represented by Ms. Louisy Sehemba, Advocate.

In his submissions, Mr. Muhindi having reiterated what is stated in the affidavit, proceeded to submit that after receiving the CMA award on **10th October 2021** while under preparation to lodge the revision, he encountered family responsibilities including transporting his family to his home place, as per attached tickets. He added that delay in filing revision application was due to the reason that applicant stayed out of Dar es salaam for five months. Bolstering his position, he cited the case of **Guy Albert Kitwange and 37 Others v. Ismail Hotel**, Misc.



Application No. 704 of 2019, High Court of Tanzania, Labour Division, at Dar es salaam, (unreported). In this case, staying outside Dar es Salaam was considered a reason to justify delay.

In replying to the applicant's submissions, Ms. Sehemba challenged the applicant's reason for delay that he travelled to Dodoma to send its family home due to failure to sustain it. He questioned the partial disclosure of the reason for delay contained in paragraph 3.5 of the applicant's affidavit which just states that the applicant was outside Dar es salaam with no further particulars in the affidavit. She added that they are just getting the details of the travel in the submission.

According to Ms. Sehemba, even if it could be had been true that the applicant travelled to Dodoma, she said that the case of **Guy (supra)** cited by the applicant is distinguishable in the instant matter. She averred that in that case there were parties who were scattered in various destinations, and it was hard to find signatures of all the applicants timely which is distinct from this case where the applicant is only one person. He made another distinction that in the cited case, the applicants had a previous revision application timely filed but only missed the permit of lodging representative suit while none of such kind is in existence in the instant matter.



Ms. Sehemba further added that this application is guided by **Rule 56(1) of the Labour Court Rules G.N. No. 106 of 2007** which states that there must be a good cause for this kind of application to be allowed, while in this matter, the affidavit just states that the applicant was outside Dar es salaam.

Ms. Sehemba submitted that the award was issued to the applicant on 18th October 2021 and he travelled on 19th October 2021 and came back on 10th April 2022 while knowing that he was not satisfied with the award. Taking note that the applicant had the same representative in the CMA, Ms. Sehemba is of the view that the Court cannot wait for someone to finish all of his personal business to lodge a matter. Citing **Section 91(1)(a) of the Employment and Labour Relations Act, Cap 366 of 2019 R.E** which requires a revision to be lodged in the High Court, within 6 weeks, Ms. Sehemba submitted that six weeks lapsed on 29th November 2021, but this application was filed on 23rd April 2022 which is a delay of 5 months and 23 days. In her view that delay was inordinate and no reasonable cause which prevented timely lodging of the revision. Supporting her position, she cited different cases including **Tanzania Coffee Board vs Rombo Millers Ltd**, Civil



Application No. 13 of 2015, The Court of Appeal of Tanzania, at Arusha, (unreported). She thus prayed for the application to be dismissed.

In rejoinder the applicant Mr. Muhindi emphasized that the case of **Guy** (*supra*) is relevant to this application on the reason he could not get a signature of the applicant for being far from Dar es salaam. He added that accounting of each day depends on the circumstances of the case. He thus prayed for the application to be allowed.

Having considered parties submissions, this Court finds one main issue for determination which is **whether the applicants adduced good reason for this Court to grant extension of time to file revision application.**

The relevant provision regarding the time of filing Revision Applications against the CMA award is **Section 91 (1) of the Employment and Labour Relations Act, Cap. 366 of 2019 R.E.** The section provides:-

"91. -(1) Any party to an arbitration award made under section 88 (10) who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for a decision to set aside the arbitration award: -



(a) within six weeks of the date that the award was served on the applicant unless the alleged defect involves improper procurement;”

The above provision provides time limit of 42 days in filing revision application against the decision of CMA.

It is an established general principle that, it is the discretion of the Court to grant an extension of time upon a good cause shown, [**See Tanga Cement Company vs. Jumanne D. Masangwa and Another**, Civil Application no. 6 of 2001, Court of Appeal of Tanzania, (Unreported); and **Praygod Mbaga V. Government of Kenya Criminal Investigation 5 Department and Another**, Civil Reference No. 4 of 2019, Court of Appeal of Tanzania, at Dar es Salaam, (Unreported)].

The word reasonable cause or good cause has to be adduced by a party seeking extension of time in order to move the court to exercise its discretion. The good cause must be determined by reference to all the circumstances in each particular case. In the case of **Lyamuya Construction Company Ltd. vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, the Court of Appeal of Tanzania, at Dar es Salaam, (Unreported), the Court developed five principles to guide determination of what amounts to good cause for the application for



extension of time. These grounds according to Lyamuya's case are as follows: -

1. That the applicant must account for all the period of delay,
2. The delay should not be inordinate,
3. The applicant must show diligence,
4. Other reasons, such as the existence of a point of law of sufficient importance not apathy negligence or sloppiness in the prosecution of the action that he intends to take and lastly,
5. If the court feels that there are other sufficient grounds such as the illegality of the decision sought to be challenged.

From the above authority for the applicant to enjoy Court's discretionary power the Court will be guided by the above listed criteria in granting extension of time.

For how long the delay is, it is not in dispute that the CMA award was issued on 18th October 2021 and applicant was served with the award on the same date when the award was issued. Therefore, according to **Section 91 (1) (a) (b), of Cap 366**, the applicant ought to have filed his application on 20th November 2021 when 42 days lapsed but instead, it was filed on 22nd April 2022 that means there was a delay of more than five months. In my view, this delay is apparently inordinate.



The only reasons given by the applicant in this delay is being out of Dar es salaam as he encountered a family business of transporting his family which hindered the filing of the application on time. The Respondent's contention is that this reason is not sufficient to justify a delay of 5 months and therefore it does not warrant this Court to exercise its discretion power to extend time. In resolving the disputed fact, as contested by the parties I find a guiding wisdom in **Daudi Haga v. Jenitha Abdan Machanju**, Civil reference No. 19 of 2006, Court of Appeal at Tabora, (Unreported), it was held that:-

"A person seeking for an extension of time had to prove on every single day for delay to enable the court to exercise its discretionary power."

From the above authority it is an established principle of law that, accounting of every day of delay is an important aspect to justify extension of time. A delay of more than 5 months is stated to be spent by the applicant in taking his family to Dodoma. The applicant has not disclosed what he was doing in Dodoma for all these 5 months. In my view, the reason does not state or justify his daily routine after transferring his family to Dodoma from 19th October 2021 when the award was issued to 22nd April 2022 when the matter was filed. Nothing is explained as to what barred him from filing the matter on time. In my

view, the delay is not sufficiently justified. Since the duty to adduce good cause has been placed to the applicant as per **Rule 56 of G.N No. 106 of 2007**, in this matter, the applicant failed to adduce such good reason for the inordinate delay of 5 months.

I agree with the counsel for the respondent that the case cited by the applicant (**Guy's case supra**) constituted more than 37 applicants which is distinct from the instant case where the applicant is just one person. Further, in Guy there was a previous application which was timely filed but struck out with leave to refile which is not the case in this matter.

From the foregoing, having seen no sufficient reason established to satisfy the court to grant extension of time to lodge the revision application against the CMA award in **Labour Dispute No. CMA/DSM/ILA/679/2020/296**, this Application is dismissed for want of merit. No order as to costs. It is so ordered.

Dated at Dar es Salaam this 07th day of November 2022.



KATARINA REVOCATI MTEULE

JUDGE

07/11/2022