

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**MISCELLANEOUS LABOR APPLICATION NO. 12 OF 2021**

*(From the decision of the Commission for Mediation and Arbitration of DSM at Ilala) (**M. Batenga: Arbitrator**) dated 27<sup>th</sup> October, 2020 in Labour Dispute No. CMA/DSM/TEM/470/19/179)*

**KIOO LIMITED ..... APPLICANT**

**VERSUS**

**FELIX BURCHARD KARUNDA ..... RESPONDENT**

**RULING**

**K. T. R. MTEULE, J**

**01<sup>st</sup> August, 2022 & 16<sup>th</sup> August, 2022**

The Applicant has filed this Application for Extension of time within which to file the Revision against the decision of the CMA in Labour Dispute No. CMA/DSM/TEM/470/19/179 [M. Batenga, Arbitrator].

In the affidavit sworn by one Nerei Massawe, Principal Officer of the Applicant and the Declaration by Mr. Victor Ntalula, Advocate assigned to handle the matter on behalf of the Applicant the applicant adduced the reasons for not having been able to file the Application timely.

The first reasons adduced for to justify granting of extension of time is the sudden sickness of Advocate Victor Ntalula who was assigned to file

the application. It is deponed that upon receipt of a copy of the Award, the Applicant's Advocates began to work on it but while the preparation of the Application for Revision was still underway and about to be laid in this Hon. Court, Advocate Victor Ntalula suddenly felt sick and was off duty from 30<sup>th</sup> November, 2020. The affidavit indicates that the Advocate attended treatment at Bochi Hospital.

It is asserted by the applicant that the counsel forgot to inform his fellow Advocates that he had not filed the Application for Revision due to the nature of the illness that befell him suddenly.

In a further deponed information, it is stated that upon further perusal of the CMA Award, Advocates for the Applicant discovered that there was an error on the face of the CMA Award regarding that the CMA Award Number which was wrongly written as "Labour Dispute No. CMA/DSM/TEM/470/19/179/19 instead of the correct "Labour Dispute No. CMA/DSM/TEM/470/19/179 where they applied for correction. That on 21<sup>st</sup> October 2020, the Commission ordered the parties to appear before it and address it on the application for correction of the error which they did on 22<sup>nd</sup> December, 2020 and the correction successfully done and the copy thereof supplied to the Applicant on 24<sup>th</sup> December, 2020. According to the Applicant the instant application was initially filed through JSDS

It is the submission of the Applicant's counsel that the delay to file the revision application was caused by the sickness encountered by the Applicant's counsel and the erroneous CMA Dispute Number which had to be corrected first.

To support his submissions, the Applicant's counsel cited the case of **Anamary Josphat versus Onesmo B. Semu, Misc. Civil Application No. 21/2021, High Court of Tanzania (Bukoba District Registry) at Bukoba (unreported)**; where the court held sickness as a valid reason to for delay.

The Applicant also cited **Issa Badra versus Omari Kilenda & Another. Civil Application No. 164 of 2016, CAT, Dares Salaam (Unreported)** in which matters to be taken into account in considering extension of time were laid down.

In support of the importance of correction of the error in the CMA award, the Applicant further cited the Case of **Robotia Mwinuka versus Kikundi cha Kinda (Nancy Sanga)**, Civil Reference No. 01 of 2020 (unreported), High Court of Tanzania (District Registry of Mbeya) at Mbeya.

In reply to the Application, the Respondent challenged the sufficiency of the reasons of sickness of Advocate and the error of number which appeared in the Arbitration Award.

The Respondent sees two different statements stated by Mr. Victor Ntalula (Advocate) and Mr. Nerei Massawe, Principal Officer of the Applicant whereby Mr. Nerei Massawe stated in paragraph 3.1 and 3.2 of his Affidavit that upon receipt of a copy of the Award, the Applicant's Advocates herein began to work on it with the intention of preparing the Application for the Revision to be filed in the High Court of Tanzania and the processing and filling of the application was assigned to Advocate Victor Ntalula. In his view, this contradicts Mr. Victor Ntalula's statement in paragraph 4 of his declaration that, upon receipt of a copy of the Award, Kioo Limited instructed the Firm on 11<sup>th</sup> November 2020 to file Application for Revision, following which the Firm assigned to him, to work on the Application for the Revision. In his view, these two different statements prove lack of diligence on the part of the Applicant.

The Respondent challenged that validity of the reason advanced in applying for correction of error on the reason that the same was made out of the time prescribed by the law. He stated that the Applicant received the Award on **27<sup>th</sup> October 2020** but applied for correction of errors in (CMA) on **17<sup>th</sup> December 2020**, after elapse of 50 days while the Law require any Application for correction of an Award to be made within 14 days as prescribed by Rule 30(1) of G.N. 64 OF 2007. The Respondent's counsel quoted the provision thus:

*"30-1) An application by a party to correct or set aside an arbitration Award in terms of Section 90 of the Employment and Labour Relations Act shall be made within fourteen days from the date on which the applicant became aware of the arbitration award."*

In Respondent's view, errors in the Arbitration Award could have been used as one of the grounds for Revision due to the irregularity of the Award.

