

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 199/18 OF 2018

PATRICK MAGOLOGOZI MONGELLA APPLICANT

VERSUS

**THE BOARD OF TRUSTEES OF THE
PUBLIC SERVICE PENSIONS FUND RESPONDENT**

**(Application for extension of time to file an application for Revision of
the Judgment and Decree of the High Court of Tanzania
(Labour Division) at Dar es Salaam**

(Mipawa, J.)

Dated the 4th day of August, 2017

Labour Revision No. 90 of 2016

RULING

3rd May & 18th June, 2019

SEHEL, J.A

This is a ruling on an application for extension of time within which an applicant can lodge an application for revision against the decision of the High Court of Tanzania (Labour Division) at Dar es Salaam delivered on 4th August, 2017. The application is by way of notice of motion made under Rules 10; 48 (1) & (2); and 49 (1) of the Tanzania Court of Appeal Rules, 2009 (hereinafter referred to as the Rules). It is supported by an

affidavit, duly sworn by the applicant. In addition the applicant through the services of Frank Mwalongo, learned advocate from Apex Attorneys Advocates filed written submission to explain the grounds stated in the notice of motion.

The respondent, on the other hand, having been served with the application filed its affidavit in reply as well as written submission to resist the application.

Basically, the applicant was an employee of the respondent whose services were terminated on the reason of gross insubordination against the Acting Director of the Public Service Pensions Fund. In trying to challenge the termination process, the applicant filed a labour dispute to the Commission for Mediation and Arbitration (CMA) whereas the termination was confirmed. The applicant was aggrieved. He preferred his revision application to the High Court (Labour Division) at Dar es salaam. On 4th August, 2017 the High Court delivered its judgment by affirming the CMA's decision and thus dismissed the applicant's revision. The applicant now wishes to challenge the decision of the High Court (Labour Division) at Dar es Salaam by way of revision. Revision, pursuant to rule

65 (4) of the Rules ought to be filed within sixty days from the date the decision sought to be revised.

In the matter at hand the applicant was supposed to be lodge the application for revision on or before 5th day of October, 2017. Unfortunately, he did not do so. Hence, the present application for enlargement of time was filed on 30th day of May, 2019.

When this application came up for hearing on 3rd day of May, 2019, the applicant was represented by Mr. Frank Mwalongo, learned advocate while the respondent had the services of Mr. Elisa Abel Msuya, learned advocate.

Mr. Mwalongo begun his submission by adopting the notice of motion, affidavit and written submission in support of the application. In expounding the grounds for extension of time, he submitted that the judgment delivered on 4th August, 2017 had errors. The errors were corrected and the High Court reissued its judgment on 6th March, 2018. He further submitted that the reissued judgment also had errors thus necessitated the applicant to move the High Court for correction. The High Court made corrections. Mr. Mwalongo contended that the final

correct judgment was delivered to the applicant on 18th May, 2018 and on 30th May, 2018 the applicant filed the application for extension of time. He argued that the applicant filed the application after the lapse of 12 days from the date the correct judgment was reissued to the parties.

Clarifying further on the reason for delay, Mr. Mwalongo submitted that on 4th August, 2017 the judgment was read in part by the Deputy Registrar such that the applicant could not establish grounds either for appeal or revision. He argued that after issuance of the copies of judgment, decree and proceedings there were some errors which went through several corrections. It was his firm view that the applicant cannot be blamed when the judgment is being corrected by the court. To cement his argument, he referred me to the case of **21st Century Food and Packaging Ltd Vs Tanzania Sugar Producers Association and 2 others** [2005] T.L.R 1.

Mr. Mwalongo further argued that given the fact that final judgment was issued on 18th May, 2018 and the present application was filed on 30th May, 2018 then the days which the applicant has to account are 12 days. He said the 12 days taken by the applicant was reasonable time as

held in the case of **Attorney General Vs Oysterbay Villas Limited & Kinondoni Municipal Council**, Civil Application 299/16 of 2016 (Unreported) where the delay of 45 days was described as not inordinate considering one has to prepare and file an application for extension of time.

