

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

MISCELLANEOUS APPLICATION NO. 185 OF 2021

MENGO FRANK FREDRICK & 72 OTHERS APPLICANT

VERSUS

EAST COAST OIL & FAST LTD RESPONDENT

RULING

12th April & 02nd June 2022

Rwizile, J

This application is for extension of time. The applicants are applying for time to file an application for revision originating from the decision of the Commission for Mediation and Arbitration (CMA) No. CMA/DSM/TEM /307/2017/214/17.

Facts paving the way to this application can be stated that, the applicants were employees of the respondent. Upon their termination, they filed a filed a representative suit on 29th May, 2019. The application was granted on 18th September, 2019. On 18th October an application for extension of time was filed. The same was struck out on 18th December, 2020 due to technical issues. They filed another application for extension of time,

again the same was struck out on 27th April, 2021. They therefore filed this application.

The application is supported by the affidavit of Mengo Frank Fredrick, applicant's representative which was opposed by the counter affidavit of Hassan Dewji, Principal Officer of the respondent.

Legal issue which was raised by the applicants was whether there is a sufficient reason for extension of time to file for revision.

The matter was heard by way of written submission. The applicant was represented by Sama Attorneys whereas the respondent was represented by Mwambene Adam A.E, learned Advocate.

In his submission, the advocate stated that there was a total delay of 637 days which was caused by operation of the law. And the other reason is the vast number of applicants who are scattered in various regions after termination of employment. He stated that, for the purpose of executing court documents, they faced a challenge of securing them.

He continued to argue that, the applicants filed an application of a representative suit on 29th May, 2019. It was granted on 18th November, 2019. The Attorney further stated that then they filed an application for extension of time on 18th October, 2019 which was struck out due to the

preliminary objection raised by the respondent on 27th April, 2021. Then, he submitted this application followed.

In his view, the applicants have shown their willingness to pursue the matter but they were delayed by technicalities posed by the respondent which led to striking out of the two applications filed before this Court. In support to his submission, he cited the cases of **Janeth David Humphrey V. Moshi University Collage of Co-operative and Business Studies (MUCCOBS)**, High Court, Misc. Labour Application No. 9 of 2020 and **Elias Msonde v Republic**, Criminal Appeal No. 93 of 2005 in which it held that, it is necessary for accounting of the days of delay and the delay should not be contributed by negligence. The applicant also cited the case of **University of Dar es Salaam v Dorothy Phumbwe**, High Court Labour Division at Dar es Salaam, Misc. Labour Application No. 348 of 2020, where it was held that, for the Court to use its discretionary power to grant extension of time the applicants have to show, they will suffer irreparable damage. Further, the case of **Vodacom Tanzania Public Co. Ltd Commissioner General (TRA)**, and **Fortunatus Masha v William Shija and Another** [1997] TLR 154 it was held by the Court of Appeal that an extension of time ought to be granted on circumstances where only technical delay is involved.

He finalized by praying to this Court to use its discretionary power as per section 95 of the Civil Procedure Code [CAP. 33 R.E. 2019] which provides that, in order to allow extension of time, injustice or irreparable loss will be suffered by the respondent.

When replying, Mr. Mwambene submitted that the reason for delay to file a representative suit has not been accounted for. The presence of the applicants in remote areas has not established. The name of the village where the applicant was has not been named. Further, he added, it has not been shown, when did he travel to sign documents in Dar es Salaam. In his view, the applicants have not shown good cause for delay. He supported his submission by citing Rule 56(1) of the Labour Court Rules G.N. No. 106 of 2007 and the case of **Paul Martin v Bertha, AR** Civil Application No. 7 of 2005, where it was held that if no sufficient reason has been shown, there is lack of diligence and there is negligence does not warrant the exercise court discretion to grant extension of time.

The learned counsel as well, stated that documents presented in Court have been signed by only one representative. The absence of evidence to prove that the applicants' representative travelled from unnamed village to Dar es Salaam concludes that the delay was caused by lack of diligence. To him, all what has been stated does not constitute good cause

to grant extension of time. To support his submission, he cited the case of **Evaline Ismail Mapuga v Edward Kodi Nyangungu (Administrator of the estate of the late Agnes Maile Kapingo)** which quote the case of **Regional Manager Tanroads Kagera v Ruaha Concrete Co. Ltd**, Civil Application No. 96 of 2007, that sufficient or good cause is what determines an application for extension of time. He prayed this application should not be granted.

Mr. Mwambene submitted further that the cases cited by the applicants are distinguishable. He stated that in the case of **Janeth David Humphrey v Moshi University Collage of Co-operative and Business Studies (MUCCOBS)**, (supra) the application was filed in time while in the present case the CMA award was delivered on 28th December, 2018 but the application for representative suit was filed on 29th May, 2019, a period of five months before they could take any step. Also, in the case of **University of Dar es Salaam v Dorothy Phumbwe** (supra) he stated that the applicant on first attempt was within time, the matter was struck out and within two days they filed another application. While on the present case, the applicants filed a representative suit when time to filed an application had elapsed. The delay, he said was a total of 637 days, not accounted for. In the case of **Vodacom Tanzania Public Co.**

Ltd v Commissioner General (TRA), (supra), extension of time was granted because of technical delay rather. To support his submission, he cited the case of **Fwada Limited v Marmo E. Granito Mines (T) Ltd**, Misc. Land Application No. 01 of 2019, on what constitutes technical delay, as based in the principle enunciated by Court of Appeal of Tanzania in cases of **Salvand K.A. Rwegasira v China Hena International Group Co. Ltd**, Civil Reference No. 18 of 2006 and **Luhumbo Investment Limited v National Bank of Commerce Limited** Misc. Civil Application No. 17 of 2018.

