IN THE HIGH COURT OF TANZANIA

(LABOUR DIVISION)

AT SUMBAWANGA

APPLICATION FOR LABOUR REVISION NO 6 OF 2019

THE SERIOUS MICROFINANCE TANZANIA ..... APPLICANT

VERSUS

ANASIKIA LUPAKISYO ..... RESPONDENT

RULING

W.R. MASHAURI
23/04/2020 & 20/05/2020

This is an application for extension of time to file the application for Revision whereas, the applicant opted for an omnibus application to save time and expenses in which the filed application contained both the application for extension of time and the revision of the award of the Commission for Mediation and Arbitration CMA-Sumbawanga in complaint No. RK/CMA/SMB/23/2016.

In both the notice of application and the chamber summons, the applicant is seeking for an order of the court in the following terms;

1. This honorable court be pleased to extend time within which the applicant may move this honorable court for an application for revision against CMA decision dated 07.05.2019 in labour dispute No. RK/CMA/SMB/23/2016.

2. That, upon grant of extension of time, this honorable court be pleased to call, revise and set aside the award of the Commission for Mediation and Arbitration for Rukwa at Sumbawanga in Labour dispute No. RK/CMA/SMB/23/2016 by honorable Arbitrator Ngaruka, O dated 07.05.2019.
3. That, this honorable court be pleased to order any other relief that it may deem fit to grant in respect of this revision.

When the matter came in court for hearing, both camps settled on battling-out through written submissions, the choice which was gladly granted by this court. The applicant was under the services of Mr. Mathias Budodi, learned advocate whereas the respondent was enjoying the services of Mr. Peter Kamyalile, learned advocate.

Arguing for this two-in-one application, Mr. Budodi, in his submission at paragraph 1.2 cited the Court of Appeal case of **MIC TANZANIA LIMITED v. MINISTER FOR LABOUR AND YOUTH DEVELOPMENT** Civil Appeal No. 103 of 2004 Court Appeal of Tanzania at Dar Es Salaam (Unreported) at page 09 and 10, to convince this court that our legal system has also praised this form of application whereby two applications are combined in one chamber summons.

The counsel for the respondent, Mr. Kamyaiile also agreed on this process, as he conceded on his submission at 2nd paragraph of page 1 that he is fully aware of the process and he his in total agreement with the good and binding principle of the law that combination of more than one

application in one chamber summons is allowed if there is no any specific law barring such combination, thus making the application by the applicant competent to this court.

After that being settled by both camps, in continuation of the hearing, Mr. Budodi, pointed out that, this application is pegged under Rule 24(1), 24(2)(a)(b)(c)(d)(e)(f), 24(3)(a)(b)(c) and (d), 24(11)(b) and Rule 28(1)(a)(c)(d)(e) and 28(2) of the Labour Court Rules G.N No. 106 of 2007, Rule 55 (1) and (2) of the Labour Court Rules G.N No. 106 of 2007, Rule 56 (1) of the Labour Court Rules G.N No. 106 of 2007 and Section 91 (1)(a) and (2) (b) and Section 94 (1)(b)(i) of the Employment and Labour Relations Act, 2004 and Section 14 (1) of the Law of Limitation Act, 1971.

Applicant's counsel argued that, there are points of illegalities involved in the impugned decision of CMA including time limitation, granting unheard application, failure to determine the preliminary objection which was already heard in merit and lastly condemning the applicant unheard. He also cited the cases of **THE PRINCIPLE SECRETARY MINISTRY OF DEFENSE AND NATIONAL SERVICE v. DURAM VALAMBHIA [1992] TLR 387** and **FRENK EZEKIEL v. MALISELA KALYOGA Misc. Land Application No. 15 of 2019 HC at Sumbawanga (Unreported) at page 11,** to stress on the settled principle that allegations of illegality on the decision intended to be challenged is a sufficient reason for extension of time even if there is no any other reason.

Challenging this fact, Mr. Kamyalile submitted that they were no any illegalities to the decision and award of the CMA. He said, the corrected award did not amend the content of the award but a clerical error on name which was a mistake caused by the CMA itself. He conclusively argued that the Arbitrator corrected the award by his own motion.

In determining the application for extension of time, the determinant factor in granting the application for extension of time is as to whether or not, the applicant has managed to demonstrate good cause.

There is a plethora of authorities as to what is meant by good cause. See: **Godwin Ndewesi and Karoli Ishengoma Vs Tanzania Audit Corporation [1995] TLR 200, Regional Manager, Tanroads Kagera Vs Ruaha Concrete Company Limited, Civil Application No. 96 of 2007, Phiri M. K. Mandari and Others Vs Tanzania Ports Authority, Civil Application No. 84 of 2013, Joseph Paul Kyauka Njau and Another Vs Emanuel Paul Kyauka and Another, Civil Application No. 7/5 of 2017, and Lyamuya Construction Company Limited Vs Board of Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (all unreported).**

In **Lyamuya Construction Company Limited's** case (supra), the Court laid down some factors which can be used to assist this Court, in assessing as to what amounts to good cause. It stated them to be:

1. The applicant must account for all the period of delay;

2. The delay should not be inordinate;

3. The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take;

4. If the Court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as illegality of the decision sought to be challenged.

Basing on what has been highlighted above, this court is enjoined in this application, to consider as to whether it qualifies in terms of the factors enumerated above. The account which has been given by the applicant for the delay was that she was attending her sick child at Muhimbili Hospital and that due to criticalness of the child's situation in normal circumstances hindered the applicant to pursue her revision in time. However, in both of her chamber summons and affidavit, she contended that to the effect of this application, there are illegalities involved in the impugned decision of CMA,

granting unheard application, failure to determine the preliminary objection which was already heard in merit and lastly condemning the applicant unheard.

Upon dispassionately giving a deep thought to the sequence of events in the scenario explained by the applicant and to the fact that there were illegalities in the decision and award of the CMA, I am convinced with the aid of the decisions outlined in **Tropical Air (Tanzania) Limited Vs Godison Eliona Moshi, Civil Application No. 9 of 2017**, and **VIP Engineering and Marketing Limited, Tanzania Revenue Authority and the Liquidator of Tri-Telecommunication (Tanzania)) Vs Citibank Tanzania Limited, Consolidated, Civil References No. 6, 7 and 8 of 2006** (all unreported).

In the case of **VIP Engineering and Marketing Limited** (supra) the court held that:

> *"It is settled law that, a claim of illegalities of the challenged decision constitutes sufficient reason for extension of time...."*

In line with the above exposition, I find merit in the application by the applicant. As a result, I grant the application for extension of time and

proceed with the determination of the application for revision of the decision and award from the CMA.

In determining the application for revision by the applicant, Mr. Budodi the counsel for the applicant argued in his submission in support of the application for revision that, according to Rule 30(1) of the Labour Institution (Mediation and Arbitration) Rules, 2007 the time limitation for filing an application for correction of errors in CMA is 14 days from the date a person becomes aware of the error. According to the respondents' affidavit in support of the application for correction of errors which was filed in CMA, the respondent discovered the error on 12.11.2018 but slept over it and filed the application at CMA on 18.12.2018 this was after lapse of 38 days beyond statutory 14 days. He added that, the only remedy for a matter which is filed out of time is dismissal as it was held in the case of **TANESCO v. BAKARI MAYONGO Revision No. 2 of 2015 HC at Sumbawanga (Unreported) at page 4.**

> *"This application is undisputedly time barred. As rightly pointed out by the counsel for the respondent, the only remedy available is to have the same dismissed."*

Mr Budodi insisted that, the position was also held in the Land Mark case in Labour, the case of **TANZANIA BREWERIES LTD v. EDSON MUGANYIZI BARONGO & 7 OTHERS Misc. Labour Application No. 79 of 2014 HC at Dar Es Salaam**(Unreported) at page 16, which borrowed the position from the decision of the Court of Appeal in the case of **HASHIM MADONGO & 2 OTHERS v. MINISTER FOR INDUSTRY AND TRADE & 2 OTHERS Civil Appeal No. 27 of 2003 CA at Dar Es Salaam** (Unreported).

In reply to the submission in support of the application for revision submitted by the counsel for the applicant, the learned counsel for the respondent, Mr. Kamyalile did not dispute the fact the application before CMA was time barred as he himself submitted at page 3 of his submission, he rather explained on if the matter was time barred the remedy was to strike out and not dismiss. However, he prayed for this court to apply the principle of overriding objectives in dealing with this fact.

In this matter at hand, the main issue is whether the application at CMA by the respondent to correct the error was time barred. To me, this issue itself suffices this court to determine the merits of this revision.

Basing on what has been highlighted, it is quite apparent from the records of CMA that the respondent discovered the error on 12/11/2018 and made the application to the CMA for correcting the error on 18.12.2018, whereby it is some 38 days later contrary to **Rule 30(1) of the Labour Relations (Mediation and Arbitration) Rules, 2007** which stipulated openly that;

> *"An application by a party to correct or set aside an arbitration award in terms of Section 90 of the Employment and labour Relations Act shall be made within fourteen days from the date on which the applicant became aware of the arbitration award."*

In addition to that, **Rule 30 (2) of the Labour Relations (Mediation and Arbitration) Rules, 2007** states;

> *"An Arbitrator may on his own accord correct or set aside an arbitration award in terms of section 90 of the Employment and Labour Relations Act,* ***within the time period stipulated in sub-rule (1)*** *and shall re-issue the corrected award with a written explanation of the correction."*[Emphasis is mine]

In relation to the above citation, was the submission made by the counsel for the respondent in the counter affidavit, that the Arbitrator corrected the error of the award on his own motion whereas the Labour Relations Rules cited above clearly rebuts the particular submission insisting that it would have been done within the prescribed statutory period.

In my considered view, since the error was noticed on 12/11/2018 and the application for correcting the same to the CMA was made on 18/12/2018, it is quite clear that the process was done beyond the statutory period of 14 days and that the respondent was required to seek leave of the CMA to make the application beyond the required statutory period. Nevertheless, the overriding objective principle cannot be applied blindly against the mandatory provisions of the procedural law which goes to the very foundation of the case. (See **Njake Enterprises Limited v. Blue Rock Limited and Another, Civil Appeal No. 69 of 2017** (unreported).

In this appeal, the argument by the learned counsel for the applicant holds water that the application to CMA was hopelessly time barred and that the CMA was to dismiss the same. It is a legal routine

that, the remedy of a suit which is filed out of time is to dismiss the entire suit as it was held in the case of **TECLA MBWAWALA VS VICENTIA KINOGE (Misc. Land Case Appeal No.1059 of 2016) [2018],** and that the prayer of the counsel for the respondent that this court may adopt the principle of overriding objective is immaterial.

As outlined earlier, in the matter at hand the issue of time limitation by itself suffices to dispose this revision and that I need not to discuss or determine other grounds for revision by the applicant.

At this juncture, I am satisfied grant this application by The Serious Microfinance Tanzania, and I hereby quash and set aside the decision and award of the CMA with direction that the matter should be tried *de novo.*

W.R. Mashauri

Judge

20/05/2020

Date - 20/05/2020

Coram - Hon. W.R. Mashauri – J

For Applicant
Applicant
For Respondent
Respondent
All absents

B/C - Zuhura

Court:

Ruling delivered in court in absence of all parties this 20/05/2020. Parties to be notified of the outcome.

W.R. Mashauri

Judge

20/05/2020