

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

**(SONGEA DISTRICT REGISTRY)**

**AT SONGEA.**

**MISC. LABOUR APPLICATION NO. 1 OF 2020**

**BAKARI ALLY ..... 1<sup>ST</sup> APPLICANT**

**ADOLF HAMISI ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**SERENGETI FOOD LIMITED..... RESPONDENT**

*Date of last hearing: 23/06/2020*

*Date of ruling: 17/07/2020*

**RULING**

**I. ARUFANI, J.**

The applicants filed the application at hand in this court seeking for leave to file an application for revision out of time and any other order the court may deem fit and just to grant. The application is made under section 24 (2) (a), (b), (c), (d), (e), (f) and section 56 (1) of Labour Court Rule G. N. No. 106 of 2007 and is supported by the affidavit of Bakari Ally. The respondent opposed the application by filing in the court the counter affidavit sworn by Mathias Kimaro, Principal Officer of the respondent.

While the applicants were represented in the application by Mr. Bethod Mathew, officer from TUICO the respondent was represented by Mr. Dickson Pius Ndunguru, learned advocate. By consent of the counsel for the respondent and the representative for the applicants the application was argued by way of written submissions. I commend both sides for filing their written submissions in the court within the time frame given by the court.

It is stated in the written submission of the applicants that, on 22<sup>nd</sup> October, 2013 the applicants filed in this court an application which was registered as Application for Revision No. 10 of 2013. In the mentioned application the applicants were beseeching the court to revise the proceedings and subsequent award issued by the Commission for Mediation and Arbitration for Ruvuma at Songea (hereinafter referred in short as CMA) in employment cause No. CMA/SON/SEPT/03/2013. The mentioned application was struck out by Hon. Abood, J on 23<sup>rd</sup> June, 2014 for being incompetent.

After the application for revision being struck out the applicants filed in this court other several applications which were also struck out on various reasons which rendered them defective or incompetent. Those applications include Labour Revision No. 9 of 2014 which was struck out on 3<sup>rd</sup> December, 2014, Labour Revision No. 13 of 2015 which was struck out on

17<sup>th</sup> May, 2017, Labour Revision No. 6 of 2017 which was struck out on 7<sup>th</sup> March, 2019 and Misc. Labour Application No. 3 of 2019 which was struck out on 11<sup>th</sup> June, 2019.

The applicants stated that, striking out of the above mentioned applications were not due to the applicants' negligence but due to technical errors which are curable. They argued that, after the above mentioned applications being struck out they are now seeking for leave of the court to file in the court the application for revision out of time. They submitted that, it is just and expedient in the interest of justice and good conscious for the court to be pleased to grant them leave to file in the court the application for revision out of time prescribed by the law and prayed the application to be granted.

In reply, the counsel for the respondent argued that, the applicants have completely failed to show the application at hand is seeking for extension of time to file application for revision of decision of which court as both the chamber summons and the affidavit supporting the application are silence. He stated that is an abuse of the court process and useless because even if the application is granted it will not serve any purpose in law. He prayed that, as it is not known the application intended to be filed in the court will be in respect of a decision made by which court and on which date which the applicants want to be revised the application be dismissed with costs.

In their rejoinder, the applicants submitted that, it's clear from the records and the submission they have filed in this court that, they have filed the application at hand in this court to seek for extension of time to file an application for revision out of time against the award issued by the CMA in the Labour Dispute No. CMA/SON/SEPT/03/2013. They directed the court to read annexure A1 in their affidavit which is the Application for Revision No. 10 of 2013, which was struck out by Hon. I. D. Abood Judge on 23/6/2014 and annexure A2 of their affidavit which is the order of the court.

They argued further that, the chamber summons and the affidavit supporting the application are not silent as the affidavit contains statement of the material facts in chronological order on which the application is based. They submitted that, the application is not an abuse of the court process and useless as argued by the counsel for the respondent. At the end they prayed the application to be granted and the respondent's counter affidavit to be disregarded.

Having carefully considered the submissions from both sides and after going through the chamber summons and the affidavit supporting the application the court has found that, as rightly argued by the counsel for the respondent the applicants have not stated therein the application for revision they want to file in this court if they will be granted extension of time will be

in respect of which decision. The court has found the first applicant deposed in the affidavit supporting the application and is stated in their submission in chief that, they filed the Application for Revision No. 10 of 2013 in this court and after that application being struck out it was followed by other several applications which were filed in this court and struck out for being found were incurably defective but they have not stated the revision they want to file in the court out of time is in respect of which decision.

The court has found the only place where the applicants states the application for revision they intend to file in this court if they will be granted extension of time is in the rejoinder they have filed in this court to reply the submission of the respondent filed in the court to reply to their submission in chief. The applicants states in their rejoinder that, the application for revision they want to file in the court if they will be granted extension of time is for the award issued by the CMA in Labour Dispute No. CMA/SON/SEPT/03/2013 annexed to the affidavit supporting the application as annexures A1 and featuring in the copy of the Application for Revision No. 10 of 2013 annexed in the affidavit as annexure A2.

The court has considered what is submitted in the rejoinder of the applicants and it has gone through the documents and

orders of the court which struck out the previous applications of the applicants as listed at paragraph 2 (i) to (vii) of the affidavit supporting the application and annexed to that affidavit as annexure A1 to A6. The court has found that, as stated in the rejoinder of the applicants the Application for Revision No. 10 of 2013 which was the first application to be filed in this court was in respect of the award issued by the CMA in the Labour Dispute No. CMA/SON/SEPT/03/2013.

