

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 247 OF 2023

*(Arising from Award issued on 12th May, 2023 by Hon. Nyang'uye, H.A., Arbitrator in Labour Dispute
No. CMA/DSM/TEM/255/2022/172/2022)*

RONALD D. JUMBALE KITI APPLICANT

VERSUS

UKOD INTERNATIONAL CO. LIMITED RESPONDENT

RULING

*Date of last Order: 04/10/2023
Date of Ruling: 18/10/2023*

B. E. K. Mganga, J.

Ronald D. Jumbale Kiti, the above-named applicant has filed this application for extension of time within which to seek revision against the CMA award issued on 12th May 2023 by Hon. Nyang'uye, Arbitrator in labour complaint No. CMA/DSM/TEM/255/2022/172/2022 before the Commission for Mediation and Arbitration (CMA) at Temeke. It is undisputed by the parties that, applicant was an employee of Ukod International Co. Ltd, the above-named respondent and that he filed the

abovementioned complaint at CMA. It is also undisputed by the parties that on 12th May 2023, Hon. Nyang'uye, H.A, Arbitrator, issued an award that the complaint was time barred. Applicant was aggrieved with the said award, as a result, on 23rd June 2023 while within time, he filed Revision No. 142 of 2023 but on 24th July 2023, he prayed to withdraw the said revision application with leave to refile. The application was granted as result, on 31st July 2023, he filed Revision No. 170 of 2023 but on 22nd August 2023, it was struck out after he has conceded to the preliminary objection raised by the respondent that he did not index the application. After the said revision No. 170 of 2023 was struck out, filed this application on 26th August 2023 seeking extension of time because he was already out of time. To support the Notice of application, applicant filed his own affidavit.

On the other hand, respondent filed both the Notice of Opposition and the Counter affidavit sworn by Kahumuza Byabusha, her General Manager to oppose the application.

When the application was called on for hearing, Mr. Walter Shayo, Advocate, appeared and argued for and on behalf of the applicant while Mr. Oscar Millanzi, Advocate, appeared and argued for and on behalf of the respondent.

Arguing in support of the application, Mr. Shayo submitted that the reason for the delay is technical due to preliminary objections. He submitted further applicant spent a period of seven (7) days from 22nd August 2023 when the application was struck out to 26th August 2023 preparing this application. He argued that seven (7) days is a reasonable time and cited the case of ***Patrick Magologazi Mongella v. The Board of Trustees of the Public Service Pensions Fund***, Civil Application No. 199/18 of 2018, CAT (unreported) to support his submissions. He concluded that applicant was diligent in pursuing his rights and prayed that the application be granted.

Resisting the application on behalf of the respondent, Mr. Millanzi, advocate for the respondent submitted that, it is true that applicant filed Revision No. 142 of 2023 within time and that on 24th July 2023 he withdrew it with leave to refile. Mr. Millanzi, submitted further that, applicant was represented by an Advocate who, was supposed to act diligently in preparation of documents and representing applicant in court and that the said advocate was not supposed to be negligent in representing the applicant or at the time of preparation of documents on behalf of the applicant. To support his submissions that applicant's advocate was supposed not to be negligent, counsel for the respondent cited the case of ***Wambura N. J. Waryuba V. The Permanent***

Secretary Ministry of Finance & The Attorney General, Civil Application No. 320/01 of 2020, CAT(unreported). Mr. Millanzi added that, on 31st July 2023, applicant filed an application that was struck out for failure to indicate index. He maintained that the delay is due to negligence of the applicant's Advocate.

When probed by the court as to whether, in the counter affidavit respondent indicated that the delay was due to negligence of applicant's advocate, he readily conceded that respondent did not state so in her counter affidavit. He also conceded that both the affidavit and counter affidavit are substitute of oral evidence and further that, this application will be decided based only on the affidavit and counter affidavit. He was quick to add that, the application will also be decided based on submissions by the parties. When probed by the court as whether submissions are evidence, learned counsel for the respondent conceded that they are not, rather, clarifies evidence of the parties on record. He maintained that there is no good cause for the delay and prayed the application be dismissed for want of merit.

In rejoinder, Mr. Shayo, counsel for the applicant submitted that, documents in Revision No. 142 of 2023 were filed by the applicant who is a layperson. When probed by the court whether those documents are part of this application and whether there is evidence to the effect that

they were drawn by the applicant who is a lay person, Mr. Shayo readily conceded that those documents are not part of this application hence they cannot be considered. Counsel for the applicant submitted further that, submissions that the delay was due to negligence of applicant's Advocate is not supported by the counter affidavit hence should not be considered. He maintained that the delay is technical one and that, at all that time, applicant was in Court corridors.

It is undisputed by the parties that applicant filed Revision No. 142 of 2023 within time and that the same was struck out with leave to refile. It is also undisputed that thereafter applicant filed Revision No. 170 of 2023 that was also struck out because the court sustained the preliminary objection that was raised by the respondent. It was submitted by counsel for the applicant that delay is technical and not actual but counsel for the respondent was of the view that delay was due to negligence of applicant's counsel. It was correctly conceded by counsel for the respondent that in the counter affidavit, there is no even a single paragraph showing that delay was due to negligence of counsel for the applicant. I have read the affidavit in support of this application and the counter affidavit opposing the application that are evidence of the parties which this court will base its decision and find that respondent said nothing relating to negligence of applicant's counsel. In short, there is no

evidence suggesting that applicant's counsel was negligent. Therefore, submissions by counsel for the respondent that delay was due to negligence of counsel for the applicant cannot be accepted. In fact, in the counter affidavit, respondent noted all paragraphs of the affidavit save for paragraph 13 in which applicant stated that, at all that time, he was in court corridors.

I have considered both the affidavit and the counter affidavit, and it is my considered opinion that applicant advanced good ground/ cause for the delay and that the delay is technical one and not actual. Technical delay is a good ground for extension of time. See the case of [Mathew T. Kitambala vs Rabson Grayson & Another](#) (Criminal Appeal 330 of 2018) [2022] TZCA 572 and [Hamisi Mohamed \(administrator of The Estates of The Late Risasi Ngawe\) vs Mtumwa Moshi \(administratrix of The Late Moshi Abdallah\)](#) (Civil Application 407 of 2019) [2020] TZCA 13. More so, applicant has accounted for the delay of seven (7) days. In the case of [Patrick Magologozi Mongella vs Board of Trustees of Public Service Pensions Fund \(Civil Application 199 of 2018\) \[2019\] TZCA 552](#) cited by counsel for the applicant, and the case of [Victor Rweyemamu Binamungu vs Geoffrey Kabaka & Another \(Civil Application 602 of \) \[2020\] TZCA 290](#) the Court of Appeal found 7 days spent by the party in

preparation of documents to be filed in court to justifiable ground for the delay. In the above cited cases, delay was also technical like the application at hand. Since the delay in this application is technical and applicant accounted for the delay of seven (7) days, I find that the application is merited.

For the fore going, I allow this application and grant applicant fourteen (14) days within which to file the intended revision.

Dated at Dar es salaam this 18th October 2023



B. E. K. Mganga
JUDGE

Ruling delivered on 18th October 2023 in chambers in the presence of Walter Shayo, Advocate for the Applicant and Oscar Millanzi, Advocate for the Respondent.



B. E. K. Mganga
JUDGE

