

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

MISCELLANEOUS LABOUR APPLICATION NO. 193 OF 2023

(Arising from the award of the Commission for Mediation & Arbitration of DSM at Kinondoni Y. Ng'washi: Arbitrator) Dated 02nd March, 2023 in Labour Dispute No. CMA/DSM/KIN/428/2020/297)

ZUHURA SULEIMAN KINYUMBI.....APPLICANT

VERSUS

LONAGRO TANZANIA LTD.....RESPONDENT

RULING

Date Of Last Order: 10TH Oct. 2023

Date of ruling: 31st Oct. 2023

OPIYO, J.

This ruling is in respect of application for extension of time to file Revision Application against the decision of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/DSM/KIN/428/2020/297.

The Application is supported by the affidavit sworn by Ms. Zuhura Suleiman Kinyumbi the applicant. Opposing the application, the

counter affidavit sworn by Ms. Beatrice Yuda Maswaga respondent's Principal Officer was filed.

At the hearing of the application, both parties managed to adhere to the Court schedule for filing the submissions by filing their respective submissions in time. The applicant appeared in person while the respondent was represented by Mr. Steven Jamson Shitindi, Advocates.

Arguing in support of the application the applicant submitted that it is a trite law that the Court can grant an application for extension of time upon a good cause shown as provided under Rule 56 (1) of Labour Court Rules (G.N No. 106 of 2007). That, her delay her delay to file for an Application for Revision was caused by time where she was busy in Court attending to Labour Revision Number 86 of 2023 which was eventually struck out for being accompanied by a defective affidavit and of which to be specific had an irrelevant and unverified paragraph which did not occasion any miscarriage of justice to the Respondent. She stated that, this circumstance is known as the principle of technical delay which was established in the case of **Fortunatus Masha v. William Shija & Another [19971 TLR 154]** where it stated that the time when the applicant was busy in Court is

considered to be covered by the principle of technical delay which is a good ground warranting extension of time.

31st Ms. Zuhura averred further that, having scrutinized the reasons for delay to file an application for revision by the applicant, it is now worthwhile to go through Rule 56 (3) of Labour Court Rules (G.N No. 106 of 2007) under which the present Application is brought. She argued that, this provision calls for any party to a suit who wants to move this Honorable Court to exercise its discretion to extend time to show good cause for his delay. She further insisted that this Court consider her foregoing reasons, technical delay, as good cause and proceed to grant the application so that both parties can be heard on merits to ensure justice is done.

It was also argued by Ms. Zuhura that, there is serious illegality in the impugned award that amounts to sufficient reasons to warrant this Honorable Court to exercise its discretion to extend time since the main revision application will be filed only once the application at hand is granted. She said that, there are serious illegalities and unfairness in the Commission's award which the Applicant intends to raise in the intended Application for Revision which in the interest of justice and due process of law requires that the Applicant be heard

on those illegalities resulting from unfair termination in relation to CMA award. In clarifying the principle of illegality which stand as a ground of enlarging time, she cited the case of **Principal Secretary, Ministry of Defense and National Service v. Devram Valambhia**, 119921 T.L.R 185 at page 185 and the case of **Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania** (Civil Application 2 of 2010) 120111 TZCA 4 (3 October 2011) (Unreported), the same being cited with approval in Revision Application No. 23 of 2021 between **Buberwa John vs Viettel Tz PLC**, High Court of Tanzania, Labour Division, at Dar es salaam, (unreported) in which the Court set the principles in determination of the application for extending time.

She argued that, the applicant herein complied with all the principles developed by Court of Appeal whereas the Applicant accounted for all the period of delay as stated in her affidavit in support of the application, further delays of 8 days as per the date of signature of the registry, and as pointed out on paragraph 10 of the counter affidavit were the time taken for processing the application until its admission. That, due to internet and technological concerns the

Application was to be filed online waiting for admission, for which she was only notified after the same was signed and ready to be served upon the Respondent. She contended that such delay was not inordinate and the applicant has shown diligence, and not apathy, negligence or sloppiness in the prosecution of the action that she intended to take. She therefore prayed that, this Honorable Court considers this case on its own circumstance, by considering the principles developed by the Court in exercising its discretion to extend time as prayed for in this application.

Opposing the application on the first ground, Mr. Shitindi argued that, it is an established principle that parties are bound by their pleadings. That, the applicant has delayed for almost 8 days without any good cause and has failed to plead in her affidavit and account for each single day of delay and the reason for the delay thereto, as was discussed in the case of **Patrick Itule Vs Diamond Trust Bank (T) Limited**, Civil Application No. 326/18 of 2021 (Unreported). Being guided by the above authority, he is of the view that, the applicant completely failed to account for each day of delay in his affidavit. Therefore, he has failed to show good cause warranting an extension

of time. He added that, the circumstances of the said case are the same as the case at hand.

Regarding the issue of technical delay, Mr. Shitindi submitted that, the applicant was negligent on the reason that she failed to comply with the court order to file her written submissions in chief on time and as ordered by this court. He stated that the applicant filed her submission in chief out of time and without leave of the court and again the affidavit in support of her revision was strongly doubted for want of a verification clause.

