

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 218 OF 2019

BETWEEN

MOHAMED ENTERPRISES (T)APPLICANT

VERSUS

MWALIMU R. WASIMBA & 17 OTHERS.....RESPONDENTS

RULING

Date of Last Order: 04/06/2020

Date of Ruling: 14/08/2020

Aboud, J

This is an application for extension of time to file an application for revision against the award and proceeding of the Commission for Mediation and Arbitration (here in CMA) delivered on 23/01/2012 by Hon. Msigwa, Arbitrator in labour dispute No. KZ/U.10/MG/2010/9.

The application was argued by way of written submission. Both parties were represented whereby Mr. Mwambene Adam A.E, Learned Counsel was for the applicant and Michael D.

Mgombozi; Personal Representative appeared for the respondent.

Arguing in support of the application Mr. Mwambene submitted that, applicant's reasons for the delay are reflected at paragraphs 3.7, 3.8, 3.9, 3.10 and 3.11 of his affidavit. He stated that, the fact that the Applicant delayed has not at any rate prompted by any negligence act on his part, but rather due to circumstances beyond his control. Mr. Mwambene added that what happened can be termed as technical delay. He said that, all through Applicant has been in Court timely from the beginning when he first filed Revision No. 28 of 2012, which was struck out with leave to re-file on the 18th July 2013 on account of improper jurat of attestation. He added that after Revision No. 28/2012 was struck out with seven (7) days leave to re-file, before Hon. Wambura J. on 18/7/2013, immediately on 25/07/2013 he filed Revision No. 167 of 2013 which was also struck out without leave to re-file before Hon. Mipawa J. for non citation of enabling Provisions of the law. Thereafter on 31st July 2014, he instituted Misc Labour Application No. 51/2015 for extension of time which was granted on 21st

December 2015. Then the Applicant filed Revision No. 247/2016 which was again struck out with 14 days leave to re-file. He then filed Revision No.218/2018 which again was struck out without leave to refile on 3rd April 2019. Thereafter the applicant filed the present application.

Mr. Mwambene cited the case of **Fortunatus Masha versus William Shija & Another** [1997] TLR page 154 Civil Application No. 6 of 1997. Hon. Mfalila JA held that:-

“A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time, but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case the applicant had acted immediately after pronouncement of the ruling of the court striking out the first appeal. In these circumstances the extension of time ought to be granted.”

Mr. Mwambene went on to submit that, the impugned award has serious illegality as the CMA had no jurisdiction to entertain the matter. To support his argument he cited a number of cases which will be considered by this Court. He therefore prayed for the application to be allowed.

Responding to the application Mr. Mgombozi submitted that, there are five issues which need to be determined by this court. The first issue is whether the applicant has shown good cause or grounds for extension of time. Second issue is whether the alleged illegality on the impugned award is apparent on the face of record to warrant grant of a prayer for extension of time. The third issue is whether the Applicant has accounted for each and every delayed date. Forth issue was what are the factors established by case laws for the court to extend time. And the last issue was on whether the applicant has shown sufficient grounds for extension of time as established by case laws.

Mr. Mgombozi submitted that, the court has defined the word sufficient cause in the case of **Tanga Cement Company Limite Vs Jummanne D Masangwa Amos A. Mwalanga,**

Civil Application No. 6 of 2001, so he argued that the applicant has failed to adduce sufficient grounds for extension of time contrary to rule 56 of the Labour Court Rules and section 3 of the Employment and Labour Relations Act No. 6 of 2004. On the second issue he submitted that illegality need to be apparent on the face of record and not one which need adduction and scrutiny of evidence if extension of time is to be granted. To cement this he cited the case of CAT, **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women Christian association of Tanzania**, Civil Application No. 2 of 20109(unreported).

On the third issue he added that the applicant has failed to account for each and every day of delay contrary to the mandatory requirement set out in **Vodacom Foundation vs Commissioner General TRA**, Civil Application No.107/20 of 2017. He said the applicant was dilatory in filling the application as he has been filling incompetent applications in this honorable court. Mr. Mgombozi argued there are no any sufficient reasons adduced as to why the applicants could not file proper application which ended to be struck out. Therefore, he prayed

for the court to dismiss this baseless application because granting of this application will highly prejudice the Respondents herein as the Respondents has been defending multiple applications and there should be end of litigations.

After careful considering the rival submissions of both parties I find the issue to be discussed is whether the Applicant has adduced sufficient cause for the delay.

It is an established principle that the decision to grant or not to grant an application for extension of time depends upon a party seeking for an order to adduce sufficient cause for not doing what ought to have been done within the prescribed time.

What amounts to sufficient cause has been elaborated in a number of cases. In the present case the applicant's reason for delay is that he had been filing incompetent applications which were struck out. I have careful examine the record that shows the impugned award was delivered on 23/01/2012 and immediately after such decision the applicant filed Revision No. 28 of 2012 which was struck out. It is revealed that since

delivery of the impugned award the applicant did not sleep for his rightly. It is unfortunate that he kept on filing incompetent applications before this Court.

In my view the fact that the applicant did not sleep to his right amounts to sufficient reason for the grant of the application at hand. Since delivery of the impugned award he has been knocking the doors of this court to be availed with the right to be heard. Thus, if the application is not granted the applicant will be infringed with the right to be heard with is fundamental to principles of natural justice.

The Court has also considered the fact that, the applicant has raised a point of illegality that the CMA had no jurisdiction to entertain the matter in the impugned award. The reason of illegality in the impugned decision or award has been decided in a number of cases as a sufficient cause for the grant of extension of time. In the case of **Principal Secretary, Ministry of Defence and National Service vs. Devram Valambhia** [1992] T.L.R 182, the court at page 189 observed that:-

“In our view when the point at issue is one alleging illegality of the decision being challenged, the court has a duty, even if it means extending the time for the purpose, to ascertain the point and, if the alleged illegality be established, to take appropriate measures to put the matter and the record right.”

Furthermore, in **Kashinde Machibya vs. Hafidhi Said, Civil Application No. 48 of 2009**, the Court of Appeal had this observation:-

“Bearing in mind that it is now established law in this country that where a point of law involves the illegality of the decision, that by itself constitutes sufficient reason to grant an extension of time.....even if the appellant’s intended appeal is out of time, there is no other option but to grant extension of time.”

Likely in the case of **Kalunga and Company, Advocate Vs. National Bank of Commerce Limited** [2006] T.L.R 235 it was held that:-

“Since the point at issue is one alleging illegality of the decision being challenged i.e. the validity of the High Court’s decision in interpreting a statutory provision and the propriety of a judge raising an issue ‘suo motto’ and making a decision without the parties concerned being heard upon it, sufficient reason has been shown for granting an extension of time to file an application for leave to appeal to the Court of Appeal.”

Also in the Court of Appeal of Tanzania case of **Attorney General Vs. Consolidated Holding Corporation and Another, Civil Application No. 73 of 2015, Dar es Salaam Registry** (unreported) held that:-

“...contentious as to illegality or otherwise of the challenged decision have now been accepted as a good cause for extension of time.”

On the basis of the above discussion I find the applicant advanced good cause to warrant the court to grant the order sought.

In the result the application has merit. The applicant is granted seven (7) days leave to file the intended application which is to be filed on or before 21/08/2020. It has to be noted the court has been very lenient with the applicant but he kept on filing incompetent applications. Thus, this is the last chance granted to the applicant to file his intended revision application.

It is so ordered.


I.D.ABOUD
JUDGE
14/08/2020