The court has found that, after the Application for Revision No. 10 of 2013 being struck out, some of the subsequent applications were filed in the court after the applicants being granted leave to file proper application in the court. The court has also found before the other applications which the applicants were not granted leave to refile the application for revision being struck out the applicants' representative prayed those application to be withdrawn or struck out so that they can refile proper application in the court. That shows the leave granted to the applicants were for filing proper application for revision of the award issued by the CMA which was being challenged in the Application for Revision No. 10 of 2013 which was the first application to be filed in the court and not any other matter.

That being the position court has found that, although the applicants have not stated in the chamber summons, affidavit or

submission in chief they have filed in this court they wish to challenge the decision of which court if they will be granted extension of time but the documents annexed in the affidavit supporting the application shows the award which they wish to challenge if they will be granted extension of time is the award issued by the CMA in the Labour Dispute No. CMA/SON/SEPT/03/2013 and not any other decision. That makes the court to find the submission by the counsel for the respondent that the applicants cannot be granted extension of time as is not known they wish to challenge the decision made by which court cannot be sustained as the award they wish to be revised is the one mentioned above.

The court has arrived to the above finding after seeing that, to rely solely on the above ground to refuse to grant the applicants extension of time they are seeking from this court is to continue to use technicalities to delay to determine the fate of the right the applicants are seeking from this court. The court has found as this is a labour matter which as provided under Rule 55 (2) of the Labour Courts Rules, GN No. 106 of 2007 and provided under Article 107A (2) (e) of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time the court is required to do justice in labour matters without due regard to technicalities.

While being guided by the above position of the law the court has found the applicants have been in the corridor of this court from 2013 when they filed the first application for Revision No. 10 of 2013 in this court seeking for revision of the award issued by the CMA in the above mentioned labour dispute. The above observation can be seeing vividly in the documents and orders annexed to the affidavit supporting the application referred earlier in this decision. To continue to determine this matter basing on technicalities as the counsel for the respondent invites this court to do is to go contrary to the position of the law laid in the above cited provisions of the law.

The court has found under that circumstance it is proper for the interest of justice for the matter at hand to be determined on merit and not on technicalities so as to enable justice to triumph in the dispute which is between the parties and cause the matter to come to an end. Having arrived to the above finding the court has found the issue to determine in this matter is whether the applicants were prevented by good cause to file the application for revision they want to file in this court out of time.

The court has framed the above issue after seeing that is what is required by Rule 56 (1) of the Labour Court Rules under which the application at hand is made to be shown to move the

court to grant extension of time the applicants are seeking from the court. The term “**good cause**” which the applicants are required to show to the court so that they can be granted extension of time they are seeking from the court was well explained in the case of **Oswald Masatu Mwinzarabi V. Tanzania Fish Processors Limited**, Civil Application No. 13 of 2010 (unreported) where the Court of Appeal stated that:-

*"The term **good cause** is a relative one and is dependent upon the circumstances of each individual case. It is upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion. See **Ratman V. Cumarasamy and Another** [1964] 3 All ER 933 and **Regional Manager Tanroads Kagera V. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007, CAT (unreported)."*

That being the meaning of the term “good cause” the court has found the reason given by the applicants as the cause for delay to file the application for revision of the labour award they wish to be revised is because the applications they filed in this court within the time were struck out because of being found were incurably defective. The court has found as appearing in the preceding part of this ruling the stated reason was not

disputed by the respondent. The court has found that, although it is stated at paragraph 10 of the respondent's counter affidavit that the respondent is disputing what is deposed at paragraph 3 of the affidavit of the first applicant but there is no any argument or submission made to the court by the respondent to support what is deposed in the said paragraph of the respondent's counter affidavit.

That being the position the court has found that, as there is no dispute that for the whole period of time from when the applicants were required to file the application they want to file in the court out of time were in the corridor of the court prosecuting the applications stated hereinabove it cannot be said their delay is not due to the good cause. The court has found as stated in the case of **Fortunatus Masha V. William Shija and Another** [1997] TLR 154 that is a technical delay which is a good cause for granting extension of time.

That brings the court to the settled view that, the applicants have been able to satisfy the court they were prevented by good cause to file their application for revision of the award of the CMA in labour dispute No. CMA/SON/SEPT/03/2013. Therefore the court has found there is no reason which can make it to desist to exercise its discretionary power to grant the applicants extension of time they are seeking from this court. In the

premises the application is granted and the applicants are given twenty one (21) days from the date of this ruling to file their application for revision in the court. This being a labour matter there is no order as to costs. It is so ordered.

Dated at Songea this 17<sup>th</sup> day of July, 2020



*I. Arufani*

**I. ARUFANI**

**JUDGE**

**17/07/2020**

**Court:**

Ruling delivered today 17<sup>th</sup> day of July, 2020 in the presence of Mr. Bethod Mathew, Representative of the applicants from TUICO and Mr. Mestory Nyoni, Advocate holding brief of Mr. Dickson Pius Ndunguru, Advocate for the respondent. Right of appeal is fully explained.



*I. Arufani*

**I. ARUFANI**

**JUDGE**

**17/07/2020**