IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLENEOUS NO. 373 OF 2022

ENDRICK DANIEL AND 70 OTHERS..... APPLICANTS

VERSUS

M.M.I. STEEL MILLS.....RESPONDENT

RULING

04th April – 28th April, 2023

OPIYO, J.

This application is for extension of time to file revision against the award of the Commission for Mediation and Arbitration (CMA) in a labour dispute No. CMA/DSM/ILA/R.720/17/770 before Faraja Johnson L. dated 15th October, 2021.

Briefly, the facts relevant to the matter are that the applicants were employed by the respondent until they were terminated on 08th June, 2017 on ground of retrenchment. The matter was taken at CMA and the award was in favour of the respondent. Applicants filed an application for a representative suit with the No. 447 of 2021 and, one, Endrick Daniel was appointed to represent others.

The application was supported by the applicant's affidavit sworn by Noel Nchimbi, applicant's advocate. Only the applicant was represented by Mwanakombo Chaponda who was holding brief of Noel Nchimbi.

Miss Chaponda submitted that their prayer is for extension of time to file application for revision. For the reasons for delay necessitating this application, she submitted that applicants are many and so they had to file for a representative suit which they did as Application No. 447/2021 which was filled on 20th July 2022. Their application continued for some time until it was granted when the time to file revision had already elapsed. In her view applicants believes that their application should be granted because the CMA decision contained illegalities which are only curable through revision. That is the procedure for retrenchment was not followed. It was therefore applicant's prayer for their application to be granted.

Mr. Lilombo who is the respondent's company' secretary submitted that the Court had already granted extension of time to the applicants. He argued that it is elementary principle that applicant should show sufficient cause for delay. He continued that after CMA award on 24/02/2021 applicants filed a representative suit which was granted on 20th July 2022. They filed

this application on October 4th, 2022. Therefore, they did not justify their delay from 20th July, 2022 to October 4th, 2022 when they filed this application. He continued that, the delay was for 74 days and applicants did not show reasons for such delay and did not account for them. To support his point, he referred to cases of **Joseph Paul Kyauka Njau and Catherine Kyauka Njau Vs. Emanuel Kyauka Njau and another** Civil Application No. 7/05/2016 Court of Appeal of Tanzania and **Julius Francis Kessy and 2 Others Vs. Tanzania Commission for Science and Technology**, Civil Application No. 59/17 of 2018 and stated that this application has no merit as the applicants failed to account for each day of delay as insisted in the above cases.

On the point of illegality, Mr. Lilombo submitted that, it has to be a point of law not point of facts. He stated that procedures mentioned to be violated are point of facts not of law. In his view, by applicants failing to account for each day of delay for 74 days their application has to be dismissed for lack of merits.

In rejoinder Miss Chaponda submitted that, on the issue of illegality failure to follow procedure is a point of law not of facts. On the issue of delay

after the decision for filing representative suit, she submitted that applicants were preparing their application competent enough to bring to court after getting the decision for representative suit. She was of the view that, since by that time there was no any other application to be made save for extension of time, no delay has to be explained as such application has no time limit to be made. She then reiterated the prayers stated in the submission in chief.

After considering parties submissions, the Court has been asked to determine whether applicants have adduced sufficient reasons for delay. The application for revision is filed within six weeks from the date the award was received. This has been provided under section 91(1) of the Employment and Labour Relations Act [CAP. 366 R.E. 2019]. Applicants through their advocate stated that they were in court applying for a representative suit. This fact is not disputed by the respondent's secretary. Also, the ruling in the miscellaneous application No. 477 of 2021 proved this fact. It is understandable that one being in Court's corridors is a good reason for being granted extension of time as per the holding in the case of **Amani Girls Home Vs. Isack Charles Kanela**, Civil Application No. 325/08 of 2019, Court of Appeal of Tanzania at Mwanza, but in my

considered view that change requires prudence and diligence after conclusion of whatever was before the court.

According to the records, the applicants were granted their application for a representative suit on 20th July, 2022, but they filed for this application on 04th October, 2022 that leaves 76 days which applicants had to account for. In her submission, the advocate for the applicants did not bother to account for those 76 days of delay. As was held in the case of **Daudi Haga V. Jenitha Abdan Machanju**, Civil reference No. 19 of 2006, Court of Appeal of Tabora, (unreported), a person seeking for an extension of time had to prove on every single day of delay to enable the Court to exercise its discretionary power in granting the application.

Thus, for the applicants in the instant suit who failed to account for each day for a period more than the usual days (six weeks) for filing such application cannot be granted extension of time. In the circumstances, the reason seems to be different from awaiting conclusion of application for a representative suit. This is because, even after its conclusion they showed no diligence in taking proper action the desired. In the case of **Philimon Simwandete Mbanga v. The Permanent Secretary Ministry of**

Defence & Another, Civil Application No. 168/01 of 2018, Court of Appeal of Tanzania at Dar es Salaam at page 6 that: -

> *"Thus, the applicant has not explained away the delay ... that is a span of about 66 days. There is a plethora of authorities of the Court which hold the view that failure by an applicant for extension of time to explain away every day of delay will not trigger the Court to grant the enlargement of time sought."*

Based on the above analysis, I find that applicants have completely failed to account for 76 days of delay after the granting of the application of the representative suit. 76 days delay is so inordinate to be unnoticed. This is a clear exhibition of negligence, apathy and sloppiness which cannot easily positively move the court to grant extension of time. This ground lacks its legal stand.

It is a common understanding that time can still be extended even if the applicant failed to give sufficient grounds for delay, if it is *prima facie* noted that there is illegality that requires rectification by the higher court that can only be achieved if the intended application is finally filed. To try their luck in that context, the advocate for the applicants stated that the other

reason for the applicants to be granted an extension of time is illegality found in the award intend to be revised. The illegality he is raising here is that procedures in their retrenchment were not followed. The respondent's secretary on the other hand stated that the illegality pleaded is on point of fact and not law as required by under the law to convince the court to grant extension of time.

Different cases have held over such matter of illegality as a reason for granting an extension of time. In the case of **Finca (T) Ltd and Another V. Boniface Mwalukisa**, Civil Application No. 589/12 of 2018, it was held that: -

> *"It was held that illegality is a good ground for extension of time. But in order to plead illegality successfully, it must be glaringly apparent on the face of the record"*

Applicants' submission on illegality as noted above is that retrenchment procedure for them was not followed. In order to determine whether procedure for retrenchment was followed or not one has to go through the whole proceeding and exhibits tendered. This means determining the matter on merits. That is not what is meant by illegality glaringly on the face of record insinuated in the Finca's case above. The illegality in

question should be the one committed by the lower court in course of proceedings. Case laws also indicate that illegality claimed has to be on the face of the record and not that needs to use all evidences and exhibits tendered. For that I find this ground for extension of time also lacks legal stand as the applicant prima facie prove the alleged illegality.

My consequential finding is that this application has no merits. It is therefore dismissed. I order no costs to either party as this is a labour matter.

M. P. OPIYO,

JUDGE

28TH APRIL, 2023