

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM
MISCELLANEOUS APPLICATION NO. 27567 OF 2023

*(Arising from a Award issued on 25/08/2023 by Hon. Igogo, M, arbitrator, in Labour dispute No.
CMA/ DSM/ILA/880/19 at Ilala)*

WEMA MTENGWA..... APPLICANT

VERSUS

TANZANIA RAILWAYS CORPORAION.....1ST RESPONDENT

MWANASHERIA MKUU WA SERIKALI.....2ND RESPONDENT

RULING

*Date of last Order: 22/02/2024
Date of Judgment: 26/02/2024*

B.E.K. Mganga, J.

On 13th December 2023, Wema Mtengwa, the abovenamed applicant filed this application seeking the court to extend time within which to file an application for Revision to revise an award issued by the Commission for Mediation and Arbitration(CMA) issued on 25th August 2023. In support of the application, applicant filed his affidavit in which he stated *inter-alia* that, he filed Revision No. 226 of 2023 while within time but the same was struck out on 07th November 2023 by because the application lacked pagination hence violated the provision of Rule

46(1),(2) and (3) of the Labour Court Rules, GN. No. 106 of 2007. He stated further that, he thereafter filed Miscellaneous Application No. 25697 of 2023 was struck out on 04th December 2023 for failure to attach the Award that was issued by CMA. Applicant also deponed that the delay is technical.

On the other hand, the respondents filed the Counter Affidavit affirmed by Hamimu Nkoleye, State Attorney. In the said counter affidavit, the deponent deponed that applicant filed Revision No. 236 of 2023 within time and that the said Revision application was struck out on 7th November 2023. It was further deponed in the counter affidavit that, after the said revision No. 236 of 2023 was struck out, 13 days thereafter, applicant filed Miscellaneous Application No. 25697 of 2023. It was also deponed that the said Revision No. 236 of 2023 and Miscellaneous Application No. 25697 of 2023 were struck out due to applicant's negligence. It was further deponed that applicant has failed to account each day of the delay.

At the time of hearing, applicant was represented by Mr. Sammy Katerega, his personal representative while respondents were represented by Salehe Manolo and Hamimu Nkoleye, learned State Attorneys.

Arguing in support of the application, Mr. Katerega, submitted that, the Award was issued on 25th August 2023 and the same day served to the applicant. Mr. Katerega submitted further that, Revision No. 236 of 2023 while within time but the same was struck out by this court(Hon. Mlyambina, J) on 07th November 2023 as there was no pagination and list of contents. He further submitted that the delay is technical and not actual because initially applicant was in court and that the same is a good ground for extension of time. In support of his submissions that the delay is technical, Mr. Katerega cited the case of ***Bank M(Tanzania) Limited v. Enock Mwakyusa***, Civil application No. 520/18/2017, CAT(unreported). He further cited the case of ***Lyamuya Construction Company v. Board of Trustees of Young Women's Christian Association of Tanzania***, Civil Application No. 2 of 2010, CAT (unreported) to the position that, in an application for extension of time, applicant must show good cause for the delay, account for the delay and that must not be negligent etc. He quickly added that applicant complied with what was held by the Court of Appeal in ***Lyamuya' case***(supra). He added that, Applicant has a fundamental right to be heard and referred the court to its decision in the case of ***Mohamed Ali Mpinda vs. Coast Bureau De Change One Limited***, Revision No. 482 of 2021. He further argued that, if this application will

not be granted, applicant will be denied his fundamental right to be heard. He concluded his submissions praying the court to grant this application because applicant was not negligent but that the delay is technical and not actual.

Resisting the application, Mr. Manolo, learned State Attorney for the respondents submitted that, there are no good grounds for extension of time. Learned State Attorney submitted that, in ***Lyamuya's case*** (supra), the Court of Appeal gave guidelines as what should be considered in granting or dismissing the application for extension of time. In his submissions, counsel for the respondents conceded that applicant filed Revision Application No. 236 of 2023 while within time and that the same was struck out on 7th November 2023. He added that, Applicant filed Miscellaneous Application No. 25697/2023 for extension of time 13 days after Revision No. 236 of 2023 was struck out. Mr. Manolo, argued that, Applicant has not accounted for the delay of the said 13 days. He further argued that Miscellaneous Application No. 25697 of 2023 was struck out on 4th December 2023 for failure to attach CMA award and that, applicant filed this application on 13th December 2023 filed this application 8 days after application No. 25697 of 2023 was struck out. Learned State Attorney was quick to add that, Applicant has not accounted for the delay of 8 days.

