

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LABOUR DIVISION)**

**AT ARUSHA**

**MISC. LABOUR APPLICATION NO. 29 OF 2022**

*(C/f the High Court of Tanzania at Arusha, Labour Revision No. 51 of 2021, Originating from  
CMA/ARS/ARS//105/2020)*

**JULIUS MESHILEKI MOLLEL ..... 1<sup>ST</sup> APPLICANT**

**ELIAS LESKIN MOLLEL ..... 2<sup>ND</sup> APPLICANT**

**EPIPHANIA MUSHI ..... 3<sup>RD</sup> APPLICANT**

**REHEMA JUMA RAJABU ..... 4<sup>TH</sup> APPLICANT**

**SAID MUSA ..... 5<sup>TH</sup> APPLICANT**

**JAMES SAMWEL MOLLEL ..... 6<sup>TH</sup> APPLICANT**

**HAMIS NGALANDE ..... 7<sup>TH</sup> APPLICANT**

**MUSA SALIM ..... 8<sup>TH</sup> APPLICANT**

**NEEMA LOMNYACK ..... 9<sup>TH</sup> APPLICANT**

**BARASA MBASHA ..... 10<sup>TH</sup> APPLICANT**

**LAZARO LUCAS MBISE ..... 11<sup>TH</sup> APPLICANT**

**OBED KIVUYO ..... 12<sup>TH</sup> APPLICANT**

**YOHANA SARUNI ..... 13<sup>TH</sup> APPLICANT**

**KELVIN LENGAI PUKASHAI ..... 14<sup>TH</sup> APPLICANT**

**STEPHANO DAUD MOLLEL ..... 15<sup>TH</sup> APPLICANT**

**HAWAD KITUND ..... 16<sup>TH</sup> APPLICANT**

**JULIAS ELIAS EKARA ..... 17<sup>TH</sup> APPLICANT**

***Versus***

**SENGO 2000 TANZANIA ..... RESPONDENT**

## **RULING**

*29<sup>th</sup> August & 21<sup>st</sup> October 2022*

### **Masara, J.**

The Applicants herein preferred this Application under Rules 24(1), (2), (3)(a-d), 55(1) and 56(1) of the Labour Court Rules, G.N No. 106 of 2007.

The Application is for extension of time to enable them to file an application for revision before this Court against the Award of the Commission for Mediation and Arbitration for Arusha ("the CMA") issued in Labour dispute No. CMA/ARS/ARS/105/2020. The Award was delivered on 18/05/2021. The Application is supported by an affidavit affirmed by Ms Aisha Masoud, the Applicants' Personal Representative. The Respondent contested the Application through a counter affidavit deponed by one Amani Ali Kassanga, the Human Resources Manager of the Respondent.

The dispute between the Parties herein can be summarised as follows: The Applicants were employed by the Respondent as security guards on diverse dates. The Applicants claimed that they were unlawfully terminated by the Respondent on 01/07/2020. They preferred a dispute of unfair termination against the Respondent before the CMA. In its Award delivered on 18/05/2021, the CMA dismissed their claims on account that the dispute was preferred prematurely. The Applicants were dissatisfied

by the CMA Award. They filed Revision Application No. 51 of 2021 before this Court in order to have the Award reversed. Their application was opposed by the Respondent who also raised two preliminary objections against it. After hearing the preliminary objections, this Court (Kamuzora, J.), struck out the said application on 28/01/2020 for being incompetent. The Applicants still eager to challenge the CMA Award, filed this Application as they were out of the prescribed time.

At the hearing of the Application, the Applicants were represented by Ms Aisha Masoud, Personal Representative from Tanzania Union of Private Security Employment (TUPSE). The Respondent enjoyed the services of Mr Rashid Miraji Shabani, learned advocate. The Application was heard through filing of written submissions.

Submitting in support of the Application, Ms Masoud reiterated what she stated in paragraphs 4, 5, 6, 7, 8, 9, 10 and 11 of the affidavit in support of the application. She intimated that the Applicants had filed Labour Revision No. 51 of 2021 on time, only that it was struck out for being incompetent. The delay, according to Ms Masoud, was a technical delay which Courts have condoned as being sufficient cause in applications of this nature. She referred the Court to the case of **Fortunatus Masha vs William Shija and Another [1997] TLR 154** to augment her

contention. According to Ms Masoud, the Applicants did not sleep over their rights, they accounted for each day of the delay, which is a prerequisite for granting extension of time. She also made reference to the Court of Appeal decision in **Bariki Israel vs Republic, Criminal Appeal No. 4 of 2011** (unreported). She, therefore, urged the Court to allow the Application.

