

**THE UNITED REPUBLIC OF TANZANIA**  
**HIGH COURT LABOUR DIVISION SHINYANGA**  
**AT SHINYANGA**

**MISCELLANEOUS APPLICATION NO. 12 OF 2016**

**(Originating from Labour Dispute CMA/SHY/209/2011)**

**JOHN MAHININI.....APPLICANT**

**VERSUS**

**PANGEA MINERALS LIMITED.....RESPONDENT**

**RULING**

**Last order: 04.10.2018**

**Date of Ruling: 14.12.2018**

**Ebrahim, J.:**

Mr. John Mahinini, the applicant has come to this Court seeking for enlargement of time so that he can file an application for revision following the decision of the Commission for Mediation and Arbitration of 05.03.2012.

The application has been preferred under of **Section 94(1)(e) of the Employment and Labour Relations Act No. 6 of 2004, Rule 24(1),(2)(a)(b)(c)(d)(e) and (f), Rule 24(3) (a)(b)(c)(d), Rule 24(11) (a) and Rule 56(1) of the Labour Court Rules 2007 (GN No.**

**106 of 2007).** The application is supported by the affidavit of John Mahinini, the applicant.

Before this Court the applicant was represented by a personal representative Mr. Benjamin Dotto; whilst the respondent preferred the services of Mr. Nelson Kasanga, learned Advocate.

Adopting the affidavit of the applicant and all documents pertaining to the application to form part of the submissions thereto; Mr. Dotto also prayed to adopt the whole submissions he made in **Miscellaneous Application No. 6 of 2016** together with the case laws submitted and its principles. In **Miscellaneous Application No. 6 of 2016**, Mr. Dotto submitted that the applicant filed application for revision which was struck out with leave to refile. He made reference to the case of **Samwel Kimaro V Hidaya Didas**, Civil Application No. 20 of 2012 in bringing the argument that courts should not be bound by technicalities. He thus urged this court to allow the application.

Responding to the argument by the Applicant's representative; Mr. Kassanga, learned Counsel for the Respondent also adopted his submission he made in reply in **Miscellaneous Application No. 6 of 2016** together

with case laws referred and their legal principles. In that case he referred to the case of **Monarch Investment Limited V Stephen Kogal**, Miscellaneous Application No. 17/2014, which referred to the decision of the Court of Appeal in **John Mosses and three others V the Republic** Criminal Appeal No. 145/2006 in defining what amounts to good and sufficient reason and the requirement put to the applicant to establish the same. He also submitted on the requirement by the applicant to state reasons for each day of delay as stated in the case of **Leons Barongo V Sayona Drinks Limited**, Revision No. 182/2012 which cited with authority the case of **Daudi Haga Vs Jenitha Abdan Machanju**, Civil Reference No. 1/2000.

In addition he submitted on the degree of delay from the last application which was struck out on 31.03.2015 to the present application which was filed on 16.03.2016 about 12 months later. He challenged that no reasons for the delay has been adduced. He prayed for the application to be dismissed for want of sufficient reasons for the delay.

In rejoinder, Mr. Dotto again adopted his rejoinder in **Miscellaneous Application No. 6 of 2016** in which he basically insisted that the fact that application for revision has not been heard on merits, the same is a

sufficient reason. He made further reference to the case of **Bulyanhulu Gold Mine Limited V Samson Hango & 16 others**, Application for Labour Revision No. 36/2017.

I have thoroughly followed the rival submissions of both parties and gone through the courts records and documents filed in court.