He submitted further that the applicants have not accounted for each day delay in the total of 637 days. He stated that from CMA award dated 28th December, 2018, the 42 days to file the application for revision expired on 8th February, 2019. He stated further that the applicants filed an application for a representative suit on 29th May, 2019, a period of 108 days which have not been accounted for. He submitted that there was another lapse of 30 days which was not accounted for from 19th September, 2019, a day of granting leave to 18th October, 2019 when they filed the first application for extension of time.

It was argued further that the application was struck out on 18th December, 2020, filed another which was also struck out on 27th April,

2021. He stated that from that day they filed another application for extension on 12th May, 2021 which is an amount of 15 days were not accounted for. He so stated that the total days for delay are 640 days which were not accounted for. To support his submission, he cited the case of **Karim Hassan v National Microfinance Bank Plc**, Misc. Labour Application No. 235 of 2017, **Rutunda Masore v Moraf Ltd** Revision No. 7 of HCLD at Mwanza (2015) LCCD at page 33, **Ramadhan v Geita Gold Mining Ltd**, Misc. Application No. 29/2013 (unreported), **Dr. Ally Shabhay v Tanga Bohorag Jamaat** (1997) TLR 305, Zuberi **Nassor Moh'd v Mkurugenzi Mkuu Shirika la Bandari Zanzibar**, Civil Application No. 93/15 of 2018. He then prayed for the application for extension of time to be dismissed.

In a rejoinder, the Attorney for the applicant reiterated what was submitted in the submission in chief. In his view, the cases of **Paul Martin v Bertha AR** (supra) and **Evaline Ismail Mapuga v Edward Kodi Nyangungu (Administrator of the estate of the late Agnes Maile Kapingo)** (supra) the applications were not allowed due to negligence and lack of good cause. He submitted that on the applicant's part, there is no negligence and it is evidenced by the continuous applications made by them and that they have good cause for the delay.

He stated that the applicants have been following up by executing other legal measures to ensure their right of revision is secured. To support that he cited the cases of **Hamis Babu Ally v The Judicial Officers Ethics Committee, The Chief Court Administrator, The Judicial Service Commission and the Attorney General**, Civil Application No. 130/01 of 2020, from page 12 to 13 and also the case of **Bharya Engineering & Contracting Company Co. Ltd v Hamoud Ahmed Nassor**, Civil Application No. 342 of 2017 (unreported) which held that a delay caused by technical matter the extension of time ought to be granted.

Going through the submissions of the parties, I was called to determine *whether applicants have shown sufficient reason for delay.*

As the law provides under section 91(1)(a) of the Employment and Labour Relation Act [CAP. 366 R.E. 2019] application to challenge a CMA award is to be filed in six weeks, as hereunder: -

"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 the award was served on the applicant unless the alleged defect involves improper procurement;"

It is clear that the application for revision of the CMA award is within six weeks which amounts to 42 days. The applicants prayed for extension of time to file this application from the CMA award dated 28th December, 2018. Without delay, it ought to be filed on 8th February, 2019. Based on the affidavit, Mr. Mengo Frank Fredrick (applicants' representative) averred that they first filed the application for leave to file a representative suit on 29th May 2019. This shows clearly that there was a lapse of 110 days from the date of the award to first filing of the representative suit. The 110 days were not accounted for by the applicants anywhere in the affidavit.

Going by the affidavit supporting this application, it was averred that from the day he was granted a leave to represent others, an application for extension of time was filed on 18th October 2019. This is after the lapse of 30 days. He stated that the reason for the delay was because he stays in the remote area at Bukoba and he had to travel to Dar es Salaam.

Therefore, apart from delay, there were two applications filed but struck out for being incompetent. This means that the applicants were not only sloppy in taking action, but also negligent in taking action.

The court has discretionarily power to extend time but, it does so with conditions. Rule 56(1) of Labour Court Rules [G.N. No. 106 of 2007] provides for the same, which states: -

"The Court may extend or abridge any period prescribed by these Rules on application and on good cause shown, unless the Court is precluded from doing so by any written law."

In the case of **Wambura N.J. Waryuba v The Principal Secretary Ministry for Finance and Another**, Civil Application No. 320/01 of 2020, it was 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 cause being shown."

This means in order for the time to be extended by the Court even though it had such powers, a good cause for delay has to show first. In the matter at hand the reasons for delay stated were filing of the application of the representative suit which was filed out of the over 100 days. The other

reason for delay was stated as travelling of the applicant's representative from Bukoba to Dar es Salaam which has also not also been proved.

In the case of **Daudi Haga v Jenitha Abdan Machanju**, Civil reference No. 19 of 2006, Court of Appeal of Tabora, (unreported), stated that the other reason for the Court to extend time, the applicant has to account for each day delayed. 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."

The application for leave to represent others, was filed after 110 days from the date of the award. The applicants did not account for those days first. This means the applicants even though they had a right for revision, it seems they have sat on it. I think, the application for a representative suit, should not be taken as the reason for delay. The applicants, if they were indeed serious in prosecuting their application, they ought to have filed a representative suit immediately after the award. Otherwise, it is taken that they were not diligent enough to do so.

For the foregoing reasons, I find the applicants have failed to show sufficient cause for the delay. On that aspect this application is dismissed.

Since this is the labour matter, I make no order as to costs.



A.K. Rwizile

JUDGE

02.06.2022

Labour Court TZ.