

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

MISCELLANEOUS LABOUR APPLICATION NO. 47 OF 2022

*(From the award of the Commission for Mediation & Arbitration of DSM at Kinondoni)
(K. Mbeyale: Arbitrator) Dated 24th December, 2021 in Labour Dispute
No. CMA/DSM/KIN/R. 445/19/185)*

BETWEEN

STANBIC BANK TANZANIA LIMITED.....APPLICANT

VERSUS

GODFREY CHING'ALI.....RESPONDENT

RULING

31st May 2022 & 13th June 2022

K. T. R. Mteule, J.

This is an application seeking for extension of time to file an application for revision of the CMA decision in Reference No. CMA/DSM/KIN/445/19/185 dated 24th December 2021. The instant application is supported by an affidavit of Lilian Gawile, the Legal Manager of the Applicant, who deponed the facts comprising the reasons for the delay. According to the affidavit the delay was due to her sickness. It is deponed in the affidavit that the Applicant felt sick during the time when the revision ought to be timely filed. That due to the aforesaid sickness the Applicant failed to instruct CRB AFRICA LEGAL so as to file revision application on time.

In opposing the application, the counter affidavit of Mr. Edson Kilatu respondent's Counsel was filed where the applicant's facts were disputed.

The application was heard by a way of oral submissions where the applicant was represented by Mr. Albert Lema, Advocate while the Respondent was represented by Ms. Evodia Beyanga, Advocate.

In his submissions, Mr. Lema having reiterated what is stated in the affidavit, proceeded to submit that the deponent of the affidavit being the Applicant's legal manager and adviser of dispute resolution with responsibilities to issue legal instruction for the applicant, felt sick from 26/01/2022 with high temperature. He referred to paragraph 5 of the affidavit. That on 28/01/2022 when he was supposed to issue instruction of filing the matter, the Legal Manager could not be on work as he attended Tumbi Hospital Kibaha where he was found with Malaria. Mr. Lema referred to annexure CRB 2a of the affidavit which is a medical report from Tumbi Hospital. According to the medical report, she was found to have severe anemia due to severe malaria where she was advised to rest for a week and on 08/02/2022 she went back for checkup when she was found to be fine as per Annexure CRB 2 and on 10/02/2022 she acted promptly by instructing the applicant to prepare this application for extension of time which was prepared on the same date on 10/02/2022 and filed online.

Mr. Lema advanced the sickness as the ground of delay to justify the granting of extension of time. He cited different cases including the case of **Emmanuel R. Maira vs. DED Bunda District Council**, Civil Appl. No. 66 of 2010, Court of Appeal of Tanzania, at Dar es Salaam, (unreported). On that basis Mr. Lema is of the view that the applicant has a reasonable cause for being granted extension of time and thus prayed for the extension of time to be granted.

Disputing the application Ms. Beyanga submitted that the reasons adduced by the applicant concerning sickness are not sufficient to justify the delay. She did not dispute that on 26/01/2022 the applicant felt sick and arrived at hospital at 10:42 in the morning. He is of the view that, in normal expectation, the Applicant's office might have been informed about his sickness but wondered why the office failed to issue instruction timely being an office composed many staff other than the Applicant.

Referring to paragraph 5 of the annexure CRB 2a Ms. Beyanga disputed the admission of Ms. Lilian Gawile as the report does not show admission or doctor's recommendation to rest for a week.

Ms. Beyanga submitted that the applicant's Legal Manager is cheating in court on what he deponent at paragraph 5 of his affidavit, therefore the court should consider the affidavit as containing lies. Supporting her stand she cited the case of **Jaliya Felix Rutaihwa vs. Kalokora Bweshia & Others**, Civil Appl. No. 392/01 of 2020, at page 12, where it was stated that any affidavit which is tainted by untruth statement should not relied upon.

She is of the view that the deponent has shown grave negligence by not being accountable on each day of delay. To support this contention, she cited the case of **Magnet Construction Limited vs. Bruce Wallace Jones**, Civil Appeal No. 459 of 2020, Court of Appeal, at Musoma, (unreported). Ms. Beyanga challenged the relevance of the case of **Emmanuel's case (supra)** cited by the Counsel for the Applicant arguing that the said case involved individual person while the instant case involved a Company which

could use any other staff to act timely. He thus prayed for the application to be dismissed for the reason that the applicant has not shown sufficient grounds for extension of time.

In rejoinder the applicant reiterated his submission in chief and emphasized that page 2 of annexure CRB 2 shows that the medical investigation was done on the same date and that the document is titled "medical continuation" which means that Lilian Gawile was still in hospital till 08th February 2022.