Indeed the law is clear that an application for extension of time is granted at the discretion of the court judiciously exercised. The overriding principle being that the applicant has to establish sufficient reasons that caused the delay and that the delay was not caused by the dilatory conducts of the applicant. Again what constitutes good cause and the requirement of the same has been elaborated in the case of **Oswald Masatu Mwizarubi V Tanzania Fish Processors Ltd**, Civil Application No. 13 of 2010 (unreported) where the Court of Appeal stated that:

*"The term **good cause** is a relative one and is dependent upon circumstances of each individual case. It is upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion. See, **Ratman vs Kumarasany and Another** [1964] 3 All ER 933 and **Regional Manager Tanroads***

***Kagera Vs. Ruaha Concrete Company Limited; Civil Application No.***

*96 of 2007 CAT (unreported)."*

The applicant has stated in para 8 of his affidavit that he filed the application for extension of time which was struck out by Hon. Mipawa, J. (as he then was) on 16<sup>th</sup> November 2016 with leave to refile within 90 days from 1<sup>st</sup> January 2016. Following the argument by the Counsel for the respondent on accounting for each days of delay from 31.03.2015, it prompted me to go through the records. The application was struck out on 16<sup>th</sup> November 2015 for the reason that the applicant was not ready to proceed since June 2015 because his representative was sick. That was not all, the applicant initially made an application for revision, Revision No.7 of 2012 which was struck out on 29.09.2012 and he was given two weeks to file a proper application. He filed another application, Revision No. 24 of 2012 which was again struck out for being defective on 24.07.2013 with leave to refile again within 14 days. He filed another application for revision, Application No. 10/2015 which was struck out on 31.03.2015. He then filed Miscellaneous Application No. 13 of 2015 for extension of time of which he declined to proceed because his representative was sick. Hon. Mipawa, J. (as he then was) again struck out

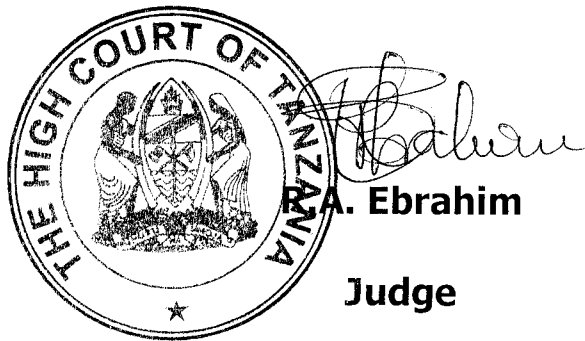
the application on 16.11.2015 and availed him 90 days from January 2016 to file the application for extension of time.

Coming to the present application, the same was filed on 16<sup>th</sup> March 2016. Undoubtedly, looking at the sequence of events, there is no doubt that the applicant was not vigilant in filing the proper applications before the court. The court has extended so many chances since 2012. Moreover, as the law requires, the applicant has not stated as to when he actually filed Miscellaneous Application No 13 of 2015 so that the court can ascertain the degree of delay. He has also not established in his affidavit the reasons for the delay from when the application for revision was struck out on 31.03.2015 which prompted him to file Miscellaneous Application No. 13 of 2015 for extension of time. Therefore, what contributed for the delay and for how long until he filed Application No 13 of 2015 is unknown.

All I see is that the applicant was negligent in filing the proper applications and was not serious to proceed with the application when the court availed him the opportunity. Furthermore this is not the issue of technicality as imagined by Mr. Dotto in his reference to the case of **Samwel Kimaro (supra)**; but rather, this is the requirement of the law and it is geared to put a governor to parties that are not vigilant and

hinders the adverse party to enjoy fruits of their wins. More importantly it is geared into ensuring that litigations come to an end.

That being said, I find that the filing of incompetent applications for more than five times and the same has not even been explained by the applicant is not sufficient reason to warrant this court to exercise its judicial discretion. I therefore dismiss the application. As it is a labour matter I give no order as to costs.



**Shinyanga**

**14.12.2018**

**Date:** 14/12/2018

**Coram:** Hon. S. P. Mwaiseje, DR

**Appellant:** Absent

**Respondent:** Mr. Kange, Advocate for

**B/C:** Raymond, RMA

**Court:** Ruling delivered today 14<sup>th</sup> day of December, 2018 in the presence of Mr. Kange Advocate for the Respondent, and Raymond RMA. In the absence of the Applicant.

**Court:** Right of Appeal fully explained.