On his part, Mr Shabani opposed the Applicants' submission, contending that power to extend time is in the discretion of the Court upon sufficient cause shown. That there was no sufficient cause exhibited by the Applicants. To augment this, he referred to the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010** (unreported). Mr. Shabani insisted that the application at hand has no merits and ought to be dismissed. It was his further submission that the delay by the Applicants was inordinate. He stated that Revision No. 51 of 2021 was struck out on 28/01/2022 and the instant Application was filed on 29/04/2022, which is more than sixty days. Regarding the assertion that the delay was a technical delay, Mr Shabani's view was that such assertion was unfounded. Mr Shabani urged the Court to dismiss the application for being devoid of merits.

I have carefully considered the affidavits filed and the rival submissions made on behalf of the parties herein. At the outset, I need to restate that sufficient cause for the delay is *conditio sine qua non* for extension of time to be granted. The Court of Appeal decision in **Lyamuya Construction Company Limited vs Board of Trustees of Young Women's Christian Association of Tanzania** (supra) referred to me is instructive in this respect. In that case the Court of Appeal outlined the yardsticks of sufficient or good cause for delay which the Court should consider before granting extension of time. It was held, *inter alia* that:

*"As a matter of general principle, it is the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities, however, the following guidelines may be formulated:*

- a) The Applicant must account for all the period of delay;*
- b) The delay should not be inordinate;*
- c) The Applicant must show diligence, not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*
- d) If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*

It is also common knowledge that what constitutes sufficient cause is not provided in our laws. However, Courts have not shied away from

exercising discretion to allow an applicant to bring a dispute notwithstanding the delay. That applicant must meet one or more of the tests above explained. The Court of Appeal in the case of **Regional Manager, TANROADS Kagera vs Ruaha Concrete Company Limited, Civil Application No. 96 of 2007** (unreported), observed the following regarding what amounts to sufficient cause:

*"What constitutes 'sufficient reason' cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the Court material which will move the Court to exercise its judicial discretion in order to extend the time limited by the rules."*

In this Application, the question pertinent question is whether the Applicants' application can be sufficiently covered by the sufficient cause circumstances above explained. The Applicants' reasons for the delay are stated under paragraphs 5, 6, 7 and 8 of the affidavit in support of the application. The reasons are that the Applicants filed Application for Revision No. 51 of 2021 on time, only that the same was struck out after being found incompetent.

The record shows that the CMA award was issued on 18/05/2021. Labour Revision No. 51 of 2021 was filed in this Court on 30/06/2021. Ordinarily,

revision against CMA award has to be filed within 42 days. That being the position, Labour Revision No. 51 was filed in time. The said Revision was struck out on 28/01/2022 for being incompetent. I would agree with the Applicants that the delay is a technical one in light of what was stated in the case **Fotunatus Masha vs William Shija** (supra). It follows therefore that the delay up to the time when Revision No. 51 of 2021 was struck out is explainable and excusable. However, as portrayed by the Respondent's counsel, this Application was filed on 29/04/2022. The period between 28/01/2022 when Labour Revision No. 51 of 2021 was struck out and 29/04/2022 when this application was filed has not been explained by the Applicants. That is a period of about sixty days delay.

It is trite law that in order for extension of time to be granted the Applicant must account for each day of the delay. That position was reaffirmed in the case of **Hassan Bushiri Vs. Latifa Lukio Mashayo, Civil Application No. 3 of 2007** (unreported), where it was 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 are to be taken.*"

As pointed out, nothing has been said by the Applicants' representative regarding the delay to file the Application after the Applicants' revision

was struck out. Since the Applicants have not explained the reasons regarding that period's delay, the Court cannot invoke its discretionary power to allow the extension sought.

For the above reasons, the Applicants' application has no legs to stand on. It stands dismissed in its entirety. This being a labour dispute, each party shall bear their own costs.

Order accordingly.



A handwritten signature in blue ink, appearing to read "Y. B. Masara".

Y. B. Masara

**JUDGE**

21<sup>st</sup> October 2022