

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LABOUR APPLICATION NO. 34 OF 2021

KCB BANK TANZANIA LIMITED APPLICANT

VERSUS

PHINA MUNISHRESPONDENT

RULING

21/10/2021 & 25/11/2021

D.C. KAMUZORA, J.

KCB Bank Tanzania Limited the applicant herein through the service of Elipidius Philemon learned counsel preferred this application for extension of time to file application for stay of execution. The application was made under the provision of Rule 24 (1), (2)(a), (b), (c), (d), (3) and (f), (3)(a), (b), (c) and (d) and 11(b), 55 (1) and (2) and 56 (1) of the Labour Court Rules, 2007, GN No. 106 of 2007. The chamber summons was supported by an affidavit sworn by Damas Mwangenge, the applicant's litigation manager.

The respondent Phina Munishi through the service of Jenipher John learned counsel strongly opposed the application by filling a counter affidavit deponed by the respondent herself. Hearing of the

application was done by written submissions and each side filled its submission as scheduled.

Before going to the substance of the application it is imperative that, I briefly reproduce the back ground of the matter as glanced from the submissions. The respondent was employed by the applicant in the position of customer service supervisor. The respondent was terminated from her work on ground of gross negligence after authorising a fraudulent transaction. Following the termination, the respondent filled a complaint at the CMA of unfair termination and the award was in her favour.

The applicant being aggrieved by the award filled a Labour Revision No 164/ 2017 to this court challenging the said award and the ~~judgment was pronounced on 11th June 2020 quashing the reliefs~~ awarded by the CMA save for the repatriation costs and subsistence allowance. It was alleged in the affidavit in support of application that there is a new and important evidence which the applicant intends to move the court to consider through a review application. As the time to file review is already lapsed, the applicant preferred the application for extension of time to file review application and preferred this application

for extension of time to file application for stay of execution pending determination of the review application.

In this application the important question for the determination is whether the applicant has adduced sufficient reasons for the grant of an order for extension of time.

Submitting in support of the application Mr. Elipidius stated that this application was made after the applicant was issued with summons for execution. That in course of perusing the court records on 14th July 2021 the applicant discovered new evidence which prompted the applicant to file an application for extension of time to file review. That prior that discovery, the applicant did not file stay of execution as there was no pending issue that could warrant the filing of the application for extension of time as it was propounded in the cases of **Pastory Henry Kaboya (as an administrator of Mwalami Seif Zigo) Vs. Evarist Shiyo** Misc. Land Application No. 936 of 2016(Unreported) and **Hussein Khanbhai Vs. Kodi Ralph Siara**, Civil Revision No. 25 of 2014(Unreported).

Basing on the ground that the applicant has discovered new evidence, Mr. Elipidius was of the view that, this court find such

discovery as sufficient reasons warranting extension of time within which to file stay of execution to this court.

Contesting the application Ms. Jenipher submitted that it is the discretion of court to grant extension of time if sufficient cause has been shown. She referred the case of **Michael Lessani Kweka v. John Eliafye** [1997] TLR 152, **Samson Kishosha Gabba v. Charles Kingongo Gabba** [1990] TLR 133. Ms. Jenipher pointed out that, the only reason adduced by the applicant for extension of time is that there is new evidence discovered by the applicant. She submitted that the reason adduced is an afterthought after the applicant has been served with an application for execution and that the said new evidence was never raised in the CMA or at the Revision stage.

~~Ms. Jenipher further submitted that, the discovery of new evidence~~ might be a sufficient reason to file a review but not for extension of time. She referred the case of **K.M Prospecting Limited v. Dr. Reginald Abraham Mengi Muganyizi J. Lutagwaba & 2others**, Misc. Commercial case No. 213 of 2016.

She also insisted that extension of time is a discretionary power of the court and has to be done judiciously and referred this court to the case of **Lyamuya Construction Company Ltd v. Board of**

Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application no. 02/2010 which formulated guidelines to test if the applicant has sufficient reasons for the court to grant an application for extension of time. Ms. Jenipher was of the view that the applicant has failed to account for all the period of delay and the delay was inordinate. She insisted that the applicant lack diligence and was negligent in prosecuting his case and intends to delay the right of the respondent thus prayed for the dismissal of the application.