Having considered parties submissions, this Court finds one main issue for determination which is **whether the applicants adduced good reason for this Court to grant extension of time to file revision application against the ruling of the CMA in Labour Dispute No. CMA/DSM/KIN/445/19/185.**

The Law guiding the timing for filing of Revision Applications is **Section 91 (1) of the Employment and Labour Relations Act, Cap. 366 of 2019 R.E.** The section provides:-

"91. -(1) Any party to an arbitration award made under section 88 (10) who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for a decision to set aside the arbitration award:-

(a) within six weeks of the date that the award was served on the applicant unless the alleged defect involves improper procurement;"

The above provision provides time limit of 42 days in filing revision application in labour matters. It is an established general principle that, it is the discretion of the Court to grant an application for extension of time upon a good cause shown, [See. **Tanga Cement Company vs. Jumanne D. Masangwa and Another**, Civil Application no. 6 of 2001, Court of Appeal of Tanzania, (Unreported); and **Praygod Mbaga V. Government of Kenya Criminal Investigation 5 Department and Another**, Civil Reference No. 4 of 2019, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported)]. Again, the word reasonable cause or good cause has to be adduced by a party seeking extension of time in order to move the court to exercise its discretion. The good cause must be determined by reference to all the circumstances of each particular case. 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, the Court of Appeal of Tanzania, at Dar es Salaam, (Unreported), the Court developed five principles to guide determination of what amounts to good cause for the application for extension of time. These grounds according to Lyamuya's case are as follows:-

1. That the applicant must account for all the period of delay,
2. The delay should not be inordinate,
3. The applicant must show diligence,
4. Other reasons, such as the existence of a point of law of sufficient importance not apathy negligence or sloppiness in the prosecution of the action that he intends to take and lastly,

5. If the court feels that there are other sufficient grounds such as the illegality of the decision sought to be challenged.

From the above authority for the applicant to enjoy Court's discretionary power the Court will be guided by the above-mentioned criteria in granting extension of time.

It is not in dispute that the CMA award was issued on 24th December 2021 while this application was filed electronically on 11th February 2022 as per annexure CRB 1. Therefore, according to Section 91 (1) (a) (b), of Cap 366, the applicant ought to have filed her application on 04th February 2022 when 42 days lapsed but instead, it was filed on 11th February 2022 that means there was a delay of seven days.

Among the reasons given by the applicant in this delay is sickness of the Legal Manager who has a duty to advise the applicant in legal matters including this application. This assertion was supported by annexure CRB 2 (medical sheet) which shows that till 08th February 2022 the deponent who is the legal manager was attending medical treatment. In line with the Court of Appeal decision cited by the Mr. Lema in **Emmanuel R. Maira Vs. DED Bunda District Council** *supra*, sickness is a good cause to justify failure to timely take court action.

Having found that the reasons of sickness are sufficient to justify delay, the question which remains is whether there was lack of diligence and that the delay was inordinate. It is not disputed that the Application was filed 11th February 2022 which means within three days from the legal manager's recovery from the sickness. By managing to file the application within 3 days from the sickness

recovery, it means she acted within a reasonable time to instruct the counsel and have this Application prepared and filed. This do not signal any lack of diligence on the part of the applicant and that the 3 days do not seem to be inordinate. By taking into consideration all these, I am of the view that the applicant's delay of 7 days in total was as well not in ordinate as per **LYAMUYA's** case (supra) and that the Applicant acted within a reasonable time without negligence.

The Respondent questioned as to why the Applicant being a big company failed to instruct another staff to file the matter. In such circumstances where the Legal Manager, Lilian Gawile was sick, in a reasonable apprehension, it is a bit difficult for any employer to take up a professional duty during the period of sickness. It is not even expected for the applicant to employ another person in that short time to advice on sensitive matter regarding legal profession and on a matter which can cause adverse impact to the organization. I therefore find the respondent's argument at this aspect to have no merit.

From the foregoing, having found that sickness is a reasonable cause of delay and that there has been no negligence and that no inordinate delay the issue as to **whether the applicants adduced good reason for this Court to grant extension of time to file revision application against the ruling of the CMA in Labour Dispute No. CMA/DSM/KIN/445/19/185** is answered affirmatively as the applicant has adduced reasonable cause for the delay.

In the circumstances, the Application is allowed. Time is extended for the Applicant to file revision application within fourteen (14) days from the date of this decision. No order as to costs. It is so ordered.

Dated at Dar es Salaam this 13th day of June, 2022.




KATARINA REVOCATI MTEULE

JUDGE

13/06/2022

Labour Court TZ.