Mr. Manolo further submitted that, Revision Application No. 236 of 2023 was struck out due to negligence of the applicant who failed to abide by the requirement of the law prior filing the said Revision. He added that, the Personal Representative of the Applicant is experienced in labour issues therefore, he was supposed to comply with the law before filing the said Revision Application. He went on that, the Personal Representative of the applicant committed a similar mistake by negligently not attaching the CMA award. To him, that was a sufficient ground for this application not to be granted. But when he was probed by the court, Mr. Manolo conceded that there is no law which provides that an attorney or a person is not supposed to commit errors twice or more, in the same application. The learned State Attorney strongly prayed that this application be dismissed with costs. Again, when probed by the court, he readily conceded that normally costs are not awardable in Labour cases.

In rejoinder, Mr. Katerega, Personal Representative of the applicant, briefly submitted that, after struck out of each of the aforementioned applications, applicant acted diligently and filed another application.

I have considered evidence of the parties in both the Applicant's affidavit and the counter affidavit filed by the respondent and rival

submissions thereof. This being an application for extension of time, I am called to exercise my discretion either to grant the application or to dismiss it. I am aware that, discretion must always be used judiciously and not arbitrary. See the case of *Mza RTC Trading Company Limited vs Export Trading Company Limited*, Civil Application No.12 of 2015 [2016] TZCA 12. I am also aware to the position of the law that, in order the court to exercise its discretion, applicant(s) must provide sufficient reason for the delay or provide relevant materials and circumstances justifying the grant of the application. See the case of *Victoria Real Estate Development Ltd vs Tanzania Investment Bank & Others* (Civil Application 225 of 2014) [2015] TZCA 354, *Rose Irene Mbwete vs Phoebe Martin Kyomo* (Civil Application 70 of 2019) [2023] TZCA 111, and *Omary Shaban Nyambu vs Dodoma Water & Sewarage Authority* (Civil Application 146 of 2016) [2016] TZCA 892, to mention but a few.

The issue is whether, in the affidavit in support of the application, applicant provided sufficient material to justify this court to grant extension of time.

It was deponed by the applicant in his affidavit in support of the application that, initially he filed Revision Application No. 236 of 2023 while within time but the said Revision Application was struck out on 7th

November 2023 due to non-compliance with the provisions of Rule 46(1), (2) and (3) of GN. No. 106 of 2007(supra). In fact, Hamimu Nkoleye, State Attorney for the respondents also confirmed that fact in his counter affidavit. Therefore, as it was correctly submitted by Mr. Katerega, the Personal Representative of the applicant, the delay is technical and not actual one. There is a plethora of case laws that technical delay is a good ground for extension of time. See the case of ***William Shija v. Fortunatus Masha*** [1997] TLR 213 and [*Emmanuel Rurihafi & Another vs Janas Mrema*](#) (Civil Appeal 314 of 2019) [2021] TZCA 332. In fact, in [*Rurihafi's case*](#) (supra) the Court of Appeal held *inter-alia* that: -

"In the circumstance, we have no hesitation to hold that, as the incompetent appeal was filed within time and the appellants were, as a result of their default to attach a copy of the ruling, penalized by having their appeal struck out, the prosecution of the incompetent appeal constituted sufficient cause for extension of time."

It was submitted by learned counsel for the respondents that the personal representative of the applicant being experienced in labour issues, was negligent because, he was supposed to comply with the law before filing Revision Application No. 236 of 2023. With due respect to the learned State Attorney, there is no law providing that any error committed by experienced person in a certain filed amounts to

negligence. I am of that view because error is human. Whether experienced or not, human beings are prone to commit errors. In my view, submissions that experienced persons are not supposed to commit errors means that inexperienced ones are allowed to commit errors. But the difficulty may arise as how to draw a line between experienced and inexperienced ones. It is my further view that, getting one thing right and the other wrong doesn't prove negligence. By the way, if I had to agree with his submissions, one would also expect much from the learned State Attorney in terms of knowledge of the provisions of the law comparing with the personal representative of the applicant who is not a lawyer. By whatever way, I am not convinced with submissions that applicant or his personal representative was negligent. I therefore reject those submissions.

Since it is not disputed that the delay was technical and not actual and since it is also not disputed that applicant promptly filed Miscellaneous Application No. 25697 of 2023 thirteen (13) days after Revision Application No. 236 of 2023 was struck out and Eight(8) days after Miscellaneous Application No. 25697 of 2023 was struck out, I find that time spent by applicant is reasonable.

For the foregoing, I hereby grant this application. I also grant applicant 14 days within which to file the intended revision. For

avoidance of doubt, applicant shall file the intended revision on or before 11th March 2024.

Dated at Dar es Salaam on this 26th February 2024.



B. E. K. Mganga
JUDGE

Ruling delivered on 26th February 2024 in chambers in the presence of Wema Mtengwa, the Applicant and Hamimu Nkoleye, State Attorney for the Respondents.



B. E. K. Mganga
JUDGE