

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT MWANZA**  
**CIVIL APPLICATION NO. 265/08 OF 2021**

**1. MWAMVITA MZIBA**  
**2. EDWARD PATRICK**  
**3. VICTOR ZACHARIA**  
**4. FAUSTINA EVARS**

}

.....**APPLICANTS**

**VERSUS**

**THE REGISTERED TRUSTEES OF BUGANDO**  
**MEDICAL CENTRE ..... RESPONDENT**

**(Appeal from the judgment and decree of the High Court of Tanzania  
at Mwanza)**

**(Nyerere, J.)**

**dated the 9<sup>th</sup> day of November, 2017**

**in**

**Revision No. 58 of 2017**

.....

**RULING**

14<sup>th</sup> & 22<sup>nd</sup> February, 2022.

**MAKUNGU, J.A.:**

The applicants wish to invoke the jurisdiction of this Court to extend time under rule 10 of the Tanzania Court of Appeal Rules 2009 (the Rules).

The intended order is meant to enable the applicants file an appeal against the Judgment and decree of the High Court Labour Division, No. 58 of 2017 at Mwanza delivered by Nyerere, J dated 9<sup>th</sup> November, 2017, out of the statutory time.

In the notice of motion the following grounds have been cited in support of the application and that are:-

*(a) The impugned judgment had contained typographical errors which were subsequently rectified by the High Court through Labour Application No. 12 of 2019 at the instance of the applicants and then the order made known to the applicants on 28<sup>th</sup> May, 2021.*

*(b) The decision and proceedings in Revision No. 58 of 2017 was tainted with illegalities in that: -*

*(i) The honourable judge relied on the respondent's submission instead of evidence on record to hold that the applicants had admitted the disciplinary offence in the disciplinary hearing form (Exh. D6).*

*(ii) The Exh. D.6 did not contain anything to be termed as admission from the applicants, but the honourable judge illegally and arbitrarily held otherwise without assigning any reasons as what was imported was extraneous.*

*(iii) The impugned decision emanated from the revision which was time barred.*

The applicants filed a supporting affidavit sworn by Mr. Julius Mushobozi, their advocate, and written submissions drawn by the same learned advocate in terms of rule 106 (1) of the Rules. Similarly, the respondent filed an affidavit in reply taken by Mr. Lufingo Mwaipopo, a Principal Officer of the respondent. Apart from filing an affidavit in reply, the respondent through Mr. Anthony K. Nasimire, learned advocate, has also filed a notice of preliminary objection the same was abandoned during the hearing of this application.

From the contents of the supporting affidavit and written submissions, the following background, relevant to the application at hand, can be deciphered.

The applicants were employees of the respondent as accountants responsible for cash collections and computer operations. On 5<sup>th</sup> June, 2013 their service was terminated by the respondent after being accused of misconduct and gross negligence causing loss to the respondent. Aggrieved, the applicants referred their complaint to the Commission of Mediation and Arbitration (CMA) where it decides on their favour.

Aggrieved by the CMA decision, the respondent appealed to the High Court Labour Division at Mwanza in Labour Revision No. 58 of

2017 where the High Court (Nyerere, J) on 9<sup>th</sup> November, 2017 quashed the decision of the CMA and held that the applicants termination was for a valid reason.

On 10<sup>th</sup> November, 2017 the applicants applied for copies of the proceedings and exhibits in the High Court Labour Division. On 8<sup>th</sup> December, 2017 they lodged the notice of appeal in this Court against the impugned decision. So far so good, and the question that lingers and calls for an answer is why the applicants did not file their intended appeal within time after filing the notice of appeal on 8<sup>th</sup> December, 2017. The answer to this question is provided by the applicants under paragraph 14 of the supporting affidavit which I reproduce below:-

*"14. That we could not lodge appeal against the judgment with typographical errors within 60 days because the decree and judgment were at variance".*

Under paragraph 12 of the same affidavit the delay has been caused by the order for rectification of Judgment that was supplied to the applicants on 28.05.2021. That soon after being supplied with the same, they started making preparation for this application.

