

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 484 OF 2019

BETWEEN

NAMWIMA ABDALLAH MOHAMED 1ST APPLICANT
RAMADHANI SAIDI 2ND APPLICANT
OMARY UFUNDI 3RD APPLICANT
HAMISI JUMANNE 4TH APPLICANT
WAZIRI ASUMANI 5TH APPLICANT
OMARY HAMISI 6TH APPLICANT
YAHYA SAIDI 7TH APPLICANT
MOHAMED MPOGO 8TH APPLICANT
BAKARY ISSA 9TH APPLICANT
WAZIRI MSOMI 10TH APPLICANT

VERSUS

CEMENT DISTRIBUTORS (E.A) LIMITED RESPONDENT

RULING

Date of Last Order: 21/05/2020

Date of Ruling: 17/07/2020

S.A.N. Wambura, J.

The applicants **NAMWIMA ABDALLAH MOHAMED & 9 OTHERS** have filed this application under the provisions of Rules 24(1),

(2)(a)(b)(c)(d)(e)(f), (3)(a)(b)(c)(d), 55(1)(2) and 56(1)(2)(3) of the Labour Court Rules GN No. 106 of 2007 praying for the following Orders:-

- (i). That the Court be pleased to grant extension of time to the applicants to file an application for revision of the Arbitrator's award of the Honourable the Commission for Mediation and Arbitration dated on 27th July, 2018 by the Hon. Amos, H., Arbitrator in Labour Dispute No. CMA/DSM/TEM/170/94/2017 of the Commission for Mediation and Arbitration at Temeke – Dar es Salaam.*
- (ii). That, the Honourable Court be pleased to grant leave to file an application for revision out of time.*
- (iii). Any others this Court may deem fit and just to grant.*

The application is supported by the affidavit of **NAMWIMA ABDALLAH MOHAMED** the appointed representative of the other nine (9) applicants.

Through the counter affidavit of Mohamed Mganda Mtaungu the respondent **CEMENT DISTRIBUTORS (E.A) LIMITED** challenged the application.

With leave of the Court the application was disposed of by way of written submissions. I thank both parties for adhering to the schedule and for their submissions.

It was submitted by the applicant that the delay in filing an application for revision of CMA's award was due to the fact that they had to file an application in this Court to be granted leave to file a representative suit. That their first application being Misc. Appl. No. 413/2018 was struck on 02/11/2018. They thus filed a second application with No. 640/2018 for leave to file a representative suit which was granted on 29/07/2019. Thus on 16/08/2019 they filed this application as they were already out of the requisite time of six (6) weeks as provided for under Section 91(1)(a) of ELRA. That the delay was on a technical ground which is a good cause for being granted an extension of time as it was held in the cases of **Christopher Gasper & 5 Others Vs. Tanzania Port Authority (TPA)**, Misc. Appl. No. 126 of 2015, **Ally Sacha Bakari & 8 Others Vs. National Housing Corporation**, Misc. Appl. No. 344 of 2016 and **Palm Beach Casino Vs. Theresia Martin**, Misc. Appl. No. 54 of 2019 which stressed on the right to be heard.

They thus prayed for the application to be granted.

Challenging the application the respondent submitted that the applicant has failed to adduce good cause and have not accounted for the delay as held in the cases of **Karim Hassan Vs. National Microfinance**

Bank, Misc. Appl. No. 235 of 2017, Vodacom Foundation Vs. Commissioner General TRA, Civil Appl. No. 107/20 of 2017 and Tanga Cement Co. Limited Vs. Jumanne D. Masangwa & Another, Civil Appl. No. 6 of 2001.

That they have even not indicated any irregularities of the award as was held in the cases of **Lyamuya Construction Co. Limited Vs. Board of Registered Trustees of Young Women Christian Association of Tanzania, Civil Appl. No. 2 of 2010 and Chiku Harid Chionda Vs. Getrude Nguge Mtinga as Administratrix of the Late Yohane Claude Dugu, Civil Appl. No. 509/01 of 2018.**

That there are no chances of success in the intended revision.

They thus prayed for the application to be dismissed as granting it will highly prejudicial to the respondent.

There is no dispute that this Court can grant an extension of time as prayed for under Rule 56(1) of the Labour Court Rules, 2007 which provides thus:-

*"Rule 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.”

[Emphasis is mine].

As submitted by the respondent the term sufficient cause has been elaborated in the case of **Tanga Cement Co. Limited Vs. Jumanne D. Masangwa & Another** (supra) to be as follows:-

"What amounts to sufficient cause has not been defined.

*From decided cases **a number of factors have to be***

taken into account, including whether or not the

application has been brought promptly; the

*absence of any or **valid explanation for the delay;***

lack of diligence on the part of the application.”

[Emphasis is mine].

The question to be determined is whether the applicant has adduced sufficient cause to be granted the application as prayed for.

The applicants have stated that they were prosecuting an application for leave of representation so filed this this application as time had lapsed for them to file an application for revision within the requisite time.

As held in the cases of **ACE Distributors (T) Ltd V. Gabriel Kimwaga**, Misc. Appl. No. 537/2018, the delay cannot be said to be due to negligence but applicants efforts in seeking to be heard. So it was in actual fact a technical delay as held in the case of **Christopher Gasper & 5 Others Vs. Tanzania Port Authority (TPA)** (supra) and **Elly Peter Sanya Vs. Esther Nelson**, Civil Appeal No. 151/2018.

I thus grant the application as prayed for. Applicants to file the intended Revision within fourteen (14) days from the date of this Order.

S.A.N. Wambura
JUDGE
17/07/2020

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VERSUS

CEMENT DISTRIBUTORS (E.A) LIMITED RESPONDENT

Date: 17/07/2020

Coram: Hon. S.R. Ding'ohi, Deputy Registrar

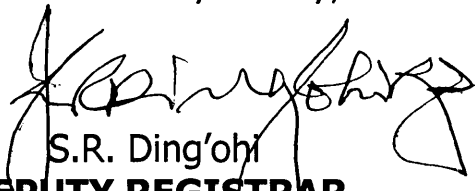
Applicants: Present in person

For Applicants:

Respondent: }
For Respondent: } Absent

CC: Lwiza

COURT: Ruling delivered this 17th day of July, 2020.


S.R. Ding'ohi
DEPUTY REGISTRAR
17/07/2020