

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

MISCELLANEOUS APPLICATION NO. 464 OF 2021

*(Arising from the decision of the Commission for Mediation and Arbitration of DSM
dated 30th Day of January 2014 in Labour Dispute No. CMA/DSM/MIS/08/12)*

SAMWEL R. SEMWETA AND 21 OTHERS APPLICANTS

VERSUS

TANZANIA FEDERATION COOPERATIVE LTD..... RESPONDENT

RULING

K. T. R. MTEULE, J

26th September 2022 & 29th September 2022

This is an application for extension of time to allow the applicants to lodge an application for revision against the decision of the Commission for Mediation and Arbitration of Dar es Salaam (CMA) in **Labour Dispute No. CMA/DSM/MIS/08/12**, dated 30th Day of January 2014. In the CMA, the applicant's dispute was dismissed on 30/01/2014 for reason of being res judicata. Being dissatisfied with the dismissal, the applicants want to challenge the CMA decision by a way of revision, but they are time barred.

It appears that the applicants had their first application for revision against the same CMA award which had registration No. 267 of 2015

which was struck out by Hon. Mashaka, J (as she then was) on 31st October 2016. According to the reply to the counter affidavit, the said application was timely filed. After the striking out of that application, the applicants were allowed to correct the errors which caused the striking out order, but this could not be done timely. From there they started seeking for extension of time to be able to lodge their revision.

Prior to this application, several other applications have been paraded but most of them have been failing due to technical errors. The reasons advanced by the applicants to justify the application is the existence of the other several applications which have been pending in court which hindered timely lodging of the envisaged revision.

The application was heard by a way of written submissions. The Applicants are represented by Mr. Daudi Maziku Maduki while Mr. Silvester Shayo, Advocate from Silvester Shayo and Co. Advocates appeared for the respondent.

In his submissions Mr. Maduki addressed the issue as to **whether the Applicants demonstrated sufficient cause for delay in preferring their Application for Revision**. He is of the view that the applicants have delayed the matter for 3520 days and in all these days, they were

in court processes finding their way to have their revision lodged, the exercise which has not yet succeeded due to technical errors.

Mr. Maduki submitted that the current application came after the Previous **Miscellaneous application No. 91 of 2016** being dismissed by the court on **12th July 2019** due to their non- appearance in the Court due to the confusion caused by the BRN schedule in the matter without their knowledge. According to Mr. Maduki, the Applicants were aware with the date of 26/07/2019 which was fixed by the Court but it changed without their knowledge.

It is further submission by Mr. Maduki that after the dismissal, the applicants filed another Application for restoration which was registered as **Application No. 522 of 2020** but it was struck out by the Court on **21/08/2021** for having been filed without leave of the Court for Samwel Semweta to represent the others. He stated that the leave was later granted by the Court on **16/09/2021** in the **Miscellaneous Application No. 171 of 2021** Before Honourable Mganga-J.

It is the submission by Mr. Maduki that the applicants' delay was not by negligence but due to the legal proceedings in pursuing their Application in this Court which in his view is a reasonable cause for this court to enlarge a time as per **Rule 56 (3) of the Labour court Rules GN no.**

107 of 2007 which provides that "the Court may on good cause shown condone non-compliance with the period prescribed by the Court.

The Applicants prayed for this Court to grant the extension of time so as to file their revision challenging the said decision of the CMA dated **30/01/2014**.

In her submission, the respondent insisted on the need to account each day of delay. The respondent's counsel considered the striking out of the applicants' several applications as negligence which cannot be pardoned by condoning the ignorance of law which in law cannot constitute excuse.

Mr. Maduki filed rejoinder. I will as well take into account the contents of the rejoinder in this ruling.

Having gone through the parties' submissions, I am inclined to consider one issue as to **whether the applicants have established sufficient grounds to warrant grant of extension of time to lodge their application for revision.**

From the parties' arguments and sworn statements, it is not disputed that the applicants timely lodged their first application for revision bearing **Registration, Revision No. 267 of 2015** which was struck out due to legal technicalities as submitted in the applicant's rejoinder. It

appears that from there, applicants have been always having a motion in court. The respondent blamed the existence of these several applications asserting that they are due to applicants' negligence.

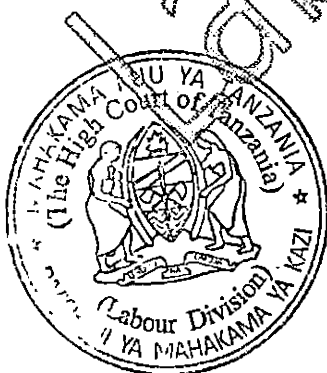
I agree with the respondent that an applicant needs to account for the days of delay to justify grant of extension of time. This principle is contained in various jurisprudence of the court including the case of **Lyamuya Construction Limited versus Board of Registered Trustee of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010**. In this case amongst the pre-requisites to be established for the court to grant extension of time is an account of all the days of delay. The Principle in **Lyamuya construction** is relevant in this matter. I have noted that, the applicants have demonstrated their continuous existence in court to prosecute their series of applications. Although the respondent calls this as negligence, it is an established principle of law that this type of negligence due to technical errors is not punishable by refusal to extend time. The striking out of the defective applications is the sufficient sanction for committing the technical errors in applications. All these applications were struck out, the same mistake cannot be used once again to deny extension of time. (See Bank M (T) Limited versus Enock

Mwakyusa, Civil Application No. 520/18 of 2017, Court of Appeal of Tanzania, unreported). This entire scenario is termed as technical delay.

It can therefore be said that the delay of the applicants to lodge their application for revision is due to technical delay which is excusable to condone such a delay. From the foregoing, the issue as to whether there is a justification to grant extension of time in lodging the application for revision is answered affirmatively.

In the upshot, this application is granted, and the applicants are allowed to lodge their application for revision in respect of **Labour Dispute No. CMA/DSM/MIS/08/12** from Commission for Mediation and Arbitration of Dar es Salaam. The said revision application should be lodged within 21 days from the date of this decision. No order as to costs. It is so ordered.

Dated at Dar es salaam this 29th Day of September 2022.



AS

KATARINA REVOCATI MTEULE

JUDGE

29/09/2022