IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION

AT DAR ES SALAAAM

MISCELLANEOUS APPLICATION NO. 686 OF 2019

BETWEEN

ABDALLAH CHITANDA & 445 OTHERS..... APPLICANTS

VERSUS

TANZANIA PORTS AUTHORITY..... RESPONDENT

RULING

Date of Last Order: 03/11/2020

Date of Ruling: 30/11/2020

Z.G. Muruke, J.

Applicant filed application of representative suit to be able to file intended revision to challenge CMA decision. Application is supported by an affidavits of Abdallah Chitanda, Festo Mabwai and Janeth Patrin Mfuruki applicants were represent by Pius Ngushi, while respondent had a service of Shija Charles and Salma Kitwana, Learned State Attorney.Supporting the application applicant counsel submitted that applicants herein to filed an application for a representative case in a Labour Revision matter they intend to file in court against the ruling and order of the Commission for Mediation and Arbitration in Labour Dispute No. CMA/DSM/LAB/16/720.

It is clear that the court has the discretionary power to grant an extension of time subject to the condition that it is convinced with a sufficient cause. The applicants in their affidavit have clearly stated the

reasons for delay mainly constituted under the grounds of technicalities due to the fact that all time the applicants were busy in court corridors seeking for justice which they have not archived up to date.

The delay was due to the fact that most of the applications made by the applicants were struck out due to many reasons for example on 22nd day of June, 2018 the application for Revision No. 515 of 2016 was struck out for the reason of incompetency, on 30th day of October, 2018 Revision No. 780 of 2018 was also struck out due to the reason of defective affidavit and notice of application, and Misc application No. 419 of 2019 was also struck out on 31st day of October, 2019.

This application was filed on the 18th day of November 2019, meaning only 18 days after Misc Application No. 419 of 2019 was struck out. It is very apparent that the applicants herein are victims of legal technicalities which made it hard for them to proceed with the matter in time hence the delay was not due to any negligence of the applicants.

It is aptly being held in the case of **FORTUNATUS MASHA Vs. WILLIAM SHIJA AND ANOTHER 1997 TLR 154 (CA)** when the court stated as follows:-

> ***"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 has acted immediately after the pronouncement of the ruling of the court***

striking out the first appeal. In these circumstance an extension of time ought to be granted"

The delay was not due to the negligence as the applicants were at all the time active in court hence their time has been consumed by the court proceedings. In the case of **SAID SAID VS. SAIDI MOHAMED 1989 TLR 206 (HC)** it was held that when there is point of law and facts to be determined then it is a reasonable and sufficient cause for extension of time.

The applicants herein did not sleep on their rights, they acted as promptly as they could manage to bring to the attention of this court as they seek for the extension of time to file the representative suit; strongly believing that their rights have been infringed by the Commission for Mediation and Arbitration and that this application has been brought in good faith all in the pursuit of the intervention of this court so that they could get their justice.

The above facts can also be quoted in the case of **SEBASTIAN NDAULA Vs. GRACE RWAMATA** Civil Appl. No. 4 of 2014 (unreported) (Copy is attached for easy of reference) wheat page 7 his Lordship, Juma J.A (as he then was) cited the case **ROYAL INSURANCE (T) LTD Vs. KIWENGWA STRAND HOTEL** Civil Appeal No. 116 of 2008 where the court held that:-

"*It is trite law that an applicant before the court must satisfy the court that since becoming aware of the fact he is out of time, he acted expeditiously and the application has been brought in good faith"*

The Court of Appeal in the case of **MONICA MYAMAKAE JIGABHA VS. MUGETA BWIRE BHAKOME AND HAWA SALUM** Civil Application No. 487/01 of 2018 (unreported) referring at page 10 the case of **VIP ENGINEERING AND MARKETING LIMITED AND 3 OTHERS VS. CITIBANK TANZANIA LIMITED** Civil Reference No. 6,7 and 8 was cited where it was held that:-

> ***"It is therefore settled law that a claim for illegality of the challenged decision constitutes sufficient reason for extension of time regardless whether or not a reasonable explanation has been given by the applicant under the rule to account the delay"***

Respondents counsels Shija Charles and Salma Kitwana submitted that, the applicants counsel has argued that there is a sufficient cause for the delay warranting this Court to exercise its discretion to grant extension of time. According to the supporting affidavit, the applicants are out of time to file the application for leave of representative suit because their (applicants') previous applications were struck out for being defective and incompetent. Therefore, the counsel has conceded that the previous applications were struck out for being incompetent and defective. Likewise, the applicants admitted in paragraph 4,7 and 10 of the supporting affidavit that Revision Application No. 515 of 2016, Revision No. 396 of 2018, Revision Application No. 780 of 2018 and Misc Application No. 419 of 2019 were struck out for being either defective, incompetent or out of time.

