

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 249 OF 2023

(Arising from the Ruling issued on 31/5/2019 by Hon. A. Massay, Arbitrator, in Labour dispute No. CMA/DSM/ILA/315/12/16/179 at Ilala)

ABB LIMITED APPLICANT

VERSUS

STELLA MANDOGO RESPONDENT

RULING

*Date of last order: 25/09/2023
Date of Ruling: 27/09/2023*

B. E. K. Mganga, J.

On 1st September 2023, applicant filed this application seeking the court to extend time within which to file an application for revision so that this court can revise the CMA Ruling issued on 31st May 2019 by Hon. A. Massay, Arbitrator in Labour CMA/DSM/ILA/315/12/16/179 that was filed before the Commission for Mediation and Arbitration at Ilala.

In support of the Notice of Application, applicant filed the affidavit sworn by Emmanuel Shali, the member of the Board of Directors. Stella Mandogo, the respondent filed her counter affidavit opposing the application.

When the application was called on for hearing, Mr. Secha Andrew, Advocate, appeared and argued for and on behalf of the applicant while Mr. Evans Nzowa, Advocate, appeared and argued for and on behalf of the respondent.

Arguing in support of the application, Mr. Andrew submitted that, applicant has filed this application for extension of time to file revision against the CMA ruling that was delivered on 31st May 2019, that is, four (4) years and four (4) months ago. On reasons for the delay, learned counsel submitted that, the Advocate who was representing applicant lost communication with the applicant and did not feedback of the outcome of the dispute to the applicant. He added that, applicant became aware of the impugned ruling on 11th August 2023 when she was served with Miscellaneous Application No. 127 of 2023 relating to execution. In his submissions, counsel for the applicant conceded that from 11th August 2023 when applicant became aware of Miscellaneous Application No. 127 of 2023 to the date of filing this application, is about 19 days and that in the affidavit in support of the application, applicant did not account for the delay of the said 19 days.

Mr. Andrew submitted further that the delay was due to negligence of applicant's Advocate. In his submissions, he conceded that the said Advocate who is alleged to have been negligent was appointed

by the applicant and that, there is no affidavit of the said Advocate showing that he/she was negligent. He further conceded that, the affidavit in support of the application did not disclose the name of the Advocate who was negligent and who did not communicate with the applicant. Counsel for the applicant concluded his submissions praying the court to allow this application and extend time to the applicant so that she can file an application for revision.

Resisting the application, Mr. Nzowa, submitted that applicant has failed to disclose or give reasons for the delay. He submitted further that, the only ground advanced by the applicant that she lost communication with her Advocate who represented her at CMA, is proof that applicant was negligent. Mr. Nzowa added that, applicant was supposed to attach the affidavit of the Advocate who is alleged to have been negligent to prove that the later did not communicate the outcome of the dispute to the applicant. He went on that, it was applicant's duties to make follow up to her Advocate on the progress of the matter at CMA. He concluded that applicant has failed to advance good reasons for the delay.

Counsel for the respondent submitted further that, applicant has failed to account for the delay of four (4) years and four (4) months. He

added that, applicant has also not accounted for the delay of 19 days when she became aware of Miscellaneous Application No. 127 of 2023. Counsel for the respondent concluded his submissions praying the court to dismiss this application for want of merit.

In rejoinder, counsel for the applicant submitted that, applicant being a legal entity, there was changes of members of the Board and Human Resources Officers, which is why, she did not act timely.

I have considered evidence of the parties both in the affidavit and the counter affidavit and rival submissions made by both counsel on their behalf. This being an application for extension of time, I should point out from the outset that, I am invited by the applicant to exercise my discretionary powers. I should also point out at this juncture that, discretionary powers must be exercised judiciously and that, judicial discretion is the exercise of judgment by a judge or court based on what is fair, under the circumstances and guided by the rules and principles of law. In fact, the Court of Appeal held in the case of [Mza RTC Trading Company Limited vs Export Trading Company Limited](#), Civil Application No.12 of 2015 [2016] TZCA 12 that:-

"An application for extension of time for the doing of any act authorized ...is on exercise in judicial discretion... judicial discretion is the exercise of

judgment by a judge or court based on what is fair, under the circumstances and guided by the rules and principles of law ...”

In the application at hand, I will therefore be guided by evidence of the parties in both the affidavit and the counter affidavit and material facts relating to this application.

In the affidavit in support of the application, the deponent deponed *inter-alia* that, on 31st May 2019 Hon. A. Massay, arbitrator set aside an exparte award issued in favour of the applicant on ground that there was no proof that respondent was served with the Referral Form (CMA F1) and that the arbitrator struck out the dispute for being filed in violation of the law. It was deponed further that, at the time of setting aside the said exparte award and striking out the dispute, applicant had already executed the exparte award. In paragraph 16 of the affidavit, it was deponed that, the lawyers who were engaged by the applicant to represent her in the said dispute, did not communicate to the applicant that the said exparte award was set aside and the dispute struck out for being incompetent. It was deponed further that, applicant became aware on 11th August 2023 after being served with summons and pleadings to appear in Miscellaneous application No. 127 of 2023. The deponent deponed in paragraph 17 that, applicant lost communication with her lawyers since 2017 and that she was not receiving updates

from her lawyers. In paragraph 18 it was deponed that, had the applicant been informed the outcome of the ruling that struck out the dispute she filed against the respondent, she would have immediately filed an application for revision. In paragraph 19 it was deponed that, the delay was not due to applicant's negligence or inaction, rather, it was due to negligence and inaction of her lawyers. In short, these are reasons or grounds advanced by the applicant imploring the court to grant extension of time.

