IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LABOUR REVISION NO. 22 OF 2020

(Originating from CMA/ARS/ARB/109/2016)

UPENDO MASAWE URIO.....APPLICANT

VERSUS

THE SMALL THINGS.....RESPONDENT

JUDGMENT

03/05/2021 & 28/06/2021

GWAE, J

The application is made under Section 91 (1) (a), (2) (b), (i) and section 94 (1) (b) (i) of the Employment and Labour Relation Act, No. 6 of 2004, Rule 24 (1), (2) (a), (b), (c), (d) and (f), (3) (a), (b), (c), and (d) and Rule 28 (1) (d) and (e) of the Labour Court's Rules G.N. 106 of 2007. The applicant calls upon this court to call for the records of the proceedings and the Ruling in application number CMA/ARS/ARB/109/2016 delivered by Hon. Arbitrator Anosisye on 25th February 2020. The application is supported by a sworn affidavit of the applicant and strongly opposed by a counter affidavit sworn by Mr. Joseph Msuya, counsel for the respondent.

A brief factual of the matter at hand as depicted by the records at hand are such that the applicant and the respondent were in an employer – employee relationship until 28th January 2016 when the respondent terminated the applicant's employment contract. Feeling that she was unfairly terminated she lodged her complaint before the Commission for Mediation and Arbitration on 25th April 2016. Unfortunately, the complaint was dismissed by the CMA on 30/06/2016 for want of prosecution. On 26th September 2016 the applicant filed an application for extension of time which was wrongly dismissed by the Hon. Arbitrator and upon filing a revision to the High Court the decision was quashed as the Hon. Arbitrator ruled on an application to set aside the dismissal order instead of an application for extension of time. The High Court further ordered the application to be heard afresh before another Arbitrator.

Certainly, the application for condonation was heard before another Arbitrator, Hon. Anosisye who dismissed the application for lack of sufficient grounds for condonation. Such a decision aggrieved the applicant who is now challenging the CMA decision on the reasons that;

i. The Hon. Arbitrator's ruling did not take into consideration the procedural irregularities conducted by Hon. Mourice in dismissing the application for want of prosecution.

ii. The Hon. Arbitrator did not take into consideration the principle of overriding objective and the chances of success by the applicant.

iii. That for the interest of justice this matter be revised and the ruling of Hon. Arbitrator dated 25th February 2020 be quashed and set aside.

iv. That it has been four years since when the applicant has been longing for the restoration of the dismissed application.

When the matter came for hearing, the applicant was represented by the learned counsel Mr. Deogratius Njau while the respondent was represented by Mr. Josephat Msuya advocate.

Submitting in support of the application, Mr. Njau told the court that the Hon. Arbitrator did not consider elements in granting applications for extension of time and that courts should do away with technicalities. He thus cited the decisions in the case of Royal Insurance (T) Ltd vs. Kiwengu Strand Hotel Ltd Civil Application No. 111 of 2009 (Unreported) and Yakobo Magoiga Gichere vs. Peninah Yusuph Civil Appeal No. 55 of 2017 (Unreported). Mr. Msuya on the other hand urged this court to dismiss the application.

Having considered the records of this application, submissions of both, the applicant and respondent carefully, I find the issue for determination is whether the applicant adduced sufficient cause for the delay to file the intended application out of time. It is an established principle in law that, sufficient reason is a pre-

condition for the court to grant extension of time, Rule 56(1) of the Labour Court Rules G.N. No. 106 of 2007.

It is worth noting that the interest of justice demand litigation to come to an end and not to walk in court corridors for years just because one party has been negligent in handling her case for the detriment of the other party. Thus, for purpose of achieving the objects of the Employment and Labour Relations Act, No. 6 of 2004 and the good end of justice this court cannot entertain mistakes that are made by applicants who delay the end of cases without good cause as this one. Courts are duty bound to see that litigations come to an end, so that parties can enjoy the fruits of their awards. See **Monarch Investment Ltd v. Stephen Kogai,** Lab. Div., MZA, Misc. Lab. Appl. No. 17 of 2014, 19/03/15 Nyerere, J.

It has been the position of our courts that an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however has to be exercised judicially and the overriding consideration is that there must be sufficient cause for so doing. From decided cases a number of factors have to be taken into account, including whether or not the application has been brought promptly; the absence of any or valid explanation for delay; lack of diligence on the part of the applicant, and whether the applicant has accounted for each day of delay.

From the circumstances of this case, as correctly decided by the CMA, among other factors, the applicant had to account for the days of delay as from 30th June 2016 to 26th September 2016. I have gone through the applicant's affidavit which was filed at the Commission (CMA), there is no where the applicant has accounted for the days of delay of almost 56 days despite giving the historical background of her employment relationship with her former employer. Never the less, at paragraph eleven (11) of her sworn affidavit it is stated that as the applicant was confused as to the dismissal of her case, she went to meet the District Commissioner for help but without success. Even if I am to assume that this could have been one of the reasons of the applicant's delay yet it does not suffice to be a ground for extension of time.

I am of the considered view that the applicant did not advance sufficient reasons for her delay, and as opposed to the applicant's counsel submission that, the Hon. Arbitrator did not consider elements for consideration in granting of extension of time, it is apparent that the ruling is well composed and the Hon. Arbitrator considered all factors in all corners, actually, it was the applicant's own negligence to give sufficient reasons for her delay the burden which cannot be shifted to the Hon. Arbitrator.

In the end result I find the applicant to have miserably failed to give sufficient reason for the delay and therefore cannot benefit from Rule 56 (1) of

the Labour Court Rules, GN. No. 106 of 2007. The application is hereby dismissed. No order as to costs is made since this is a purely labour case and above all the applicant is a weaker party compared to the respondent, the employer

It is so ordered.

M. R. GWAE
JUDGE
28/06/2021