

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

**MISCELLANEOUS APPLICATION NO. 101 OF 2022**

**BETWEEN**

**RASHIDI RASHIDI MWENEVYALE ..... APPLICANT**

**AND**

**MAPOLOLONI GUEST HOUSE ..... RESPONDENT**

**RULING**

*Date of last Order: 28/06/2022*

*Date of Ruling: 01/07/2022*

**B. E. K. Mganga, J.**

On 10<sup>th</sup> February 2004 Applicant and respondent entered employer and employee relationship but the same was terminated in 2021. Following termination of employment of the applicant, the latter filed Labour complaint No. CMA/DSM/ILA/77/21/72/21 before the Commission for Mediation and Arbitration henceforth CMA. On 1<sup>st</sup> February 2022, Kiwelu, L, arbitrator, having heard evidence of the parties issued an award in favour of the respondent that the dispute was filed out of time. Applicant was aggrieved by the said award and being out of time, filed this application imploring the court to extend time for him to file an application for revision against the said award. In support of the notice of application, applicant filed his affidavit. Respondent

opposed the application by filing the counter affidavit sworn by Mutakyamirwa Philemon, respondent's advocate.

By consent of the parties, the application was argued by way of written submission.

Arguing in support of the application, applicant submitted that in 2004, respondent employed him as a Carpenter. That, he worked until 15<sup>th</sup> January 2021 when he was terminated from his employment and that he referred the matter to CMA on 2<sup>nd</sup> February 2021. Applicant submitted further that, after receiving a copy of the award on 1<sup>st</sup> February 2021 he sought for legal assistance and filed the application before this court but the same was rejected for being improper. He went on that after rejection of his application, he decided to seek for another legal assistant and filed this application on 3<sup>rd</sup> March 2021. He submitted further that this application was admitted on 21<sup>st</sup> March 2022. Applicant submitted further that the delay was caused by an officer of the court. He added that, there are overwhelming chances of success.

In response, Mr. Philemon submitted that, in his affidavit in support of the application, applicant failed to advance the reason for his delay. Learned counsel for the respondent submitted further that, the

impugned award was issued on 1<sup>st</sup> February 2022 and the applicant filed the application before this court on 21<sup>st</sup> March 2022 while out of time for 14 days. Counsel for the respondent submitted that applicant did not account for each day of the delay. Mr. Philemon went on that applicant is blaming a registry officer but, there is no affidavit of the said officer to support his allegation. Counsel for the applicant referred the court to the case of Regional ***Manager, TANROAD Kagera vs. Ruaha Concrete Company Ltd***, Civil Application No. 96 of 2009, CAT (unreported) to cement on his submission that applicant was supposed to establish some material amounting to sufficient cause or good cause for the delay but has failed.

Mr. Philemon, counsel for the respondent submitted that in his affidavit, applicant deponed that there is an error in the CMA's award hence illegality. He submitted that, for illegality to be a good ground for extension of time, it must be apparent on face of record and cited the case of ***Ngao Godwin Losero vs. Julius Mwarabu***, Civil Application No. 10 of 2015 and ***Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania***, Civil Application No. 2 of 2010, CAT (Unreported).

Mr. Philemon submitted further that, in his submission, applicant submitted that he is a lay person to implore the court to extend time. Counsel for the respondent submitted that applicant is using qualified lawyers to draft his documents and further that ignorance of law has never been a good cause for extension of time. He cited the case of **Hamimu Hamisi Totoro @ Zungu Pablo and 2 others vs. Republic**. Criminal Application No. 121/07 of 20128 to support that submission.

I have carefully considered submissions of both sides together with both the affidavit and counter affidavit in support and opposition of this application. I should point out that all that was submitted by the applicant as reasons for the delay are not in his affidavit supporting the application hence not evidence. It has been held several times by the Court of Appeal that submissions by counsels are not evidence but merely clarifications of party's case. Some of those cases are **Dr. A Nkini & Associates Limited v. National Housing Corporation**, Civil Appeal No 75/2015, **Republic v. Donatus Dominic @ Ishengoma & 6 Others**, Criminal Appeal No. 262 of 2018, **Morandi Rutakyamirwa v. Petro Joseph** [1990] T.L.R 49] and **the Registered Trustees of the Archdiocese of Dar es Salaam v. The Chairman Bunju Village**

**Government**, Civil Appeal No. 147 of 2006 to mention but a few. In **Bunju Village's** case (supra) the Court of Appeal held: -

*"... submissions are not evidence. Submissions are generally meant to reflect the general features of a party's case. They are elaborations or explanations on evidence already tendered. They are expected to contain arguments on the applicable law. They are not intended to be a substitute for evidence".*

It is a well-established principle that both affidavit and counter affidavit are substitutes of oral evidence as it was held in the case of **Rosemary Stella Chambejairo v. David Kitundu Jairo**, Civil Reference No. 6 of 2018, CAT (unreported). Therefore, if applicant wanted those information to form part of his evidence in support of this application, he was supposed to include them in his affidavit. Since they are not in his affidavit, but came out in the written submissions, I will not consider them because they are not evidence.

In his affidavit, applicant gave no reason for the delay, rather, he gave out grounds for revision. It should be recalled that this is an application for extension of time and not revision. In an application for extension of time, for the court to exercise its discretionary power of extending time or not, sufficient reasons for the delay must be shown. This position is clearly provided for under Rule 56 (1) of the Labour

Court Rules, GN. No. 106 of 2007, that requires an applicant to show that there was good cause for the delay. In addition to that, it was held in the case of **Sebastian Ndaula vs. Grace Lwamafa**, Civil Application No. 4 of 2014, CAT (unreported), that the delay is excusable if sufficient reasons has been accounted for. Not only that but also, applicant was supposed to account each day of the delay as it was held in the case of **Joseph Raphael Kimaro & Another v. Republic**, Criminal Appeal No. 54/02 of 2019, CAT (unreported). In this application applicant hand, applicant has not accounted for each day of the delay.

For the foregoing, I find that the application is not merited and hereby dismiss it.

Dated at Dar es salaam this 1<sup>st</sup> July 2022.



B. E. K. Mganga  
**JUDGE**

Ruling delivered on this 1<sup>st</sup> July 2022 in the presence of Rashidi Mwenevyale, the applicant but in the absence of the respondent.



B. E. K. Mganga  
**JUDGE**

