

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**  
**LABOUR DIVISION**  
**AT DAR ES SALAAM**

**MISCELLANEOUS LABOUR APPLICATION NO. 5928 OF 2024**

*(Arising from the award of the Commission for Mediation & Arbitration of DSM at Kinondoni  
(L.Chacha: Arbitrator) Dated 24<sup>th</sup> November 2023 in Labour Dispute  
No. CMA/DSM/KIN/91/2022/35/2022)*

**ESMAIL YAHYA FUTAIN.....APPLICANT**

**VERSUS**

**ORGANIA CO. LTD.....RESPONDENT**

**RULING**

Date of last order: 16/4/2024

Date of ruling: 29/4/2024

**OPIYO, J.**

Being out of time to file notice of intention to file application for revision to challenge the CMA award with reference No. CMA/DSM/KIN/91/2022/35/2022, the applicant herein filed this application seeking extension of time to file notice of intention to seek revision out of time.



The Application is supported by the affidavit sworn by Mr. Esmail Yahya Futain the applicant. The respondent opposed the application by filing the counter affidavit and notice of opposition.

At the hearing of the application, the applicant was represented by Mr. Mabula, Personal Representative, while respondent was represented by Mr. Jackson Mgonja, Advocate.

Supporting the application Mr. Mabula argued that the applicant had a case at CMA which ended on 24<sup>th</sup> November 2023. The applicant being dissatisfied with the award, filed labour revision No 27669/2023 but the same was struck out on 6<sup>th</sup> March 2024 for being incompetent for want of notice to seek revision.

In justifying his promptness in filing this application, Mr. Mabura added that on 12<sup>th</sup> March 2024 they were served with a copy of the order and the present application was filed 18<sup>th</sup> March 2024. That means applicant spent only 6 days in preparing the documents for this application. In such circumstances, he is of the view that applicant's delay was technical and not actual. Supporting his stand, he cited the case of **Grumet Reserve Company Ltd v Mourice Akiri**, Misc. Application, Labour Application No. 29/2021 where it was held that the technical delay is a good reason

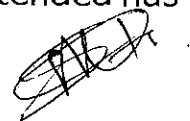
for extension of time and the case of **The Director General LAPF Pensions Fund v Paschal Ngalo**, Civil Application no 76/ 08 of 2018 CAT. He thus, prayed for the application to be granted.

Challenging the application, Mr. Jackson argued that, it is a legal requirement that for extension of time to be granted the applicant must establish good reason for delay. He stated that the reason advanced by the applicant has been narrated under paragraph 9, 12 and 14 of his affidavits, but in his submissions before this court his representative stated that the technical delay is the reason for delay, which is the argument from the bar as it is not reflected in the affidavit. He thus, prayed for the court to ignore the same.

He went further arguing that, the main reason advanced by the applicant is that there is apparent error in the award of CMA. This is the only reason under the affidavit, which is not sufficient in the eyes of the law to extend time. he made reference to the case of **Omari shabani Nyambu v Dodoma Water Authority**, Civil Application No 146/2015 CAT at page 8, where he submitted that it was held that error on face of record is not a good reason for delay. Mr. Jackson further challenged the two cases cited by Mr. Mabula by narrating that the same are distinguishable as both speaks of technical delay which the applicant did not show in his affidavit.

He further added that, the application before this Court was a result of revision application that was struck out after applicant failed to file notice to file revision. To him, the applicant was not diligent enough before filing revision that was struck out. That, the negligence of the applicant in failing to file notice is not a good cause for delay. In strengthening his argument, he cited the case of **Fortunartus Masha V. William Shija and Another, (1997) TLR 154** in which the court held that the negligence of an advocate in adapting the procedure does not constitute sufficient cause of delay to enable court to exercise its discretion.

He continued to argue that, the applicant ought to file revision application within 42 days. And in this matter award was delivered on 24<sup>th</sup> November 2022, according to him, the applicant ought to have filed the same on or before 5<sup>th</sup> January 2024. For failing to so file he is supposed to count for each and every day of delay from 5<sup>th</sup> January 2024 to the date of filing this application. that means he spent almost 100 days in filing this application, constituting inordinate delay. This is contrary to what was addressed in the case of **Eveline Ismail, Mapuga v Edward Kodi Nyangungu**, Misc. Civil Application No 29/2021, HC Dodoma where the principle that anyone who asks for the time to be extended has to account



for each day of delay. He therefore, prayed for the application to be dismissed for lack of merits.

In rejoinder the applicant emphasized that the reasons have been elaborated from paragraph 8 of the affidavit reflecting technicality of the application being struck out as the reason for delay. That, the issue of there being apparent error on the face of record is not the reason for delay they advanced, rather it is noted in relation to the explanation to the effect that upon being granted extension time, the applicant will point out the errors on the record in revision application. On challenge regarding cases, Mr. Mabula argued that the cases he referred to are relevant in this application as they support that technical delay is a good cause for delay warranting extension. He further hinted that counting from when the matter was struck out to filing this application the applicant counted for each day of delay which is only 8 days.

Basing on rivals' argument above, this Court is called upon to determine whether the applicant has adduced sufficient reasons for this Court to enlarge. In this matter, the applicant impliedly advanced one ground of technical delay associated with striking out former revision application for causing the need to file for this application. The insinuation by the

respondent that the ground advanced is on there being an error on the face of records lacks bearing in my view, as that was only touched in relation to what will be proved in revision application if this application is successful. It is not presented as the ground for delay as Mr. Jackson argued above. It is undisputed that, the first application for revision was filed within time, but it was struck out for being incompetent. That means, it is striking out the former application for revision that necessitated filing this application as it happened after the time elapsed to successful file the same application without first seeking for enlargement of time, thus constituting technical delay talked about in the cases of **Grumet Reserve Company Ltd and The General Director LAPF Pensions Fund** (supra) referred to by the applicant representative and also in the case of **Fortunatus Masha (supra)** referred to by the respondent's counsel. coupled with the fact that the applicant acted diligently after the former application was struck out, I am convinced that the applicant provided this court with sufficient cause to exercise its discretion in extending time for him for taking the necessary requested action in time. It is therefore, not my conviction that delay was not inordinate contrary to what is insinuated by Mr. Jackson who tries to convince the court to start counting from when the award was delivered. In technical delay, the period is counted from the technical event itself, which in this case is when the



application for revision was strike out. in the case of Johan Harald Christer Abrahson v. Exim Bank (T) Limited And 3 Others, Civil Application No. 224/16 of 2018 at page 8 it was held that; -

*"I have with greatest care gone through the record of the case and the submissions made by the two learned counsel. There is no doubt that prior to this application, the applicant was in this Court pursuing Civil Revision No. 49/16 of 2016 which was struck out for reason that the Court was moved under wrong provision and that **upon being struck out on that technical delay the applicant acted promptly within two weeks in bringing this present application.** Since the applicant was not idle but all along have been in this Court pursuing an incompetent application, **that by itself constitutes good cause.** See Robert Schelten V. Balden Norataian Vaima and 2 Others, Civil Application No.112 of 2016 (unreported)."*

From the above authority especially, boarded portions we can see the reflection of what transpired in the instant application. Since its undisputed that the first application was filed within a time and the applicant acted promptly in filing the present application on 4<sup>th</sup> July 2023, only after eight days after Revision No. 86 of 2023 being struck out on 23<sup>rd</sup> June 2023, the prayer is worth granting as I hereby do. The applicant



should file the notice of intention to seek revision within seven days from the date of this ruling. Each party to take care of its own cost.

It is so ordered.



**M. P. OPIYO,**

**JUDGE**

**29/4/2024**