Citing the cases of **John Chuwa versus Anthony Ciza**, (1992 T.L.R. The Court of Appeal Ramadhani J.A and MPS Oil Tanzania Limited And 2 Others Vs Citibank Tanzania Limited (unreported) where the Court of Appeal, Nchimbi, J the applicant is of the view that there should be an affidavit from a counsel from the Applicant's law firms to show that Victor Ntalula was actually assigned to prepare the application.

Alternatively, the Respondent's counsel is of the view that even if even if, Advocate Victor Ntalula would have been sick, the Firm was responsible to deal with the Matter because the Applicant assigned the Firm of six Advocates as proved by the Notice of Representation and the Declaration of Mr. Victor.

The Respondent reminded the Court that although extension of time is in the discretion of Court, it has to be exercised according to the rules of reason and justice, such as:-

- a). The Applicant must account for all the period of delay
- b). The delay should not be inordinate
- c. The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.
- d). If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.

According to the Respondent, the Applicant received a copy of an Award on **27<sup>th</sup> October 2020** and filed this Application on **11 January 2021**, after elapse 74 days, without accounting every single day of delay. He associated the Applicant's delay with lack of diligence and requested this court to dismiss the application with costs.

The Applicant's counsel filed a rejoinder in which he denied existence of any contradictory statements in the Applicant's affidavits. He questioned any prove or citation of the places in the affidavit where the allegedly contradictory statements have featured.

In rejoinder, the Applicant's counsel further denied any need to have another affidavit to be sworn by another counsel from the Applicant's counsel's firms apart from the affidavit of Applicant's principal officer and the declaration of Advocate Victor Ntalula.

We humbly submit furthermore, that it is our Firm's in-house arrangement that when a matter like the one under submission is brought to the Firm by a Client, one Advocate is assigned to deal with it. The Advocate assigned has to attend to the same in consultation with the Firm as a whole and file the required response in Court. He or she has to work on it and report to the Firm on every step. We humbly submit that Advocate Victor Ntalula was duly assigned to deal with the matter, but suddenly fell sick and was off-duty from 301

November, 2020 without any information to the Firm. Advocate Victor Ntalula himself has made a declaration as to his sickness and filed the same in this Hon. Court. The declaration aforesaid was made in support of the Affidavit sworn by Nerei Massawe, Principal Legal Officer of the Applicant and we humbly submit that the matters deponed in both documents on the record, suffice for this Hon. Court to grant the Application for extension of time for

The Applicant raised new issues in the rejoinder, but they out of context as I have view that they ought to have been introduced in the Submission in chief.

Grounds upon which the court may be moved to grant extension of time has been a subject of discussion in a number of cases in our courts. I am in one with Mr. Mwamkwala on the list of the factors to be

considered in granting extension of time. The list was provided in **Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania (Civil Application 2 of 2010) [2011] TZCA 4 (03 October 2011); (TanzLii citation).**

**In the case, the Hon Justices of Appeal stated:-**

*"As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated:*

*(a) The applicant must account for all the period of delay*

*(b) The delay should not be inordinate*

*(c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*

*(d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*

The above list is not exhaustive. Paragraph (e) leaves a room for expansion when it stated, if the court feels that there are other sufficient reasons.

From the parties submission, it is applicant's oath that the counsel who was assigned to file the intended revision felt sick suddenly and due to



the sickness, he could not hand over the assignment to his fellow counsel in the firm. This, according to the applicant, was the major cause of delay. Although the applicant disputed the truthiness of the sickness, in my view, having two senior officers making oath on the same subject matter constitute sufficient evidence to prove existence of the fact upon which the oath is taken. I therefore conclude that by the existing affidavits of the principal officer of the Applicant and that of the Applicant's counsel, there is a prove that Mr. Victor was actually sick.

Whether sickness constitute a sufficient ground for extension of time, there is a good number of authorities where sickness of a counsel has been regarded as a good cause to justify extension of time to take court action. The case of **Anamary versus Onesmo** cited supra by the Applicant is relevant on this. It is one among the cases where the court has considered sickness as a ground to justify extension of time.

Mr. Mwamkwara questioned why the firm did not assign another counsel. This question was answered in the affidavit and the declaration of the counsel that due to the seriousness of the sickness Advocate Victor Ntalula could not report the progress immediately.

As well the reasons that the Applicant had to pursue an application in the CMA seeking for correction of error was given as another reason for delay. I do not agree with Mr. Mwamkwala that the error was to remain

untreated to make it a point in the revision. If the law provides for a possibility of having the said error to be corrected within the CMA, the applicant was right in taking the action of pursuing the application in the CMA. This is a technical delay which is another contribution to the entire delay. Technical delay has been considered to constitute an excusable reason in extension of time.

Mr. Mwamkwara tried to establish some contradictory statements from the affidavit. I have read his statement, but I could not see the contradiction. I found this part of Respondent's submission not founded.

Having found the sickness and application for correction of error in the CMA being sufficient grounds to justify delay, I have view that the Applicant has given sufficient reasons to extend time to file the revision.

Consequently, I allow the Application and grant extension of time to file revision application in respect of Labour Dispute No. CMA/DSM/TEM/470/19/179. The said Revision to be filed within 14 days from the date of this Ruling. It is so ordered.

Dated at Dar es Salaam this 16<sup>th</sup> Day of August 2022



KATARINA REVOCATI MTEULE

**JUDGE**

16/08/2022