Challenging the case of *Fortunatus Masha v. William Shija & Another* (1997) TLR 154. Mr. Shitindi submitted that, the issue of technical delay does not exempt the applicant from a legal duty to be accountable for each day of delay for all 8 days she delayed. According to him technical delay cannot be used as bush of being negligent by going to court as parties wish as held in the case of **Mtengeti Mohamed Versus Blandina Macha, Civil Application No.344/17 Of 2022 (CAT) (Unreported).**

On second ground regarding illegality as a good cause to warrant extension of time, Mr. Shitindi submitted that, the applicant has failed

to state or point out specifically which illegality he refers to as it is neither stated in her affidavit nor in her submission in chief. He added that, legal issues cannot be regarded as illegalities on the face of record because they can only be established by long drawn arguments.

Mr. Shitindi continued to state that, the illegality is a sufficient cause for the extension only if it meets the following conditions; one, such illegality must be easily traceable on the face of the judgement sought to be challenged. Two, such illegality should not require a long drawn argument or search process to unearth. As was discussed in the case of **Wilson Sirikwa v. Mikael Mollel, Civil Application No.544/02 of 2021 (CAT) Page 11 (unreported)**.

He added that, even if this court agrees that there is an illegality, illegality by itself is not enough to warrant the extension of time because the applicant is also duty-bound to account for each day of delay. Illegality cannot be used as a shield to her negligence, as law aid vigilant and not negligent parties. He stated that, for applicant who delayed for 8 days (from 23 June 2023 to 4 July 2023) she nowhere in her affidavit accounted for each day of delay. In explaining the principle of being accountable, he cited the case of

Mtengeti Mohamed Versus Blandina Macha, Civil Application No.344/17 of 2022 (CAT) (Unreported). Further that, citing the case of **principal secretary, ministry of defense and national service vs Devram Valambhia**, (1992) T.L.R 185 and the case of **Lyamuya construction co. ltd** by the applicant is in the respondent's favor because the applicant has not met any of the conditions stated thereto.

Mr. Shitindi agreed that, this court has discretion to extend time prescribed by the rules, but such discretion must be exercised judiciously. That, the respondent stated in her counter affidavit (paragraph 12) that this application is prejudicial to the respondent as he is barred from enjoying the fruits of the judgment. So, justice is not and cannot be only when the applicant wins the case, but justice is seen also when the applicant loose the case and the respondent wins the case. He challenged relevancy of the case of **Tanga Cement Company (supra)** on the reason that is not in applicants favor. He further invites this honorable court to excise its discretion judicially according to the legal reasoning and principles. He thus, prayed for the application to be dismissed.

Having heard and considered the submissions of the rival sides, it is now a turn of this court to determine as to whether the applicant has adduced sufficient reasons for this Court to enlarge time so as to file application for revision.

Time limit for filing a Revision Application is well provided under Section 91 (1) of the Employment and Labour Relations Act, Cap. 366 RE 2019 which allows any party to an arbitration award who alleges a defect in any arbitration proceedings under the auspices of the Commission to prefer its revision to the Labour Court for an award to be set aside within six weeks of the date that the award was served on the applicant. From this provision, the counting of the time needs to commence from the date when the Applicant was served with the impugned award.

The applicant was late to react to her dissatisfaction with the award. She advances two grounds to persuade this court to grant her desire to file the desired revision application out of time. One is technical delay in which she claimed that her first application for revision was filed within a time, but was struck out for being defective. That, to show vigilance she filed this application just 8 days after the struck out, thus her delay is not inordinate. She therefore argued that, since

the delay was not inordinate and for the interest of justice, she believes she qualified to be granted her prayer for extension of time.

On other hand the respondent maintained that there was negligence on the part of the applicant by delaying for 8 days. He further asserted that the applicant failed to account for each day of delay.

In addressing the disputed question, I find worth to consider the record of this application. The record available reveals that, the first application, Revision No. 86 of 2023 was indeed filed within time. It was struck out after the time to file fresh one within time elapsed. The issue is whether this constitutes technical delay? The principle governing technical delay has been expounded in different cases including the case of **John Harld Christer Abramson v. Exim Bank (T) Ltd & 3 others, (supra)**. It was held that:-

*"I have with greatest care gone through the record of the case and the submissions made by the two learned counsel. There is no doubt that prior to this application, the applicant was in this Court pursuing Civil Revision No. 49/16 of 2016 which was struck out for reason that the Court was moved under wrong provision and that **upon being struck out on that technical delay the applicant acted promptly within two weeks in bringing this present application.** Since the applicant was*

*not idle but all along have been in this Court pursuing an incompetent application, **that by itself constitutes good cause.** See Robert Schelten V. Balden Norataian Vaima and 2 Others, Civil Application No.112 of 2016 (unreported)."*

The above authority especially bolded portions, reflect what transpired in instant application. Since it is undisputed that the first application was filed within time and the applicant acted promptly in filing the present application on 4th July 2023 after Revision No. 86 of 2023 was struck out on 23rd June 2023. That means within eight days, the applicant managed to lodge the present application. That was indeed a technical delay accompanied with prompt proper action of filing fresh application.

As pointed out herein above, I am convinced that the reason of this Court to grant extension of time will not only be on technical delay, but also for applicant's diligence in pursuing her right after the previous application was struck out. Therefore, respondent's allegation regarding negligence and inordinate delay lacks legal stance.

In such circumstances, as the first reason warrantee extension of time then I find no need deal with the remaining ground. I proceed

to grant the application. The applicant is to file her intended application within 14 days from the date of this order. Each party shall bear their own costs, being a labour matter.



A handwritten signature in blue ink, appearing to read 'M. P. Opiyo', written over a light blue rectangular stamp.

M. P. OPIYO,
JUDGE
31/10/2023