

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

LABOUR DIVISION

AT ARUSHA

MISC. LABOUR APPLICATION NO. 60 OF 2021

(Originating from High Court of Tanzania at Arusha, Labour revision No. 27 of 2019)

BETWEEN

ANGELA GERALD MANYONYI..... APPLICANT

VERSUS

BHUNU MBUNDI CO. LTD..... RESPONDENT

RULING

27.07.2022 & 10.08.2022

N.R. MWASEBA, J.

This is an application for the extension of time to file an application for review out of time. The Applicant is seeking for extension of time to file review in respect of a Labour Revision No. 27 of 2019.

Briefly, the facts of the matter giving rise to this application are that: The applicant filed a dispute at the Commission for Mediation and Arbitration (CMA) via Dispute No. CMA/ARSARB/90/2018 for the reason that she was unfairly terminated and the labour procedures were not adhered to by the respondent (Employer). After a full trial her dispute was dismissed for the

sole reason that there was no employer and employee relationship between the parties. Aggrieved, she preferred a revision to this court which was registered as Labour Revision No. 27 of 2019 in which the court decided in her favour and ordered the respondent to pay her 12 months salaries as remuneration at the rate of Tshs. 24,000/= as per **Section 40 (1) (c) of the Employment and Labour Relation Act**, of 2004. The applicant was not pleased by the High Court decision and she wanted to challenge it by way of review. So far, she is out of time, the present application was filed for the court to enlarge the time to enable her file a review out of time.

When the application was called for hearing on 15.06.2022, the applicant was present in person and Mr. Kundaal Godson Ringo, Human Resource Manager appeared on behalf of the respondent. The application was disposed of by way of written submission.

In support of the application, the applicant submitted that she delayed to file the review application as she discovered later on that there was an error made by Hon. Judge in his decision and after discovering the said error it took her sometime to search for and secure a legal assistance. Also, she averred that she was sick (suffering from Corona pandemic) and she was treated traditionally. Thus, based on the point of illegality and sickness she prayed for the court to extend the time for the said illegality

to be cured. The cases of **Tanzania Revenue Authority Vs Tanga Transport Co. Ltd**, Civil Application No. 4 of 2009 (Unreported), **Kalunga & Company Advocates Ltd Vs National bank of Commerce Ltd** [2006] TLR 235 and **Ally Salum Said Vs Idd Athuman Ndaki**, Misc. land Application No. 718 of 2020 (Unreported) were cited to cement her arguments.

Opposing the application, the respondent argued that the application for review needs to be filed within 15 days after the date the decision was delivered, see **Rule 27 (1) of the Labour Court Rules**, GN No.106 of 2007. He added that the rationale behind it is to avoid any party to come to court as he wishes.

In our application, the applicant is late for more than 13 months without proving her allegation that she was sick and it took her sometime to secure legal assistance. The High Court decision was delivered on 05.11.2020 and the present application was filed on 08.12.2021, the applicant miserably failed to account for each day of delay for all 13 months. Further to that, the applicant did not disclose as to when she discovered the alleged illegality.

He submitted further that regarding the issue of sickness, it is just an afterthought because nothing was submitted to prove that she was suffering from Corona pandemic without being medically examined. On

top of that the documents show that they were written by the applicant and there is no evidence that she was assisted by a law firm. Therefore, the argument of being lay person is just an afterthought too. To buttress his arguments, he cited the case of **Pamela P. Bikatumba Vs The Director Abb Tanalec Ltd**, Misc. Civil Application No. 108 of 2016 (Unreported) and **Mathias Charles Kaselele Vs The Registered Trustees of the Archdiocese of Mwanza Roman Catholic** [2017] TLR 312. He finally prayed for the application to be dismissed with costs.

Having heard the rival arguments from both parties, it is pertinent for this court to determine the issue as to whether the applicant has advanced reasonable grounds to merit her application.

Rule 27 (1) of the Labour Court Rules, GN No.106 of 2007 provides that: -

*"Any review shall be instituted by filing a written notice of review to the Registrar **within fifteen days from the date the decision to be reviewed was delivered.**"* (Emphases added)

The applicant herein is late for more than 13 months to file her review against the High Court decision in Labour Revision No. 27 of 2019. And

Section 56 (1) of GN 106 of 2007 provides that: -

*"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."* (Emphasis is mine)

The reasons advanced by the applicant herein are that she was sick (suffering from Corona pandemic); she is a lay person; and that there is illegality in the impugned decision. However, nothing was submitted to prove her allegations. Regarding the issue of sickness, she submitted that she was treated traditionally that's why she had no proof of her medical treatment.

Concerning the ground that she is a lay person, it has been decided in a number of cases that it is not a good cause to warrant extension of time. See the case of **Hamimu Hamisi Totoro @ Zungu Pablo and 2 Others Vs the Republic**, Criminal Application No. 121/07 Of 2018 (CAT-Unreported). And for the issue of sickness since nothing was submitted to prove the same it becomes just an afterthought.

Further to that, the applicant has just pleaded that she took a long time seeking for legal assistance and that she had been suffering from Corona pandemic several times. Her allegations are not certain as for how long she had been sick and being looking for legal assistance. The applicant being late for 13 months, she failed to account for each day of delay. This was spelt out in the case of **Bushfire Hassan Vs Latina Lucia Masaya**,

Civil Application No. 3 of 2007 (CAT-Unreported) that in very certain terms: -

"Delay, even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken. "

In view of the cited authority, the applicant was obliged to account for each day of delay for all the 13 months she was late. On top of that, she was supposed to bring proof regarding her claims as to why she was late.

As for the issue of illegality, I am aware that it can be raised at any time and it is a reasonable ground to grant extension of time. In this matter, the applicant pointed out that the Hon. Judge had erred in rating the amount of payment of compensation for unfair termination by rating the amount the applicant was paid weekly instead of rating the amount that the applicant was paid monthly. With due respect, the pointed-out error, if it exists, does not amount to illegality in the face of law. The word illegality is defined by **Black's Law Dictionary, 8th Edition** as:

"An act that is not authorised by law"

Due to the above definition, if the Hon. Judge underrated the amount to be paid to the applicant as a compensation this act does not amount to illegality. But rather, it calls for an aggrieved party to go for respective remedies within the prescribed time. It should be noted that the illegality

claimed must be apparent on the face of the record. The same was held in the case of **Lyamuya Construction Company Ltd Vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported).

Being guided by the above legal position, I find that the applicant has failed to show good cause for this court to exercise its discretion to extend time to file an application for review out of time.

From the foregone, the application is dismissed for lack of merits. Since this is a labour matter, each party shall bear its own costs.

Ordered Accordingly.

DATED at ARUSHA this 10th day of August 2022.




N.R. MWASEBA

JUDGE

10.08.2022