The respondent opposes the application as earlier intimated, as sound in the affidavit in reply and written submission in opposition to the application. The critical relevant part of the affidavit in reply is paragraph 5 which is a reply to paragraphs 12,13,14,15 and 16 of the supporting affidavit, and it goes thus:-

*" That according to what is deponed by the said JULIUS MUSHOBOZI in paragraphs 12,13,14,15 and 16 of his affidavit does not constitute a good reason for the delay in filing the present application".*

At the hearing of this application on 14<sup>th</sup> February, 2022, Mr. B. Sekundi learned advocate appeared for the applicants, whereas, the respondent had the services of Mr. Anthony K. Nasimire, learned advocate.

Having adopted the notice of motion, supporting affidavit and his written submission, Mr. Sekundi submitted that the applicants did not file their appeal in time against the Judgment with typographical errors which could have vitiated the intended appeal.

In the circumstance, he argued that the time was spent to rectify the typographical errors in the judgment commencing from 14<sup>th</sup> November, 2017 when the applicants became aware of the existence

of such error followed by follow ups up to the institution of Misc. Application No. 12 of 2019 on 18<sup>th</sup> April,2019 for rectification of errors in the High Court up to 28<sup>th</sup> May, 2021 when the applicants were supplied with the rectified order up to 1<sup>st</sup> June,2021 when the applicants lodged the instant application.

Mr. Sekundi submitted further that, the judgment of the High Court is tainted with illegalities apparent on the face of the record which occasioned the miscarriage of justice and which illegalities need to be resolved through intended appeal to this Court. He mentioned, among others, the impugned decision and proceedings that emanated from the revision which was time barred. In addition, he said, the respondent will not be prejudiced if this application is granted. In support of his arguments, he cited the following cases: **Tanzania Saving Machines Company Ltd v. Njake Enterprises Limited**, Civil Application No.56 of 2007; **Geita Gold Mine v. Truway Mureth and other**, Civil Application No. 311/08 of 2019 (all unreported), and case of **Principal Secretary Ministry of Defence and National Services v. Devran Valambia** [1992] TLR 182.

In reply, Mr. Nasimire parted ways with the applicant's counsel as he submitted on the issue of delay to the effect that the application

has no merit because the applicants had enough time to lodge their appeal within the statutory 60 days without the unnecessary rectifications. He submitted further that according to the record the order of rectification was signed by the judge on 19.06.2020 and paragraph 12 of the affidavit stated that the order was supplied to the applicants on 28.05.2021 but Annexure KLC/E2 shows that it was received on 28.06.2021. He drew the attention of this Court that there is no proof if the applicants were served on that date because there is no endorsement of the Registrar but it was signed and endorsed by the advocate on 28.06.2021, i.e over one year after being signed by the Judge. He thus argued that the applicants were not vigilant enough to follow up the matter in Court.

On the point of illegality, Mr. Nasimire submitted to the effect that, whenever illegality is raised in application of this nature, it must be clearly seen on the face of record and must raise an important point of law. According to him, the alleged illegality by the applicants, in the revision complained of and that the subsequent proceedings were time barred is just fanciful and an afterthought because such allegation had never been raised before the High Court by the

respondent. He added that the Revision No 58/2017 was struck out but the respondent was given 3 days to file again which he did.

The period for lodging an appeal is 60 days from the day of lodging notice according to Rule 90(1) of the Rules and I should add that the said rule provides the general rule in filing civil appeals where, see also the case of **National Microfinance Bank PLC v Odilo Odila Mbunda**, Civil Appeal No. 95 of 2015 (unreported). When appellant has no reason for not filing his appeal within 60 days, he has no basis for making use of any other provisions that provides for exceptions.

When the applicants lodged their notice of appeal on 8<sup>th</sup> December, 2017 they ought to have lodged their appeal by 8<sup>th</sup> February, 2018. However, instead of filing the appeal they filed the application for rectification on 18<sup>th</sup> April, 2019. The fear that the appeal would have been incompetent because of typographical errors, is bone out of a misconception as rightly submitted by Mr. Nasimire.

