

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

MISCELLANEOUS LABOUR APPLICATION. 142 OF 2021

BETWEEN

CHARLES MGHAMBA..... APPLICANT

VERSUS

THOMAS MORE MACHRINA HIGH SCHOOL.....RESPONDENT

*(From the ruling Commission for Mediation & Arbitration of DSM at Kinondoni) (Wilbard:
Arbitrator) Dated 19th Mei 2020 in Labour Dispute No.CMA/DSM/KIN/R. 158/13)*

RULING

24th March 2022 & 10th May 2022

K. T. R. MTEULE, J.

This is an application for extension of time to file Revision Application against the decision of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/DSM/KIN/R.158/13. The Applicant **CHARLES MGHAMBA** prays for the order of this Court in the following terms:-

1. That, this Honourable Court be pleased to grant extension of time to file revision out of time against the award of the Commission for Mediation and Arbitration at Dar es salaam Zone at Kinondoni in the Labour Dispute No. CMA/DSM/KIN/R.158/13 delivered on 19th May, 2020 before Hon. Wilbard G. M, Arbitrator upon failure to meet the



extension of time by Hon. Madam Justice Aboud in Labour
Revision No. 247 of 2020 dated 04/03/2021.

2. Any other relief (s) this Honourable Court deems fit to grant.

The application was accompanied by a Chamber Summons supported by applicant's affidavit. Opposing the application respondent filed the Counter Affidavit of Constantine Michael Kirwanda, the respondent's Principal Officer.

The brief background of the dispute is explained hereunder. The matter began in the CMA, where it was decided in favour of the respondent. Being aggrieved, the Applicant wants to challenge the CMA decision by a way of revision. Initially the Applicant filed an application for revision against the CMA award but that application was withdrawn for being improperly filed with a leave of the Court to refile on or before 18th March, 2021.

The applicant failed to refile the application within the time provided by the Court hence this application for extension of time which was filed on 29th April, 2021.

In the applicant's affidavit, the reasons advanced to have caused the delay included what the applicant deposed to be the problems

encountered when they were lodging the application through electronic Judiciary Statistics and Database System (JSDS).

By counter affidavit, the Respondent vehemently disputed the reasonability of the grounds advanced by the applicant as a cause of delay.

The hearing proceeded by way of oral submissions. The Applicant was represented by Mr. Thomas Massawe, Advocate, whereas the Respondent was represented by Mr. Jebra Kambole, Advocate.

Mr. Massawe submitted that the applicant prepared an application according to law which is annexed as annexure CM3 which were prepared on 16th March 2021, which was supposed to be admitted in JSDS system before filing the hard copies. He stated that the system failed to admit the application two times until 18th March, 2021 which was the last day of refiling the application, hence they could not lodge it lodge it physically for being time barred. He stated that on 29th April, 2021 applicant's application was admitted that means there was a delay of 40 days.

Mr. Massawe argued that the applicant did not have means to enter the system after making electronic submissions, it was out of his

control to enable the system to work timely. He stated that despite of the delay, the respondent was not prejudiced.

It was further submitted by Mr. Massawe that the applicant was a lay person who could not understand all the complications without legal assistance and in that circumstances the Court should act reasonably since the system was the cause for the delay and respondent is not prejudiced. He thus prayed for the application to be allowed.

Facing the application Mr. Jebra submitted that there is no supporting affidavit from Court's Officer to prove the assertion or explanation as to how the system was not working between 17th March, 2021 and 18th March, 2021. He added that no evidence to show initiative taken by the applicant to serve the delay.

Mr. Jebra submitted further that the attached CM3 is electronic evidence from the system, for the same to be admitted and relied upon by this Court, must comply with the requirement of admitting electronic evidence as provided under S.18 of E.T.A of 2015. According to Mr. Jebra, the application made by applicant's Counsel has two reasons for rejection; firstly, the application should be denied on the ground that the Order of Aboud, J. was not attached and



secondly another attempt to file application was returned for want of pleadings. He stated that, the dashboard as per annexure CM3 does not show when the two applications were filed, hence the Applicant failed to prove when the system was not working.

Mr. Jebra challenged the argument that the Applicant is a layperson contending that it lacks legal stance as the applicant had an advocate since 16th March, 2021.

Mr. Jebra as well challenged the validity of the argument that this application was brought on 12th April, 2021 but was not approved until 29th April, 2021 asserting this to be a new fact which does not feature in the affidavit.

Mr. Jebra is of the view that the applicant failed to explain the delay of each day from 18th March, 2021 to 29th April, 2021. He added that in allowing extension of time this Court must be governed by those principles developed 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, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported). He stated that if the Applicant was diligent, he should



have attached affidavit to prove that the system was not working and the efforts he made in approaching the Registrar. Mr. Jebra is of the view that there was no genuine reason for the delay of 40 days and the respondent was prejudiced for not prosecuting the application timely. Thus, they prayed for the application not to be allowed.

In rejoinder applicant's Counsel reiterated his submission in chief but argued that the system does not show dates therefore it is not easy to extract something which does not exist.

After consideration of the rival submissions from both parties, the issue to be discussed is **whether the Applicant has adduced sufficient cause for the delay.**

It is in accordance with the law that the decision to grant or not to grant an application for extension of time depends upon a party seeking for an order to adduce sufficient cause for not doing what ought to have been done within the prescribed time. What amounts to sufficient cause has been elaborated in a number of cases [see. **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd.**, Civil Application No. 13 of 2010, Court of Appeal of Tanzania, (Unreported); and **Praygod Mbagha 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 good cause must be determined by reference to all the circumstances of each particular case.

In the present case the applicant submitted that the delay in filing the two applications was due to network problem resulted from the JSDS. I have examined the record. It shows that the impugned award was delivered on **19th May, 2020** and thereafter, the applicant timely filed the **Application Revision No. 247 of 2020** which was withdrawn with leave to re-file on or before **18th March, 2021**. However, the present application was filed on **29th April, 2021** that's means there was a delay of 40 days.

It is apparent that alleged network problem as per annexure CM3 (JSDS dashboard) does not show when the application was filed for the Court to establish the exactly time as to when the alleged two applications were filed. In defending this, the applicant alleged that the system does not show the dates. According to the Applicant's affidavit, the first filing attempt was done manually on 16th March, 2021 and Annexure CM 2 but according to the sworn statement, the



application was not received and on the same date of 16th March 2021, electronic filing was done but rejected by the system for technical error. According to the affidavit, on 17th March 2021, the applicant tried again through the system by the assistance of Mr. Massawe, but it did not go through as the system was not working until when the time expired.

In the oral submission, the Applicant's counsel submitted that the Applicant had to use the 40 days delayed to prepare this application of extension of time, which again came encountered some system problems.

I agree with the counsel of the Respondent that the matter each day of delay need to be countered. But each case needs to be considered on its own circumstances. The genuinely of the applicant is reflected from the very first time when the first application was timely filed by rejected on technical error. When the challenges of the filing system are the reasons for the delay, I feel wiser to be a little bit lenient to the applicant especially when the delay is not inordinate. The lenience is important since the filing system is a new technology which is still learned.



On the above ground, and taking into account that the delay was not inordinate, I allow the application for extension of time to file the revision. The said Revision application to be filed within 7 days from the date of this ruling. It is so ordered.

Dated at Dar es Salaam this 10th day of May, 2022.



KATARINA REVOCATI MTEULE

JUDGE

10 / 05 / 2022