

TANZANIA / JUDGMENT

alexander bonifasi masasi others vs belgium development agency 2022 tzhcld 220 18 may 2022

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IN THE HIGH COURT OF TANZANIA LABOUR DIVISION AT PAR ES SALAAM MISCELLANEOUS APPLICATION NO. 272 OF 2021 ALEXANDER BONIFASI MASASI 1st APPLICANT THEODOS CHARLES MPEMBWE MUSSA SALUM MASELA VERSUS W BELGIUM DEVELOPMENT AGENCY..... .A.JhwRESPONDENT RULINGS 28th April &. IS1*1 May 2022 Rwiziie This application is for<exterisiohiof time. The applicants are applying for enlargement of time to file an application for revision to challenge the decision of „the?Commission for Mediation and Arbitration (CMA). The applicants>were employed by the respondent as security guards and ■w on 14th March 2017 were terminated. Following this termination, which they considered unfair, they instituted Labour Dispute No. CMA/DSM/KIN/R.1006/2017 against the respondent. The award was in favour of the respondent. i Again, they were aggrieved by decision of CMA. But due to the procedure obtaining in this court, they were to first file a representative suit. They successfully applied for leave which was granted on 23rd June, 2021, hence this application. The application is supported by the affidavit of AlexanMr Bonrfasi Masasi. The respondent filed counter-affidavit to oppose me same. The application is based on the following issues;

- a) Whether the applicant has good reason fbr^extension of time to be granted.
- b) Whether the The hearing of this applicators was by way of oral submissions. The applicants were r^^h^^M^by Saulo J. Kusakalah learned Advocate, whereas mlCf^onderit was represented by Flora Jacob, learned Advocate Mr. Kusakalah argued that the reason for delay was because of the application complying with a legal requirement of first filing a representative suit, before filing the application. He said, when the same was granted on 23rd June 2021. This application was then filed on 10th August 2021. He therefore prayed for the application to be granted. 2 Miss Flora in reply, argued that the reasons given are not sufficient since the applicants did not account for each day of delay. She continued to state that the award was delivered on 29th April 2019 and they were served with the same on 30th April 2019. She further submitted that the application for leave was filed for the second time. The first was No. 382 date of service. This, the learned advocate added/>is contrary to section 91(1) of Employment and Labour Relations Ac®, She continued to state that the same

^S^i^tit and another one was filed, which is Application No. Jfcof 21J2Q^ihd leave was granted on 23rd June 2021. It was her argument further that this application was filed on 10th August 2021 after the month and six days from the date, leave was granted, not proper and fetched support from the cases of Esio Nyomolefp and Fikiri Nyomolelo v Republic, Criminal Application fWd.1 of 2015 and Paul Martin v Bertha Anderson, AR Civil Application No. 7 of 2005 at page 6-8 where in both cases, it was stated that gaps during the period of prosecuting a matter in Court must be accounted for. Me cited the case of Sebastian Ndaula v Grace Rwamafa, Civil Application No. 4 of 2014 at page 8. She then stated that the delay was due to negligence and inaction on party of the applicant as 3 held in the case of Jireys Nestory Mutalemwa v Ngorongoro Conservation Area Authority, Miscellaneous Labour Application No. 270 of 2013 at page 14. She prayed, the application to be dismissed. In a rejoinder, Mr. Kusakalah submitted that the application for a representative suit had to be filed first. He said, a representative suit as a legal requirement is provided for under Rule 44(2)^teLa^dr Court Rules and so, they were delayed because of it. Going through the submissions of the pajie^the^Gpurt is called upon to determine if there is sufficient reason for delaying to warrant extension of time. It is true that according fe^l^44(2) of the Labour Court Rules, G.N No. 106 of 2007, requipgr^h^Mfiling a representative suit is apparent. It is because th&il^q^emaVids when there is more than one applicant. The layv statesFalzhereUnder; WAe/e there are numerous persons having the same interest in a suit, one or more of such persons may, with the permission of the Court appear and be heard or defend in such dispute, on behalf of or for the benefit of all persons so Interested, except that the Court shall in such case give at the complainant's expenses, notice of the 4 institution of the suit to all such persons either by personal service or where it is from the number of persons or any other service reasonably practicable, by public advertisement or otherwise, as the Court in each case may direct." Section 91(l)(a) of the Employment and Labour Relation Act [CAP. 366 R.E. 2019] provides for Revision of arbitration awards. Ittstatesiihat: - 91(1) Any party to an arbitration award mafietunder section 88(10) who alleges a defect in any arbitratibpproceedings under the auspices of the Commisston. m^the Labour Court for a decision to set aside the arbitrat^p^m/ard-

- (a) Within six weeks^idhe date the award was served on the Froqvthe p^ov^ipns of the law, it is clear that the application for revision of the ChjAfeward is within six weeks. In this application the applicants are praying for extension of time to challenge the CMA decision dated 29th April, 2019, which was served to them on 30th April, 2019. As submitted, they first filed an application for representative suit No. 382 of 2019 on 28th June, 2019, which was nearly two months thereafter. 5 They filed another application for representation, Application No.225 of 2020, which was granted on 23rd June, 2021. Not until on 10th August, 2021, when this application was filed. Counting from when the application for a representative suit was granted, it also took 48 days to take action. Even though Rule 56(1) of Labour Court Rules [G.N. No. 106 of 2007] provides for the Court to have discretionary powers<t^%,out it should be done upon good cause to be shown, which states^.- "The Court may extend or abridge an^er^xi prescribed by these CH Rules on application and on

good cause shown, unless the Court is satisfied that the delay was justified." This was also stated in *Wambura NJ. Waryuba v The Principal Secretary of the Ministry of Finance and Another*, Civil Application No. 2 of 2020, it was held that: - reiterate here that the Court's power for extending time is both wide-ranging and discretionary but it is exercisable judiciously upon cause being shown." In the case of *Lyamuya Construction Company Ltd V. Board of Registered Trustees of Young Women's Christian Association of Tanzania*, Civil Application No. 2 of 2010 (unreported) the following principles to be considered as good cause were laid down: -

1. The delay should not be inordinate
2. The applicant should show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; *% %
3. 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 quashed. Based on the above cited authorities and a delay of 48 days from the day the representative to the date this application was filed is not inordinate. Therefore, this application has merit and is granted. The applicant is given 14 days to take necessary action. I make no order as to costs. JUDGE 18.05.2022 7

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