

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISCELLANEOUS LABOUR APPLICATION NO. 4 OF 2022

M/S TENDER INTERNATIONAL CO. LTD APPLICANT

VERSUS

RUTH SIMUMBA 1st RESPONDENT

FREDRICK ROBERT MTUI 2nd RESPONDENT

ZAWADI SIMCHIMBA 3rd RESPONDENT

OBADIA IBRAHIM 4th RESPONDENT

HARUNA YUSUPH 5th RESPONDENT

(Arising from the Award of Commission for Mediation and Arbitration for Rukwa and
Katavi zone at Sumbawanga)

(Ngaruka, O. Arbitrator)

Dated 9th October 2020

In

Labour Dispute Ref. No. CMA/RK/SMB/25/2020

RULING

Date: 21 & 25/07/2022

NKWABI, J.:

The applicant is seeking extension of time to file, in this Court, a labour revision from the award of the Commission for Mediation and Arbitration for Rukwa and Katavi zone. In the Commission for Mediation and Arbitration, the applicant was ordered to pay T.shs 74,795,000/= in total to the respondents for unlawful termination of the Respondents from employment.

The applicant had earlier on filed a Labour Revision No. 14 of 2020 which was struck out by this Court for being incompetent, on 4th April 2022.

The application has been brought under the provisions of Rule 24(1) and 24(2) (a) (b) (c) (d) (e) and (f), 24(3) (a) (b) (c) and (d), 56(1), and (3) of the Labour Courts Rules, G.N. No. 106 of 2007 and any other enabling provision of the law. It is supported by the affidavit duly affirmed by Faraji Issa, Principal officer of the applicant. In the affidavit the applicant attests that the delay in filing the revision is technical one not deliberate for the 177 days as from 9th October, 2020 to 4th April 2022. Then she received the copy of the ruling and drawn order on 6th April 2022. Then from then to 8th April 2022 she prepared this application for extension of time after being advised by advocate.

Then the applicant enumerated the grounds that would base the extension of time, in the affidavit as follows:

- a) The delay to file an application for revision was never intentional but caused by occasion challenge and technicalities of the courts proceedings.

- b) The delay by the applicant is justifiable.
- c) If application will not be granted Applicant stands to suffer irreparable loss.
- d) Granting the application will have no prejudice to the respondent.
- e) Applicant intends to challenge legality of the award.
- f) It is for interest of justice applicant be given right to be heard on his intended.

To resist this application, the respondents filed a joint counter affidavit attesting that the delay is attributed to the negligence and intention to delay the respondents' rights urging no extension of time should be granted.

During the hearing of this application, Mr. Samwel Kipesha, learned advocate, appeared holding brief for Mr. John Lingopola, learned Counsel for the applicant. Mr. Kipesha had earlier on informed this Court that he had instruction to proceed. The respondents appeared in person, unrepresented.

Mr. Kipesha started his submission in chief by informing this court that this application is for extension of time to file revision against the award of the

Comission for Mediation and Arbitration. He then prayed to adopt the contents of affidavit as their submissions.

Mr. Kipesha while expounding on the application he stated that on 09/11/2020 the award of the Comission for Mediation and Arbitration was issued. The applicant was aggrieved with the award and lodged a revision application, which was filed within time on 16/11/2020. He further stated that this Court struck out the revision on 04/04/2022. After the revision was struck out, then the applicant filed this application. He added that until the striking out of the revision, 177 days had lapsed. The delay is therefore because of technicalities, Mr. Kipesha stressed.

He further explained that from 04/04/2022 to 06/04/2022 the applicant was waiting to be supplied with copy of ruling and drawn order which he got on 06/04/2022. Then from 06/04/2022 to 25/04/2022 were used for legal consultation and legal advice. The application was filed on time, the delay is justifiable in law, Mr. Kipesha maintained. If the application is not granted, added Mr. Kipesha, the applicant shall suffer irreparable loss, while granting this application shall not prejudice the respondents. He also notified this

Court that the applicant shall challenge the legality of the award. He referred me to the case of the Court of Appeal in **Dar es Salaam City Council V. Giantilal P. Lajan, Civil Application No. 27/1987** (unreported). He thus prayed the application be granted.

The respondents are unimpressed by this application. The 2nd Respondent, in reply submission stated that they object the application as per their joint counter – affidavit which he prayed it be adopted as their submissions. He further maintained that it was the negligence of the applicant that led to the revision application being struck out. The other respondents concurred with the 2nd respondent in his submissions and rested their submissions.