In her counter affidavit, respondent stated *inter-alia* that, applicant have not demonstrated or advanced good cause to warrant the court to extend time.

It is clear from the affidavit of Mr. Shali in support of the application that, the main reason for the delay is that the advocate who was appearing at CMA on her behalf was either negligent or inaction and that the said advocate did not communicate to the applicant the outcome of the ruling that set aside exparte award and struck out the dispute applicant filed against the respondent. In other words, the reason for the delay according to the affidavit in support of the application is negligent or inaction of applicant's advocate. In my view, that cannot be a ground for extension of time. In fact, the Court of Appeal had an advantage to discuss a similar issue in the case of [Lim](#)

Han Yung & Another vs Lucy Treseas Kristensen, Civil Appeal No.

219 of 2019 [2022] TZCA 400 and held:-

"It is also our considered view that even if the appellants were truthful in their allegations against their erstwhile advocates' inaction, negligence or omission, which generally, does not amount to good cause, they themselves share the blame. The appellants cannot throw the whole blame on their advocates..."

In the case of **Ally Forodha & 1673 Others vs The Permanent Secretary Ministry of Finance and Attorney General** (Misc. Application No. 421 of 2022) [2022] TZHCLD 1096, this court having quoted above holding of the Court of Appeal in **Lim'se case** (supra) stated:-

"If I may be permitted to add, the reason and logic behind that position is that, the said advocate was chosen by the applicants themselves. Therefore, if the said advocate was negligent or incompetent, the court or the other part, is less concerned because that is poor choice of the applicants themselves and nobody forced them to select the said advocate..."

In fact, if at all the advocate who was representing applicant was negligent, then, applicant has no body to blame because that is her poor choice. I say, if the said advocate was negligent because, in the affidavit in support of the application, applicant did not even mention the name of the alleged advocate and there is no proof that it is the advocate who was negligent and not the applicant. There is a possibility that it is the applicant who was negligent and not the advocate. It is likely that, after

being notified by her advocate, applicant knowing that she has executed the expert award, thought that the game is over and relaxed as a result, ignored advice from her advocates. With that possibility, I cannot conclude that it is applicant's advocate who was negligent and not the applicant herself. It is my view that, applicant was negligent because in the affidavit in support of the application, she clearly stated that she dumped the file to her advocate and did not make follow up. From where I am standing, that cannot be a ground for extension of time.

It was correctly submitted by counsel for the respondent that, in the affidavit in support of the application, applicant did not account for the delay of four (4) years and four (4) months from the date the impugned CMA ruling was issued to the date of filing this application. Not only that but also, applicant has not accounted for the delay of 19 days from 11th August 2023, the date she was served with summons and pleadings to appear in Miscellaneous Application No. 127 of 2023 hence became aware of the impugned CMA ruling to 1st September 2023, the date Emmanuel Shali deponed the affidavit in support of this application. This application was filed on 1st September 2023, the date the Shali deponed the affidavit in support of the application. There is a litany of case laws that, in an application for extension of time, an applicant must account for each day of the delay. See the case of [*Said*](#)

Nassor Zahor and Others vs. Nassor Zahor Abdallah El Nabahany and Another, Civil Application No. 278/15 of 2016, CAT, (unreported), **Finca T. Limited & Another vs Boniface Mwalukisa**, Civil Application No. 589 of 2018) [2019] TZCA 56, **Zawadi Msemakweli vs. NMB PLC**, Civil Application No. 221/18/2018 CAT (unreported), **Elias Kahimba Tibendalana vs. Inspector General of Police & Attorney General**, Civil Application No. 388/01 of 2020 CAT (unreported) and **Bushiri Hassan vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, CAT (unreported) to mention but a few. In **Mashayo's case** (supra), the Court of Appeal held *inter-alia* that: -

"...the delay of even a single day, has to be accounted for otherwise there would be no proof of having rules prescribing periods within which certain steps have to be taken."

Submissions by counsel for the applicant that, applicant being a legal person delayed to file revision because there was changes of members of the Board and Human Resources Officers, is not supported by evidence in the affidavit in support of the application, as such, it is submissions from the bar hence cannot be acted upon. Even if applicant could have included that fact in the affidavit in support of the application, in my view, it could have added nothing because the court is not concerned with internal matters of the applicant. It was the duty of the applicant to keep her administrative matters properly.

Since applicant has failed to adduce good grounds or reasons for the delay and has failed to account for each day of the delay, I find that there is no justification for exercising my discretionary powers to grant extension of time. I therefore dismiss this application for want of merit.

Dated at Dar es salaam this 27th September 2023



B. E. K. Mganga
JUDGE

Ruling delivered on 27th September 2023 in chambers in the presence of Ms. Geraldina Paul, Advocate for the Applicant and Mr. Evans Nzowa, Advocate for the Respondent.



B. E. K. Mganga
JUDGE