By admitting that the applications were struck out for being incompetent, the applicants and their counsel concede that they were negligent, sloppy, ignorant and lacked diligence in preparation of the aforesaid applications. This is so because incompetency of the applications is a natural result of ignorance, negligence, sloppiness and/ or lack of diligence of the applicants or their advocates in preparation and filing the same. Therefore, the applicants cannot be allowed to benefit from their own wrongs and extension of time cannot be allowed while the delay was caused by the applicants' own ignorance applications. In the case of **Jane Chabruma Vs. NMB PLC**, Misc Application No. 12 of 2017, court insisted that applicants should not be allowed to benefit from their own wrongs and held in verbatim:-

> "The application and appeal was struck out because of the applicant's counsel's self –induced negligence. To the best of my understanding the relief that the applicant is seeking is equitable in nature. Therefore, this court should consider the clean hands Doctrine in determining the merit of the applicant's flawed applications. The clean hands Doctrine precludes a party who is seeking equitable relief from taking advantages of his/her own wrongs."

It is also a settled law in our jurisdiction that an application for extension of time cannot be granted where the applicant(s) exhibits sloppiness, negligence ignorance or lack of diligence in prosecuting their case. In the case of **Lyamuya Construction Ltd Vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (Lyamuya's Case) unreported.** The Court of Appeal at page 6 held and we quote:-

As a matter of general principle, it is in the discretion of the court to grant extension of time. But that direction is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated:-

(a) The applicant must account for all the period of delay

(b) The delay should not be inordinate

(c) **The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take..."**

[Emphasis supplied]

The supporting affidavit does not account for nor do the applicants given explanation for the following periods namely, the period of seven(7) days from 30th October, 2018 when Revision No. 396 of 2018 was struck out to 6th November, 2018 when Revision No. 780 was filed, the period of sixty two (62) days starting from 14th June, 2019 when Revision No. 780 was struck out to 16th August, 2019 when Misc. Labour Application No. 419 was filed, and the period of eighteen (18) days from 31st October, 2019 when Misc Labour Application No. 419 was struck out to 18th November, 2019 when the present application was field. Therefore, a period of the total eighty seven (87) days has not been accounted for nor has any explanation been rendered by the applicants in the supporting affidavit.

It is even worse that the applicants contravened this court order (Hon. Muruke,J) dated 31st October 2019 which required the applicants to refile a competent application within fourteen (14) days and thus they

were required to have filed the present application on or before 14th November, 2019 but they contravened the Court's order and filed the present application on 18th November, 2019 four days past the period prescribed by the Court. It was compulsory for the applicants to an explanation why they even contravened this particular Court's order. It is very deplorable the applicants did not bother to account for all those days. The gaps making the aggregate of eighty seven (87) days is a period of actual delay and it cannot be termed as a technical delay envisaged in the case of **Fortunatus Masha Vs. William Shija and Another**, [1997] 154 (CA) and the applicants were required to account for all those days.

Failure to account for each day of the delay makes the application liable to be dismissed Likewise, failure to account for the gaps between striking out one application and filing another leads to dismissal of the application for extension of time. In the case of **Sebastian Ndaula Vs. Grace Rwamafa (Legal Personal Representative of Joshwa Rwamafa)** Civil Application No. 4 of 2014 (unreported) where the Court of Appeal reiterated the need of accounting for each day of the delay and held at page 8 thus:-

> "The position of this court has consistently been to the effect in an application for extension of time, the applicant has to account for every day of the delay."

In his closing remarks, the applicant's counsel has quoted the Court of Appeal holding in **VIP Engineering and Marketing Limited and 3 Others Vs. Citibank Tanzania Limited**, Civil Reference No. 6.7 and 8 to the effect that illegality constitutes a sufficient cause for extension of time.

By supplying this quote, the counsel for the applicants is trying to tell this court, albeit indirectly, that the decision sought to be challenged is tainted with illegality and thus this court should grant the application on that ground.

The question of illegality which has been raised by the counsel indirectly in his submission is to be ignored because there is no a single paragraph in the affidavit that alleges illegality in the CMA's proceedings and Award nor does the affidavit set out the particulars of the alleged illegality. Since the affidavit does not allege illegality as a ground for extension of time, this court cannot entertain it is now as it is a mere statement from the bar. It is simply an afterthought. This practice of presenting mere statements from the bar as grounds for extension of time during the hearing was discouraged in the case of **Tanzania Broadcasting Corporation (tbc) Vs. John Chidundo Mbele,** Misc. Application No. 146 of 2013. The court in discouraging that practice held that:-

> " To the contrary, facts and issues raised and argued by the applicant at the hearing as grounds 2 and 3, were not part of the supporting affidavit. This is clearly verifiable from those grounds quoted herein above.
>
> The above requirement is not an unnecessary legalize. It ensure that grounds relied on by the applicants are presented by affidavit, which in essence is evidence presented as a sworn or affirmed written statement. Such evidence presented as a sworn or affirmed written statement. Such evidence is properly countered by the respondent, again through a sworn statement termed counter affidavit.