He said the applicant had earlier on filed a notice of appeal but after receipt of the copy of the judgment, he had to withdraw the notice so that he can file an application for revision. He argued that the application for revision could not have been filed earlier because the applicant had to obtain a proper judgment and decree for filing an application for revision.

Mr. Mwalongo also raised an issue of illegality that there is apparent illegality since the court did not determine all the grounds which is a serious issue that need to be considered by the Court of Appeal.

In reply, Mr. Msuya adopted the affidavit in reply and written submission and he argued that a party who seeks extension of time must provide enough materials for the court to exercise its discretion. He said the applicant neither in his notice of motion nor in his affidavit disclosed the date when he became aware of the contents of the judgment. In

support of his submission, he cited the cases of **Said Issa Ambunda Vs Tanzania Harbours Authority**, Civil Application No. 177 of 2004 (Unreported):

Regarding judgment being read in part, Mr. Msuya contended that the notice of appeal appearing at page 199 of the record shows that the applicant intended to appeal against the whole judgment. The learned counsel further contended that by the contents of a letter dated 19th September, 2017, the applicant knew the contents of the judgment. He said, the defect in the judgment issued on 19th September, 2017 was in regard to the variance of date on the judgment and decree and not the contents therein. Mr. Msuya saw no apparent reason why it took the applicant eight good months to withdraw notice of appeal, that is, from 18th September, 2017 to 18th April, 2018 when the notice of appeal was withdrawn.

He also contended that according to Paragraph 9 of the affidavit, a copy of the judgment was ready for collection on 2nd May, 2018 but it was supplied to the advocate for the applicant on 18th May, 2018 at 0400pm.

Mr. Msuya argued that we are not told what happened between 2nd May, 2018 to 18th May, 2018.

Further, he argued that according to Paragraph 12 of the affidavit, the applicant finalized the preparation of the application on 25th May, 2018 but it was filed 30th May, 2018 and there is no account on the days between 25th May, 2018 to 30th May, 2018. He submitted that each and every day of delay must be accounted by the applicant for the Court to exercise its discretionary powers. In support of his submission, he cited the cases of **Tanzania Bureau of Standards Vs Anitha Kaveva Maro**, Civil Application No. 60/18 of 2017 and **Nicholaus Hamisi & 1013 Others Vs The Consolidated Holding Corporation, Receiver of Tanzania Shoe Company and Another**, Civil Reference No. 5 of 2016 (Both Unreported).

On illegality, he argued that the alleged illegalities stated at Paragraph 4 of the affidavit are not pure point of law rather they are mixed points of law and fact which is contrary to the set standard enunciated in the case of **Ngao Godwin Losero Vs Julius Mwarabu**, Civil Application No. 10 of 2015 that cited in approval 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 (Both Unreported). Conversely, Mr. Msuya prayed for the dismissal of the application.

It was rejoined that there is no dispute that the copy of the judgment was supplied to the applicant on 18th May, 2018 and the application was filed on 30th May, 2018 therefore the applicant has to account for the 12 days. Mr. Mwalongo insisted that the 12 days period used by the applicant for the preparation and filing of the application was not inordinate as such good cause have been shown. He, therefore, reiterated for the application to be granted.

From the rival submissions, it is gathered that I am invited to consider and determine whether the applicant has advanced good cause for extension of time as envisaged under rule 10 of the Rules. Rule 10 reads:

"The Court may, upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or tribunal, for the doing of any act authorized or required by

these Rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended."

From the wording of the above rule, it is for a party who seeks for an extension of time to advance good cause for the Court to exercise its discretionary powers. This position was stated in the case of **Said Issa Ambunda** (supra) cited by the learned counsel for the respondent where it was held:

"A notice of motion seeking orders for enlargement of time.....must be accompanied by an affidavit bearing the grounds for the delay. If the affidavit does not contain the grounds for the delay, the application is incompetent..."

