

THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 172 OF 2021

BETWEEN

ANTHONY NYEMBO & ANOTHER APPLICANT

AND

SARAWU BEVELOPAS CONSTRUCTION LTD RESPONDENT

RULING

Last order 26/01/2022
Date of Ruling 11/02/2022

B.E.K. Mganga, J

It is alleged by the applicants that they were employees of the respondent. It is further alleged that the said employment relationship between the parties were by oral agreement. It is alleged further that the respondent terminated the alleged employment of the applicant unfairly as result, applicants filed labour dispute No. CMA/DSM/ILA/893/18/09 before the Commission for Mediation and Arbitration henceforth CMA at Ilala.

On 11th September 2020, Hon. Igogo M, arbitrator, issued an award in favour of the applicants and ordered the respondent to pay a

total of TZS 180,000/= to all applicants. Applicants were aggrieved by the said award, but after noticing that they were out of time, they filed this application seeking extension of time to file application for the court to revise the said award. The notice of application is supported by an affidavit sworn by Anthony Nyembo, the first applicant. In the said affidavit, Mr. Nyembo deponed that, being aggrieved by the award, on 4th November 2020, they filed Miscellaneous Application No. 506 of 2020 seeking leave of this court to issue an order allowing him (Anthony Nyembo) to file revision in a representative capacity. He deponed further that leave was granted on 12th May 2021, while already out of time.

The application was resisted by the respondent who filed the notice of opposition and a counter affidavit sworn by Musa Mhagama, her advocate. In the counter affidavit, the deponent averred that applicants were not employees of the respondent and further that miscellaneous application No. 506 of 2020 were filed in court while applicants were already out time by 14 days.

The application was disposed by way of written submissions whereas applicants enjoyed the service of Hamza Rajabu, their personal representative while the respondent enjoyed the service of Musa Mhagama, advocate.

In his written submissions, Mr. Rajabu, the personal representative of the applicants submitted that, on 24th October 2020, applicants filed Labour revision before this court while within time. That, at all times, applicants were in court struggling to obtain leave for the representative application to enable them to file revision application. He went on that; this is sufficient cause for the delay. Mr. Rajabu submitted that, there is illegality in the award that need to be considered by this court. He cited the case of **Samwel Munsiro v. Chacha Mwikwabe**, Civil Appeal No. 539/08 of 2019 (unreported) to support his argument that illegality is sufficient ground for the court to extend time.

On the other hand, counsel for the respondent submitted that applicants were negligent as they filed Miscellaneous application No. 506 of 2020 already out of time by 14 days. On the issue of illegality, counsel for the respondent submitted that, the same was not raised in the affidavit and that the type of illegality itself was not explained in both the affidavit and submissions. Counsel cited the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Appeal No. 2 of 2010, CAT (unreported) and argued that applicants were negligent and failed to account for the delay or show the illegality complained of.

In rejoinder, Mr. Rajabu, the personal representative of the applicants submitted that Miscellaneous application No. 506 of 2020 was filed on 23rd October 2020 as shown in the e-filing report that is part of annexure AN 2 to the affidavit in support of the application and maintained that the said application was filed within 42 days.

Having carefully read the affidavit in support of the application, the counter affidavit and submissions thereof, I am of the considered opinion that the application is straight forward and no need to labour much. I agree with counsel for the respondent that the issue of illegality was not covered in the affidavit in support of the application, but it came out of the blue during submissions made on behalf of the applicants. More so, the nature of illegality is not specified. Whatever the case, so long as illegality was not averred in the affidavit, which is evidence, submissions made thereon, are useless and cannot be considered. I will therefore not consider it as a ground in this application.

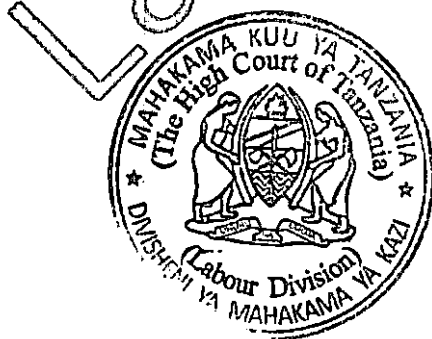
In the affidavit in support of the application, Mr. Nyembo on behalf of the applicants, deponed that they filed Miscellaneous application No. 506 of 2020 on 4th November 2020, but in the written submissions it was submitted that it was on 23rd October 2020 well within 42 days. Counsel for the respondent submitted that applicants filed the said Misc. Application No. 506 of 2020 already out of time for 14 days and that

they have failed to account for each day of delay. I have carefully read the e-filing report annexure AN 2 to the affidavit in support of the application and find that the application was admitted on 24th October 2020 at 11:03:55. From the date the award was issued i.e., 11th September 2020 to the 24th October 2020 is 43 days. In short, applicants filed Misc. Application No. 506 of 2020 while out of time for one day. This delay by a single day has not been accounted for. The Court of Appeal in the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) held: -

"...Delay, of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

As applicants failed to account for that single day of delay, the application fails. I therefore dismiss this application without costs.

Dated at Dar es Salaam this 11th February 2022.




B.E.K. Mganga
JUDGE