> For that reason, it is improper in law and practice, to allow a part to an application to present such evidence, otherwise required to be sworn, in a form of a mere statement from the bar. For that reason, I dismiss the 2 not included in the supporting affidavit but argued at the hearing."

Illegality can only be a ground for extension of time only if it raises a point of law of sufficient importance and such illegality must also be apparent on the face of the record, such as the question of jurisdiction. The argument finds support in **Lyamuya's case (supra)** where the Court of Appeal held at page 9 and we quote:-

> **".... The court meant to draw a general rule that every applicant who demonstrate that his intended appeal raises points of law should as of right, be granted extension of time if he applies for one. The court there emphasized that such point of law, must be that "of sufficient importance" and I would add that it must also be apparent on the fact of the records, such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process.**

The application is liable to be dismissed for want of sufficient cause for the delay and for the failure by the applicants to account for each day of the delay. Time limitation is very serious and can only be departed from and extended where there are good reasons but when there are no good reasons. The court should not grant the same even at the risk of injustice and hardship to the applicant. this was so held in **Meis Industries Limited and two others Vs. Twiga Bankcorp, Misc Commercial**

Case No. 243 of 2015 where the court quoted with approval the case of Daphne Parry Vs. Murray Alexander Carson [1963] 1 EA 546 and held:

> **"Though the court should not doubt give a liberal interpretation to the words 'sufficient cause' its interpretation must be in accordance with judicial principles. If the appellant has a good case on the merits but is out of time and has no valid excuse for the delay, the court must guard itself against the danger of being led away of sympathy, and the appeal should be dismissed as time-barred, even at the risk of injustice and hardship to the appellant."**

Respondent counsel then requested this court to dismiss application for lack of sufficient cause.

Having heard both parties submission, issue before me is whether sufficient cause has been shown to allow the application. Both parties admit that, applicants have been in court corridors trying to challenge CMA decision since 2016 when they filed first revision, number 515 of 2016 that was struck out for being incompetent. It was then followed with several incompetent applications to the date of filing present application. What applicant are strugling for all this time is right to be heard in their intended revision on allegations of illegality in the CMA decision sought to be challenged. I appreciate reading respondent submission reach of authorities and legal principals. However Applicants are more than 445, right to be heard to 446 applicants is basic and very fundamental.

Right to be heard is one of fundamental principals of natural justice, failure of which vitiate proceedings. Rule of natural justice states that no man should be condemned unheard and, indeed both sides should be heard unless one side chooses not to. **It is a basic law that, no one should be condemned to a judgment passed against him without** being afforded a chance of being heard. The right to be heard is a value right and it would offend all notions of justice if the rights of a part were to be prejudiced or affected without the party being afforded an opportunity to be heard.

To the best of my understanding, **the Principles** of natural justice should always be dispensed by the court, that is both parties must be heard on the application before a final decision. Failing which there is miscarriage of justice as it is wrong for the judge to impose an order on the parties and such order cannot be allowed to stand. **Implicit** in the concept of fair adjudication lie cardinal principles namely that no man shall be condemned unheard. Principles of natural justice must be observed by the court save where their application is excluded expressly or by necessary implication. It is un-procedural for a court to give judgment against the defendant without giving him an opportunity of being heard. **Every judicial or quasi-judicial tribunal must apply the fundamental principles of natural justice and natural justice will not allow a person to be jeopardized in his person or pocket without giving him an opportunity of appearing and putting forward his case.** The issue of denial of the right to a hearing is a point

of law which underline the proceedings the effect of which is to render a proceeding a nullity.

In the case of Ridge Vs. Baldwin [1963] 2 All ER 66, it was insisted that the consequence of the failure to observe the rules of natural justice is to render the decision void and not voidable. Official of the court must comply with the rules of natural justice when exercising judicial functions. Right to be heard was insisted in the case of **Kijakazi Mbegu and five others Vs. Ramadhani Mbegu** [1999] TLR 174.

Application granted. Intended revision to be filed within 30 days from today. I believer, applicant will make sure that they file competent application for revision, otherwise they will create chaos on entire admission of justice.

Z.G.Muruke

JUDGE

30/11/2020

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TANZANIA PORTS AUTHORITY ..... RESPONDENT

Date: 30/11/2020

Coram: Hon. S.R. Ding'ohi, DR.

Applicants:
For Applicants: Mr. Pius Ngosi, Advocate

Respondent:
For Respondent: Mr. Shija Charles, SA & Salma Kitwana, SA

CC: Halima

Court: Ruling delivered this 30th day of November, 2020.

S.R. Ding'ohi
DEPUTY REGISTRAR
30/11/2020