Applying the above to the matter at hand, the applicant did advance reasons of delay. It is stated in the notice of motion and affidavit in support of the application that: the Deputy Registrar did not read the whole judgment on the date of delivery in which case the applicant could not establish the aggrieved points; after issuance of copies of the

judgment, decree and proceedings there were errors in which the applicant had to go back to the High Court of Tanzania Labour Division two times seeking rectification of the errors; the application has been without reasonable delay on the basis that the correct judgment, decree and proceedings were received by the applicant on 18th May, 2018 though it was ready for collection on 2nd May, 2018; the necessary papers for lodging an application was completed on 25th May, 2018; and there are illegalities in the judgment and decree to be challenged through revision.

The learned advocate for the respondent did acknowledge that; the judgment delivered on 4th August, 2017 had errors; the errors were corrected; and the correct judgment, decree and proceedings were reissued to the applicant's counsel on 18th May, 2018.

Going by the facts, by the time the correct judgment was issued to the applicant, the sixty days within which to lodge an application for revision expired. It expired way back on 5th October, 2017. Consequently, on 30th May, 2018 the applicant and it is on record, filed the present application for extension of time. Counting from the date the applicant

received the copy of the correct judgment, that is, on 18th May, 2018 to the date of filing the present application, that is, on 30th May, 2018, the applicant has spent almost 12 days in preparing and filing the application for extension. We are further told under Paragraph 12 of the affidavit that the preparation was completed on Friday the 25th May, 2018. As such the business day resumed on Monday the 28th May, 2018 and the applicant lodged the application on 30th May, 2018. This means that the applicant took two days from preparation to the actual filing of the application which I take it to be reasonable time. It was not inordinate. The time taken from the issuance of incorrect judgment on 18th September, 2017 to the withdrawal of the notice of appeal on 18th April, 2018 has no relevance to the matter at hand.

Though it is acknowledged that the applicant was supplied with the incorrect judgment on 18th September, 2018 but the applicant could not file an application for revision with an incorrect judgment. The applicant had to obtain a correct judgment for him to file the application for revision. In the case of **the Board of Trustees of the National Social Security Fund (NSSF) Vs Leonard Mtekpa**, Civil Application No. 140

of 2005 (Unreported) the Court of Appeal was invited by way of the preliminary objection to strike out an application for revision for being incompetent for want of a copy of the High Court ruling and drawn order. It was argued that when a party moves the Court for revision, it is his duty to ensure that a copy of the proceedings, decision and drawn order of the court from which revision is sought accompany the notice of motion for an application for revision. In determining the preliminary objection, the Court cited in approval the case of **Benedict Mabalanganya Vs Romwald Sanga**, Civil Application No. 1 of 2002 and stated as follows:

*".....In the **Benedict Mabalanganya case**, Civil Application No. 1 of 2002, which was cited by the respondent; this Court was dealing with an application for revision under section 4(3) of the Act and asked itself the question whether that application was competent. It made a finding that the record before it was incomplete for revision purposes. It did not have all the necessary documents. It had only the notice of motion, the advocates' affidavit, and the ruling of the judge of the*

High Court which was sought to be revised. It did not have a copy of the proceedings of the High Court. It then said:-

"The record of proceedings of the High Court and in the case of the appellate jurisdiction of the High Court, then the record of proceedings of the lower court or courts, must be before this Court. This is glaringly certain from the very definition of what revision entail and if the Court is to perform that function".

*Now, when the Court acts on its own motion it will have to call for those records itself. But **when the Court is moved, as in this case, then the one who moves it will have to supply those records.**" [Emphasis added].*

From the above holding, it is obvious that the applicant who moves the Court for revision ought to supply the Court with a correct judgment for the Court to properly exercise its revisional power.

For the foregoing reasons, I find that there is sufficient ground for granting the application as prayed in the notice of motion. I thus proceed to grant the application for extension of time within which to apply for

revision. The application for revision shall be filed within sixty days from the date of delivering this ruling. Due to the circumstances of this matter, I make no order for costs. It is so ordered.

DATED at DAR ES SALAAM this 27th day of May, 2019.

B. M. A. Sehel
JUSTICE OF APPEAL

I certify that this is a true copy of the original.



S. J. Kainda
S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL