

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT ARUSHA

MISC. LABOUR APPLICATION NO. 48 OF 2021

*(Originating from Commission for Mediation and Arbitration Application No.
CMA/ARS/ARS/510/2019)*

GABRIEL MWENISONGOLE.....1ST APPLICANT
JONAS BYAKUYUNGU.....2ND APPLICANT
BEINESTA WAIGORO.....3RD APPLICANT
GODFRE WILLIAM.....4TH APPLICANT
ISUMAIL SOLOMON.....5TH APPLICANT
MERY KASILIKA (As an administratrix
of the Estate of the Late Endru Kasililika).....6TH APPLICANT
MUSA BENADI.....7TH APPLICANT
HAJI MAKONO.....8TH APPLICANT
JOHANESI MAHABULA.....9TH APPLICANT
BARAKA ELIAS.....10TH APPLICANT
GRACE MWANJONDE.....11TH APPLICANT
FRED JAMPYON.....12TH APPLICANT
NINGISAE ERNEST (As an Administratrix of the
estate of the Late Ernest Lazaro).....13TH APPLICANT
RIZIWAN SALEHE.....14TH APPLICANT
HAMIS OMALI.....15TH APPLICANT

ROBART KIMAMBO.....16TH APPLICANT
DUARE MORIO.....17TH APPLICANT
RICHARD HEMED.....18TH APPLICANT
YONA JORAMU (As an administratrix of the
estate of the Late Amosi Joram.....19TH APPLICANT
SIFUN DEVID.....20TH APPLICANT
ELIA OMALI.....21ST APPLICANT
JULIAS TOMASI.....22ND APPLICANT
DANIEL SANGITO.....23RD APPLICANT

VERSUS

TANZANITE AFRICA LIMITED.....RESPONDENT

RULING

14/07/2022 & 11/08/2022

KAMUZORA, J.

Gabriel Mwenisongole & 22 others preferred this application seeking for extension of time to file a revision application to this court against the decision of the Commission for Mediation and Arbitration (the CMA) in CMA/ARS/ARS/510/2019 that was delivered on 26th November 2020. The application was brought under the provision on Rule 24(1) (2) (3) & 56 (1) (3) of the Labour Court Rules, GN. 106 of

2007 and supported by an affidavit sworn by the Applicants. The application is strongly opposed by the Respondent in a counter affidavit deposed by Jeremia Mollel, the Principal Officer for the Respondent.

During hearing of the application, the Applicants were represented by Ms. Francisca A. Lengeju from Legal and Human Rights Centre and the Respondent was represented by Mr. Emmanuel Matondo, learned advocate. Hearing of the application was by way of written submissions and parties filed their submissions in accordance with the schedule save the rejoinder submission.

The brief background is that, the Applicants sued the Respondent at the CMA claiming for unfair termination of their employment contracts. The CMA made a decision that there was no employer and employee relationship between the parties and the Applicants claims were dismissed. As the time to file revision application to this court had lapsed the Applicants preferred this application seeking for time enlargement. The main issue calling for the determination by this court is whether the Applicants have demonstrated sufficient reasons for the enlargement of time.

Submitting on the substance of the application, the Applicant's representative adopted the contents of the affidavit filed in support of

the application to form part of her submission and submitted that, the power of the court to extend time is discretionary and it can be exercised upon the Applicant demonstrating good cause. To support her submission, she cited the case of, **Kalunga & Company Advocates Ltd. V. National Bank of Commerce Ltd** [2006] TLR 235.

Ms. Lengeju submitted further that, it is settled that where extension of time is sought, the Applicant will be granted upon demonstrating sufficient cause for delay which will depend on deliberation of various factors. To cement on this, she referred the case of **Tanzania Revenue Authority Vs. Tanga Transport Co. Ltd.** Civil Application No 4 of 2009 (Unreported). She acknowledged the fact that the Applicants being late for one year, they have to account for each day of the delay as it was so held in **Kariuel J Mola Vs. Tanzania Zambia Railways Authority**, Labour Revision No 780/2019, **John Moses and three others Vs. R**, Criminal Appeal No 145 of 2006 and **Elias Msonde Vs. R**, Criminal Appeal No 93 of 2015.

Ms. Lengeju insisted that, the delay by the Applicant to refer the matter on time is because they are lay persons and they pursued the matter using administrative and government authorities for so long without knowing that they could file revision against the CMA award.

That, the Applicants made phone calls, wrote letters visited different offices in different dates including the PCCB where they were directed to the Registrar of the High Court. That, they also contacted the minister for minerals and minister for constitutional and legal affairs but they were refereed to the Registrar of the High court who also directed them to Legal and Human Rights Centre.

Ms. Lengeju insisted that all these administrative processes resulted into delay in taking action by the Applicants hence a reason for extension of time. She was of the view that, the Respondent will suffer no harm by the grant of the application and for this argument she referred the case of **Mobrama Gold Corporation vs Minister of Energy & Minerals and 2others** [1998] TLR 425.

It was her argument that, the Applicant has the right to be heard, a principle of natural justice which is also enshrined under the constitution under Article 13(6) as well as the case of **Rukwa Auto Parts and Transport Ltd Vs. Jestine George Mwakyoma**, Civil Appeal No 45 of 2000 and **Sadiki Athuman Vs. The Republic** (1986) TLR 235.

She added that, the court being a body responsible for dispensation of justice should do away with legal technicalities intended to impede dispensation of justice. To buttress her submission, she cited Article

107A (2) (e) of the Constitution of the United Republic of Tanzania, 1977 and the case of **Kiko Rajabu Kiko and another Vs. Bakari Rajabu Kiko** (Unreported), **Jackson Mwendu Vs. Agakhani Education Service**, Misc. Application No 763 (TZHCLD 3757) ZK. The Applicants pray that, the application be granted as the Respondent will not suffer in anyhow.

Opposing the application, the counsel for the Respondent argued that, no good cause has been shown to warrant the grant of extension of time. He submitted that, the Applicant has to account for each day of the delay as held in the case of **Bruno Wenceslaus Nyalifa Vs. The Permanent Secretary Ministry of Home affairs & The Honourable Attorney General**, Civil Appeal No 82 of 2017 and in **Assa Joseph Makole Vs. Vijana Ukerewe Saccoss Ltd**, Revision No 34 of 2014.

On the reason that there was delay because of administrative follow up, the counsel for the Respondent argued that the letters addressed to PCCB have no any signature or stamp to prove that were received by the said office. That, even if the letters were received by the PCCB office still the Applicants were out of time as the letter were sent on 17th April 2021 which the Applicants were already out of time for almost 97 days

from 7th January 2021. He was of the view that, this reason is an afterthought.

The counsel for the Respondent submitted further that, seeking legal advice from various office is not a sufficient ground for the extension of time. She insisted that, it is a trite law that ignorance of law is not an excuse. To back up his submission, he cited the case of **Omari R. Ibrahim Ndege Commercial Services Ltd**, Civil Application No 83/01 of 2020 (Unreported) where the Applicant spent time consulting various lawyers on account of being a layman and the court ruled out that ignorance of law is not a good cause for extension of time. He insisted that, the Applicants were clearly informed on their right to file revision within 42 days but failed to do so due to lack of diligence. He maintained that the Applicants were unable to show sufficient reason warranting the grant of extension of time thus, prays for the dismissal of this application with costs.

I have considered the application, the sworn affidavit of the Applicants which lays the basis of this application, the counter affidavit and the submissions by the parties. The provision of the law to which the Applicants are moving this court to enlarge time to file revision

application is Rule 24(1), (2), (3) and 56 (1) (3) of the Labour Courts Rules GN. No. 106 of 2007. Rule 56 (1) and (3) provides,

*"56 (1) The Court may extend or abridge any period prescribed by these rules on application and on **good cause** shown unless the court is precluded from doing so by any written law.*

*(3) The Court may, on **good cause** shown, condone non-compliance with the period prescribed by the Court."*

As a matter of law, whether to grant or refuse to grant an application for extension of time is entirely in the discretion of the Court but that discretion is to be exercised judiciously. With the wording in the above cited provision, the court can grant extension of time upon good cause being shown by the Applicant. The overriding consideration is that, there must be sufficient or good cause to justify the court to extend time within which to file a revision or any application out of the prescribed period. See the decision in the case of **Tumsifu Kimaro (the Administrator of the Estate of the late Eliamini Kimaro) Vs. Mohamed Mshindo**, Civil Application No. 28/17/2017 CAT at DSM (Unreported).

It is also a settled principle that, in an application for extension of time each day of the delay must be accounted for. It was contended by the counsel for the Respondent that the Applicant has failed to account

for each day of delay and that the reason of ignorance of the law or seeking for legal advice is not a sufficient reason for the grant of extension of time.

From the facts deponed in the Applicant's joint affidavit as well as the attachments there to it appears that, the award of the CMA which revision is intended was delivered on 26/11/2020. The time to lodge a revision application against an award of the CMA is 42 days by virtue of section 91(1) (a) of the Employment and Labour Relations Act No. 6 of 2004. As the CMA award was pronounced on 26/11/2020, the revision application could be filed up to 6/01/2021. The Applicants are therefore duty bound to account for the period starting from 7/1/2021 to 8/10/2021 when this application was lodged.



Under paragraph 9,10,11,12 and 13 of the Applicant's affidavit the Applicants have adduced reasons for seeking legal advice as a ground for the extension of time. I agree with the counsel for the Respondent that ignorance of law has no excuse. This is a well-known common principle of law and for that reason, ignorance of the law can never amount to a good ground for the extension of time.

Reading the contents of annexure S3, S4 and S5, the Applicants were complaining that the proceedings and award by the CMA were

tainted with corruption, illegalities and irregularities. As rightly submitted by the counsel for the Respondent, the said annexures do not justify the grant for extension of time for the following reasons; **One**, all letters bare no signature or stamp of the receiving authorities evidencing that the said letters were sent to the respective authorities. **Two**, the letters to TAKUKURU, annexures S3 and S4 were written on 17/04/2021 and a letter to MSAJILI WA MAHAKAMA was written on 01/08/2021. The letters in question were issued after the expiry of revision period which was 6/01/2021 thus, it cannot be said that it is a reason the Applicants delayed in filing the application on time. Apart from the letters referred above, there is no other evidence attached justifying the follow up by the Applicant which can be termed as acceptable reason for delay. In a simple explanation, the Applicants were unable to account for each day of the delay as so required by law.

In the upshot, the Applicants have failed to give sufficient reasons to justify the grant of extension of time. The application is therefore devoid of merit and it is hereby dismissed. In considering that this matter emanates from labour dispute, no order as to costs is made.

DATED at **ARUSHA** this, 11th day of August, 2022


 **D.C. KAMUZORA**
JUDGE