I have dispassionately followed the rival submissions for and against the application. I wish to state at the out set that, it is settled position that the discretionary power of the Court to extend time for an

applicant to do an act authorized by the Rules after the expiry of the prescribed time, are exercised upon good cause being shown as provide for under Rule 10 of the Rules.

I am mindful of the fact that there is no single definition of the term "good cause" stated in the above Rule, but the Court in determining good cause, may consider all the material factors brought by the applicant for it to exercise its discretionary powers to extend its discretionary powers to extend time in given circumstances. In the case of **Henry Leonard Maeda and other v. Ms. John Anael Mongi**, Civil Application No. 31 of 2013 (unreported), it was stated that:-

*" In considering an application under the rule, the Courts may take into consideration, such factors as the length of delay, the reasons for the delay and the decree of prejudice that the respondent may suffer if the application is granted".*

In the light of that established position, the question to be determined herein is whether or not the applicants have been able to show good cause to justify their application.

Submitting on the grounds justifying the application Mr. Sekundi raised 3 points of illegality the major one is that the Revision No. 58 of 2017 was time barred. This ground of illegality was vehemently opposed by the respondent on the ground that such allegation had never been raised before the High Court by the applicants and cannot be raised in the Court of appeal. So, I do not find the illegality, complained of by the applicants. Therefore, I agree with Mr. Nasimire's submission that Civil Revision No. 58 was not time barred. It is my settled opinion that, the alleged illegality cannot raise any arguable point of law worth to be addressed by the Court.

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 Court stated that:-

*" Since every party intending to appeal in my view, be said that in VALAMBIA'S Case, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raised point of law should, as of right, be granted extension of time if he applies for one. The Court there emphasized that such point of*

*law must be that of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process”.*

Being guided by the above decision, I must state that nothing on the record of this application suggests that there was illegality worthy of consideration by the Court to justify the Court’s exercise its discretionary powers to extend time as sought by the applicants.

Now reverting to the reasons for delay advanced by the applicants, I do not think that I need to dwell on the long background of this matter. I will go straight to consider the un accounted for delay as parties do not discount that the applicants wasted time waiting for corrections for the Court. From 14<sup>th</sup> day of November,2017 up to 1<sup>st</sup> day of June, 2021 when this application was filed. It is over three years.

The applicants in paragraph 13 of the affidavit admitted the fact that the delay has taken very long time. I find it important to reproduce paragraph 13 of the said affidavit:-

*" 13. That after we were supplied with the said above referred order for rectification, we find it for betterment of justice that craved prayer will save the purpose. It is now 3 years and 181 days since the judgment was delivered, and the reasons for such delay are beyond our human control for the reasons advanced for each day of delay ".*

As it can be observed from the above paragraph, the applicants pleaded that the delay is beyond human control. I don't think so. The applicants instead of filing the appeal they decided to file application for rectification. In my view more rectification is needed in the title of respondent. The respondent at CMA was known as "**the Registered Trustees of Bugando**" but at the High Court and this Court is known as "**the Registered Trustees of Bugando Medical Centre.**"

In the circumstances, I entirely agree with the counsel for the respondent, who rightly argued, in my view, that the applicants have failed to account for delay of more than 3 years. The Court has been insistent that every day of delay must be accounted for and in the case of **Sabastian Ndaule v Grace Rwemafa**, Civil Application No. 4 of 2014 (unreported) the Court stated 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 have to be taken.

For the foregoing and taken into consideration the circumstances pertaining in the current application, it is my view that no good cause has been shown by the applicants to warrant extension of time sought. In the final result, this application is devoid of any merit and the same is dismissed.

It is so ordered.

**DATED** at **MWANZA** this 22<sup>nd</sup> day of February, 2022.

O. O. MAKUNGU  
**JUSTICE OF APPEAL**

The Ruling delivered this 22<sup>nd</sup> day of February, 2022 in the presence of Mr. Sekundi Sekundi, learned counsel for the applicants and also hold brief of Mr. Anthony Nasimire, learned counsel for the Respondent is hereby certified as true copy of the original.



  
G. H. HERBERT  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**