

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 187 OF 2021

DAMARIS SIMTALA.....APPLICANT

VERSUS

MANTRAC TANZANIA LIMITED RESPONDENT

RULING

02nd & 16th June 2022

Rwizile, J

This application is for extension of time. The applicant is 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/13/2018/39/2018. It has been filed by a notice of application, supported by an affidavit of Henry Mwangala a representative of the applicant. It only raises an issue whether, there is sufficient reason to grant this application.

It has to be factually recalled that the applicant was terminated by the respondent. Aggrieved with termination, a dispute was filed at the CMA, where the applicant was not successful. The applicant approached this

court to have the award set aside. That was unfortunately done out of time, hence this application.

Mr. Mwangwala learned advocate, made oral argument for the applicant. He was of the submission that the applicant appeared before this court for Revision. However, her application was struck out on 19th October 2020, with leave of 14 days to refile the same.

Before time given lapsed, he said, she filed an application as directed on 2nd November 2020. He said, the said application had defects which rendered the same be struck out. It was his argument further that he instead of filing a fresh application, simply filed it as an amended one, maintaining the number of the one struck out i.e amended Revision No. 49 of 2020. The same was rejected and so was out of time to file this application. He said, it was a slip of the pen and it is excusable, since he filed another application in 7 days time thereafter.

The learned advocate, then asked this court to consider the decisions in the cases of **Serikali ya Kijiji cha Mlangali vs Kasimu R Kakene**, Misc. Application No. 233 of 2029 at page 8, and **Mwanza Director M/S News Co. Ltd vs Mwanza Regional Manager of TANESCO and others** [2006] TLR 335. He lastly asked this court to grant this application for the sake of justice.

On his party, the respondent's advocate one Fraterne Munale, was of the view that failure to take keen action as the applicant did, is an act of negligence. In his view, the point that the error committed is a slip of the pen is lame and should not be accepted. He argued that the application was alleged filed on 8th January, but it was signed on 3rd June 2021, it is not, in his view genuine. Since parties are bound by their pleadings, the learned counsel held the view that the applicant did not plead slip of the pen in his affidavit, then it should not be considered. He asked this court to refer to the case of **Ngao Godwin Losero vs Julius Mwarabu**, Civil Application No. 10 of 2015 at page 3-4, and the case of **Hadija Adam vs Godbless Tumba**, Civil Application No. 14 of 2013, where it was held that the delay should not be inordinate, the applicant should not be sloppy or, there should be a point of law.

By way of a rejoinder, the applicant stated that the application was filed in time as the record shows, but it was rejected for the reasons stated before. In his argument, he said, the application was not filed on 3rd June 2021. In conclusion, he stated that the same was filed as per the Electronic Filing Rules, 2018 and so referred to the case of **Khamis Mosoud Abushiri vs Hamis Ally Shaban and 2 Others**, Misc. Civil

Application No. 20 of 2020. The learned counsel therefore asked this court to dismiss this application.

Going through the submissions of the parties, I was called upon to determine *whether the applicant has 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] an application to challenge a CMA award is to be filed in six weeks, in clear terms the law states 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.

Going by the affidavit supporting this application, it was averred that from the day he was granted leave to file the application, it only took few days

and filed it. But what came as a huddle is the error on the record that led to striking out of the said application. Taking action further, it took him another 7 days to prepare and file this application.

In law, the court has discretionary power to extend time, but it does so with conditions, among them, is that good cause has to be shown. Rule 56(1) of Labour Court Rules [G.N. No. 106 of 2007] provides:

"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."

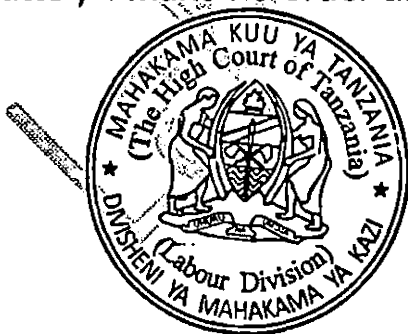
This means, in order for the time to be extended by the Court even though it had such powers, a good cause for delay has to be shown. In the case of **Daudi Haga v Jenitha Abdan Machanju**, Civil reference No. 19 of 2006, Court of Appeal, (unreported), stated other reason for the Court to

extend time is that 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."

Since the applicant filed this application in 14 days, but it was found with defects, I hold that the applicant has shown good cause. I do not think, the same was sluggish to the extent of denying him the right to be heard. I consider that the delay is not inordinate.

For the foregoing reasons, I find the applicant has shown sufficient cause for delay. On that aspect this application is granted. The applicant is given 15 days from today to file the intended Revision. Since this is the labour matter, I make no order as to costs.



A.K. Rwizile

JUDGE

16.06.2022