

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**LABOUR DIVISION**

**ARUSHA DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. LABOUR APPLICATION NO. 25 OF 2021**

[ C/F CMA/ARS/MED/38/2008]

**NICAS BAZIL AND 108 OTHERS ..... APPLICANTS**

**VERSUS**

**SUNFLAG (T) LTD ARUSHA.....RESPONDENT**

**RULING**

29.06.2022 & 10.08.2022

**N.R. MWASEBA, J.**

This is a ruling on an application for extension of time within which the Applicants can lodge an application for revision to this court against the decision of the Commission for Mediation and Arbitration of Arusha (CMA) in Dispute No. CMA/ARS/MED/38/2008.

Their application was supported by a sworn affidavit of Mr. Haruni Idd Msangi, learned counsel for the applicants and was objected by the

counter affidavit sworn by Mr. Innocent Mwanga, learned counsel for the respondent.

When the application was called for hearing on 29.06.2022, Mr. Haruni I. Msangi, learned counsel represented the applicants whilst Mr. Innocent Mwanga represented the respondent. The application was argued orally.

Supporting the application, Mr. Msangi argued that, this is the second application after the first one being struck out by Hon. Gwae, J. on 17.05.2021 due to the fact that they wrote 'review' instead of 'revision'. After having struck out the previous application the present one was filed within the time. It was his further submission that, the current application was filed within the time and prayed for the court to extend the time so that they could file the revision to challenge the CMA's decision. He cited the case of **Fortunatus Masha Vs William Shija and Another (CA)** [1997] TLR 154 to support his arguments that the delay was a technical one and it was out of their control.

Opposing the application, Mr. Mwanga prayed to adopt their counter affidavit to be part of his submission. He added that the applicants' affidavit together with their submission is silent as to why they did not file their application for revision for more than 11 years since 2008 up to 2019 when the first application for extension of time was filed before Mzuna, J.

via Misc. Labour Application No. 4 of 2019, and later on before Gwae, J. via Misc. Labour Application No. 4 of 2021 which were struck out for being incompetent. He submitted further that the cited case of **Fortunatus Masha** (supra) is distinguishable since their delay was not a technical one as they were late for more than 11 years without any concrete justification.

Further, Mr. Mwanga pointed out that the journey for the applicants to beseech the court to grant leave started way back in 2010 although they had decided to remain silent about it. On 10.06.2010 Rweyemamu, J. (as she then was) gave them 14 days to file their application due to the defects on the application before her. On 11.7.2013 Sarwat, DR gave them another time to file their application before 25.07.2013 but they did not comply with the order. On 15.05.2014 the applicants prayed to withdraw their application due to defects, thereafter on 11.05.2015 they were given a last chance by Aboud, J. to file another application. The application was filed but once more they prayed to withdraw it on 20.10.2015 before Nyerere, J. with a leave to refile and they were given 14 days.

As if that was not enough, on 11.05.2017 they filed another incompetent application which was struck out and they were given 30 days to file

another application. On 06.12.2018 they filed another application before Mzuna, J. and they were given 30 days to file the application for revision but they failed to comply with the said order. On 17.05.2021 they filed another application before Gwae, J. which was struck out for being incompetent. Mr. Mwanga was surprised to hear the counsel for the applicants saying this application was filed within time.

The respondent's counsel was of the view that a litigation must come to an end. The applicants have been granted extension over extension but no revision was filed. More to that, in all previous applications including the incompetent ones the applicants had legal representation. He supported their arguments with the case of **Lyamuya Construction Ltd vs Trustee of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (CAT- Unreported) and **Shomary Y. Mahangira Vs Ifakara Town Council & Others**, Misc. Land Application No. 133 of 2021. In the end, they prayed for the application to be dismissed as no reasons were put forward to justify their delay.

In a brief rejoinder, Mr. Msangi argued that in all the applications mentioned by the respondent's counsel they were given extension of time due to the reasons advanced before the respective Honourable Judges.

So, they prayed for this court to extend the time for them to file their revision challenging the CMA decision delivered in 2008.

Having considered the rival submissions of the parties and court records, the only issue for determination is whether the applicant advanced sufficient reasons to justify the delay to file the intended revision application.

The power of this court to extend time in this kind of applications is governed by **Rule 56 (1) of the Labour Court Rules**, GN 106 of 2007 which provides as follows:

*“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 added)

What amounts to good cause has not been defined, however this Court has, in various decisions stated a number of factors to be considered. These are whether or not the application has been brought promptly, the absence of any valid explanation for the delay and whether the applicant has accounted for each day of delay and the lack of diligence on the part of the applicant.

In the case of **Blue Line Enterprises Ltd Vs East African Development Bank**, Misc. Application No. 135 of 1995 (CAT-Unreported) the Court held that: -

*"...it is trite law that extension of time must be for sufficient cause and that extension of time cannot be claimed as of right, that the power to grant this concession is discretionary, which discretion is to be exercised judicially, upon sufficient cause being shown which has to be objectively assessed by Court."*

See also the cases of **Tanga Cement Company Limited Vs Jumanne D. Masangwa & Amos A. Mwalwanda**, Civil Application No. 06 of 2001, **Omary Shabani Nyambu Vs Dodoma Water and Sewerage Authority**, Civil Application No. 146 of 2016 (CAT-all unreported).

In our present application the respondent revealed that there has been a number of extensions in which the applicants were given extension of time and they failed to comply with the court orders. Surprisingly, those facts were not featured in the applicants' affidavit supporting the application nor disclosed in their submission in chief for the reasons best known to themselves. The same allegations were not denied by the counsel for the applicants. Thus, making it clear before the court that the applicants failed to account for each day of delay since 2008 when the

CMA delivered its award up to 2019 when the application for extension was filed before Hon. Mzuna, J. via Misc. Labour Application No. 4 of 2019 which make a total of 11 years uncounted for.

The issue of counting each day of delay has been decided in a number of cases including the case of **Bushiri Hassan Vs Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (CAT-unreported) where it was held that:


*"Delay of 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."*

For the above stated reasons, the applicants have failed to disclose a good cause for the extension of time. Accordingly, the application is hereby dismissed. Since this is a labour matter each party will bear its own costs.

It is so ordered.

**DATED** at **ARUSHA** this 10<sup>th</sup> day of August, 2022.



  
**N.R. MWASEBA**

**JUDGE**

**10.08.2022**