Mr. Kipesha would not back down, despite him having heard the respondents' submissions, he maintained in rejoinder submission that there is no any negligence on the part of the Counsel for the applicant because he followed the name of the parties as written on the award. The proceedings of the Commission for Mediation and Arbitration from the form and proceedings are written Ruth Simumba & 4 Others else, it could be a different case, if the names of the parties were indicated differently. He

added that they did not delay intentionally. Even this application, pointed Mr. Kipsha, was filed on time. He pressed on his prayer that this application be granted.

I have given this application the deserving consideration and weight. I am persuaded by the averments of the respondents in their joint counter-affidavit that the delay is not technical one but was caused by the negligence of the counsel for the applicant. I also, accept the respondents' argument that the delay is intended to delay the respondents to get their rights.

In the Labour Revision No. 14 of 2020 between the parties in this application for extension of time, I had an occasion to say and I quote:

*"The applicant ought to have mentioned the names of all the respondents in the application. I say so because, I note from the award, each and every respondent was clearly mentioned and what he would get from the award (his or her share). **The present application is just numb on the names of other respondents and the applicant***

blames that it was a representative suit while it was not.”(emphasis added).

The above statement made by this Court is relevant in this application in that the applicant’s counsel ought to know that position of the law and act in accordance to it.

Lest it be forgotten that *‘litigation has to come to an end’*, it cannot be open ended. For that position of the law, see **Stephen Masato Wasira v Joseph Sinde Warioba and The Attorney General [1999] TLR 334**. It is to that end that for the court to extend time within which a party to do an act which ought to have been done and time has lapsed, sufficient reason has to be assigned.

That the applicant wants to challenge the award on any ground including the alleged illegality ground claimed by the applicant is, with respect, the alleged illegality sought to be challenged was not stated by the counsel for the applicant and is not apparent on the face of the record as envisaged in **Omari R. Ibrahim v Ndege Commercial Services Ltd, Civil Application No. 83/01 of 2020** CAT (unreported):

"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said in VALAMBIA's case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right be granted extension of time if he applies for one. The court there emphasized that such points of law must be of sufficient importance and, I would add that must also be apparent on the face of records, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process."

In the circumstances what is alleged as illegality, does not meet the standard as above set by the Court of Appeal. That ground advanced for extension of time is rejected and dismissed.

With respect, negligence of the applicant or his advocate has never been a good ground for extension of time, see **William Shija & Another v Fortunatus Masha [1997] TLR 213 (CA)**, where it was said:

"In determining whether the application should nonetheless be granted, the court took into account the counsel had been negligent in adopting the correct procedure and this could not constitute sufficient reason for the exercise of the court's discretion."

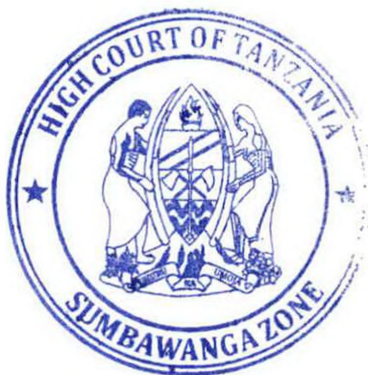
See as well **Umoja Garage v National Bank of Commerce, 1997] TLR 109**. I place reliance too, on **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015 CAT (unreported) where it was said:


*"As has been held times out of number, ignorance of law has never featured as good cause for extension of time (See for instance, the unreported ARS Criminal Application No. 4 of 2011 **Bariki Israel Vs The Republic**; and MZA Criminal Application No. 3 of 2011 – **Charles Salungi Vs The Republic**). To say the least, a diligent and prudent party who is not properly seized of the applicable procedure will always ask to be appraised of it for otherwise he/she will have nothing to offer as an excuse for sloppiness."*

In the circumstances, the applicant has failed to account for each day of the delay, violating **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 192/20 of 2016 CAT (unreported).

Consequently, I rule that the applicant has failed to account for each day of the delay. The applicant has demonstrated negligence on her part or her counsel. No sufficient cause of the delay has been demonstrated to this Court by the applicant. In addition, the alleged illegality is not apparent on the face of the record. I observe that granting this application will greatly prejudice the respondents and would not serve justice. I dismiss the application as it is devoid of merits. I make no order as to costs since this is a labour matter. It is so ordered.

DATED at **SUMBAWANGA** this 25th day of July, 2022.




J. F. NKWABI
JUDGE