In a brief rejoinder by Mr. Elipidius reiterated the submission in chief and added that the evidence discovered was not in the knowledge of the applicant and that is why it was never raised at the CMA. He insisted that the same does not preclude the applicant to bring it at this level as the law allow it. He insisted that the discovery of new evidence is the reason why the applicant filed this application. That, since the application for stay of execution cannot be filed where there is no pending issued. The applicant urged this court to grant the application as sufficient reasons has been demonstrated.

I have keenly followed the submissions by the learned advocates for and against the application. The law is settled that the grant of the extension of time is within the discretion of the court but such discretion

needs to be exercised judiciously upon the applicant showing sufficient reasons. The provisions of the Labour Court Rules, 2007, GN No. 106 of 2007 to which this application was preferred; Rule 24 (1), (2)(a), (b), (c), (d), (3) and (f), (3)(a), (b), (c) and (d) and 11(b), prescribes the format under which the application has to be made while Rule 55 (1) and (2) prescribes the manner under which the court have to deal with the application. However, Rule 56 (1) gives powers to the court to extend any period prescribed by the Rules. The said Rule read;

"The Court may extend or abridge any period prescribed by these Rules on application and on good cause shown, unless the Court is precluded from doing so by any written law."

The jurisprudence has been developed in this area on what will be considered as good cause. The Court of Appeal established guiding principles in the case of **Lyamuya Construction Company Ltd v Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 CAT (Unreported) as follows;

- (a) The applicant must account for all the period of delay*
- (b) The delay should not be inordinate*

- (c) *The applicant must show diligence, and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.*
- (d) *If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

Apart from the above, there is more explanation as with regard to the length of delay. The Court of Appeal in the case of **Bushiri Hassan V Latifa Lukio Mshana**, Civil Application No. 3/2007(Unreported) held that,

“delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps has to be taken”

In the matter at hand the main and the only reason adduced by the applicant for failure to file application for stay of execution on time is that there is a discovery of a new issue to which he applied for review of the court decision. The respondent contested that argument on account that the said ground is baseless as the said new issue was not pleaded before the CMA or at the revision stage.

It is unfortunate that apart from stating that the applicant filed an application for extension of time to file review as per paragraph 10 of the applicant affidavit in support of the application, the applicant did not mention the number of the review application. Similarly, the applicant has not disclosed the exact date to when the application for execution was filed by the respondent, neither did he state the date when the applicant became aware of the execution process or was served with summons regarding the application for execution by the respondent. Applicant did not even mention the provision prescribing the time limit for the application he intends to file and the length of his delay. The applicant under paragraph 11 of his affidavit supporting his application stated that: -

" That from 11th June 2016 to 19th January 2021 there was no execution which was pending before this court and from 20th January 2021 to 14th July 2021 no application for extension of time to file review as the respondent had no knowledge of the said new evidence."

The statement by the applicant does not establish the needed facts establishing the date as to when the application for execution was filed to make it easy to assess the length of delay. The claim for discovery of

new issue does not stand as a sound reason as the applicant has failed to show the action taken to move this court to rule that there is matter of sufficient importance warranting the extension of time. The applicant being the one moving this court to extend time, had a duty to show the length of the delay and account for all the time he had delayed in filling an application for stay of execution. I find that the applicant had not discharged his duty.

In this application the applicant was supposed to prove either of the principles enunciated in the case of **Lyamuya Construction** which are; to account for the period of delay, the delay not to be inordinate, illegality of the decision and show that he acted diligently without apathy negligence or sloppiness in the prosecution of the case. The judgment of this court in Labour Revision No. 164 of 2017 was pronounced on 11/06/2021 and the applicant claim to discover new and important evidence concerning his case on 14th July 2021. He did not state as to when the application for execution was filed to assist this court assess the length of delay and its reasonability.

That being the case, the application before this court is devoid of merit as the applicant has failed to adduce good and sufficient reasons

to make this court exercise its discretion. The application is hereby dismissed without costs considering the nature of this application.

DATED at **ARUSHA** this 25th Day of November 2021



D. C. KAMUZORA

JUDGE

