

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

MISCELLANEOUS LABOUR APPLICATION NO. 379 OF 2020

*(Arising from Labour Dispute No. CMA/DSM/UB/R.06/18/160 from the Commission for
Mediation and Arbitration of Dar es Salaam Zone - Hon. Mbeyale, R, Arbitrator)*

BETWEEN

AKO CATERING SERVICES LIMITED.....APPLICANT

VERSUS

SUDI KAMUGISHAAPPLICANT

RULING

06th May 2022 & 09th May 2022

K. T. R Mteule, J.

This is an application for extension of time to allow the applicant to file an application for revision against the decision of the CMA in Labour Dispute No. CMA/DSM/UB/R.06/18/160, Ubungo, Dar es Salaam Zone which was delivered on 12th June 2020.

The application is supported by an affidavit of Iddi Yassin who is the Applicant's counsel who deponed reasons for the delay to justify the granting of extension of time. The deponent of the affidavit explained that initially, the application was filed within the 42 days required by the law and it was submitted vide the electronic filing system (JSDS)

but it was returned two times for the purposes of making some corrections and when resubmitted for the third time, it was rejected for being time barred for 4 days. The rejection notice dated 27/8/2020 was attached with the affidavit as "AKO-2".

It is deponed that the delay was caused by the challenges of the new electronic filing system which did not take into account the date the application was firstly submitted.

By a way of counter affidavit, the Respondent disputed all the material facts of the affidavit.

The application was heard by a way of oral submissions, where the Applicant was represented by Ms. Evangelina Ebrahim while the Mr. Saulo Kusakalah appeared for the Respondent.

In her submissions, having narrated what is in the affidavit, Mr. Evangelina cited the case of **Lyamuya Constructions Co. Limited versus The Board of the Registered Trustees of Young Women Christian Association of Tanzania, CA Civil Application No. 2 of 2010** where it was held that delay should not be inordinate and that there should be no negligence. According to Evangelina, since the delay was due to the challenges contained in

the JSDS, then the Court should find it to be a reasonable cause of delay and allow extension of time.

On his part, Mr. Kusakalah challenged the relevance of Paragraph 8 of the affidavit to the instant application by stating that the grounds raised therein, do not support the instant application but the merit of the intended revision.

According to further submissions of Mr. Kusakalah, the applicant has failed to establish any evidence to support the assertion that the JSDS was not working properly.

Referring to the same case of **Lyamuya Construction** Supra, Mr. Kusakalah question the accounting of the days between 24/7/2020 when the matter was rejected by JSDS and 28/8/2020 when this application was filed. Citing the case of **Bruno Wenceslaus Nyalifa versus the Permanent Secretary Ministry of Home Affairs and Another, Court of Appeal, Civil Appeal No. 82 of 2017**, Mr. Kusakallah submitted that in the strength of this case, even a single day needs to be accounted. He alleged negligence on the part of the applicants and prayed for the court not to allow extension of time.

In rejoinder, Ms. Evangelina reiterated that after the rejection, they started another attempt to file the matter manually, but they were instructed to file it electronically and from there they started the preparations of filing this matter.

I have gone through the affidavit and counter affidavit together with the submissions of the parties, the issue which I construe therefrom is **“whether there are sufficient grounds established by the Applicant to justify granting of extension of time to file the application for revision”**.

It is stated that the applicants began the filing of the matter electronically which went back and forth due to some technical errors. This statement is supported by the system generated report which was attached as AKO-2 to support the affidavit. Although this piece of report was not stated in the submission, its attachment and reference in the affidavit cannot be completely ignored. I have taken note of it.

I agree with Mr. Kusakalah that the applicant must show no negligence and must account for all the days of delay but again each case must be considered according to its own circumstances. The applicant stated that she went further to file the matter manually

hoping to have the time to count from the date of their first submission in the electronic system, but again it was rejected for being time barred and they were required to file it manually. I have considered this statement, taking into account the advent of the new inexperienced electronic system which may cause ups and downs. To penalize a party who faced difficulties of the system may prejudice justice.

Although there is no clear counting of the days, the hassles met through the JSDS when the matter was firstly filed timely, and the attempt made to file it manually which failed, makes the entire delay to be technical delay. It is established that technical delay cannot be used to penalize a party by denying extension of time. (See **Bank M T. Ltd. vs. Enock Mwakyusa (Civil Application No. 520 of 2017) [2018] TZCA 291.**) I have further taken into consideration the fact that the delay is not inordinate. All these qualifies the reasonability of the grounds advanced for delay.

From the above circumstances, it is my view that there are sufficient ground for the delay which justifies the granting of extension of time. The issue is therefore answered affirmatively.

From the foregoing, I hereby allow the extension of time to file application for revision as prayed. The application is therefore granted. The intended Revision Application to be filed within 7 days from the date of this Ruling. It is so ordered.

Dated at Dar es Salaam this 09th day of May, 2022.



KATARINA REVOCATI MTEULE

JUDGE

09/05/2022