

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
CIVIL APPLICATION NO. 243/18 OF 2021

HILLARY KERARYO APPLICANT

VERSUS

AEA LIMITED RESPONDENT

**(Application for extension of time to file appeal against the Judgment of
the High Court of Tanzania, Labour Division at Dar es Salaam)**

(Wambura, J.)

dated the 3rd day of July, 2020

in

Revision No. 331 of 2019

RULING

27th September, 2022 & 11th August, 2023

MASHAKA, J.A.:

Hillary Keraryo, the applicant lodged an application for enlargement of time within which to file an appeal against the decision of the High Court of Tanzania (Labour Division) in Revision No. 331 of 2019 dated 3rd July, 2020. The application predicated under rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) is supported by affidavit duly sworn by the applicant. The respondent lodged affidavit in reply contesting the grant of the application.

A brief background of the application is pertinent. The respondent was aggrieved by the award of the Commission for Mediation and Arbitration (the CMA) to the applicant; hence she lodged Revision No. 331 of 2019 challenging it. The High Court revised and set aside the award of the CMA on 03rd July, 2020. Being aggrieved by that decision, the applicant lodged an application for leave to appeal to the Court vide Miscellaneous Application No. 359 of 2020. Subsequently, on 23rd November, 2020 the applicant withdrew the application as the issue of obtaining leave to appeal to the Court was no longer a legal requirement. Notwithstanding that fact, since the applicant still had the intention to challenge the decision of the High Court but found himself out of time, he lodged this application seeking for extension of time to file his appeal on 11th June, 2021.

The grounds advanced by the applicant in the notice of motion are as follows:

- 1. That, the applicant filed his notice of appeal in time but by oversight filed in High Court (Labour Division) Miscellaneous Application No. 359 of 2020 seeking leave to appeal t the Court of Appeal;*

2. *That, when Miscellaneous Application No. 359 of 2020 was called upon for hearing the applicant had to withdraw it as it was wrongly filed due to the development of the labour law; and*
3. *That, the applicant is still intending to appeal against the judgment of the High Court of Tanzania (Labour Division) (Hon. S. A. N. Wambura, J.) dated 3rd of July, 2020 in Revision No. 331 of 2019.*

When the application was called on for hearing, Mr. Mluge Karoli Fabian, learned counsel entered appearance representing the applicant and Ms. Bora Alfred Nicholas, learned counsel represented the respondent.

Upon adopting the notice of motion and supporting affidavit to form part of his oral submissions, Mr. Fabian submitted that they had lodged Civil Application No. 359 of 2020 seeking for leave to appeal to the Court only to discover that the legal requirement had been waived and decided to withdraw the application on 23rd November, 2020. The current application was lodged after having mistakenly filed Misc. Application No. 359 of 2020 at the High Court (Labour Division) and he argued that it was not due to negligence on the part of the learned counsel as attacked by the learned counsel for the respondent. He implored me to grant the prayer as the rights of the respondent will not be prejudiced.

In reply, Ms. Nicholaus strongly opposed the granting of the application arguing that the applicant has failed to establish that the delay was due to a good cause. She contended that the applicant enjoyed the services of an eloquent learned advocate who knows and is aware of the existence and amendment of the laws of our land. She urged me to find that the applicant had failed to act diligently to lodge an appeal against the impugned judgment and not as alleged that he was fulfilling a legal requirement that is seeking for leave as averred at paragraphs 3 and 4 of his supporting affidavit. She pointed out that Miscellaneous Application No. 359 of 2020 was withdrawn on 23/11/2020 and this application was eventually filed on 11/06/2021 almost six months later.

The present application is without a doubt regulated by rule 10 of the Rules which stipulates:

"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 authorised 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."

In view of the oral submissions by the learned counsel for the parties and the cited provision, the contentious issue for determination is whether the applicant has demonstrated good cause for exercising the discretion of the court as prescribed under rule 10 of the Rules in granting extension of time.

It is a settled principle that before the court can exercise such discretion in an application for enlargement of time, the applicant has to account for each day of the delay involved and the failure to do so would be fatal to the application: see, **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007; and **Sebastian Ndaula v. Grace Rwamafa (Legal Representative of Joshua Rwamafa)**, Civil Application No. 4 of 2014 (both unreported). The applicant has to show good cause for the delay. Though good cause has not been defined, it is upon the applicant to sufficiently convince the court that good cause exists. In **Tanga Cement Company Ltd v. Jumanne D. Masangwa and Amos A. Mwalavanda**, Civil Application No. 6 of 2001 (unreported), the Court observed:

"What amounts to sufficient cause has not been defined. From decided cases a number of factors have to be taken into account, including whether or not the application has been brought promptly, the absence of any valid explanation for delay, lack of diligence on the part of the applicant".

It is undisputed that the decision against which the intended appeal is sought to be lodged was delivered on 03rd July, 2020. The applicant averred at paragraphs 4, 5 and 6 of supporting affidavit that the delay was caused by the filing of an application for leave to appeal to the Court vide Miscellaneous Application No. 359 of 2020 and when pursuing it, he became aware that the requirement of leave was no longer necessary and, thus, on 23rd November, 2020 the application was marked withdrawn. In those circumstances, the period from the delivery of impugned decision to the date when the application for leave to appeal to the Court was withdrawn can be exempted. The question remaining is whether the applicant has advanced good cause for the delay from when the application for leave to appeal to the Court was withdrawn to the time of filing this application on 11th June, 2021.

As hinted earlier, Miscellaneous Application No. 359 of 2020 was withdrawn on 23rd November, 2020 and the present application was lodged on 11th June, 2021 almost six months had elapsed. Unfortunately, in his affidavit in support of the application, the applicant has failed to account for each day of delay from 24th November, 2020 to 10th June, 2021. In **Sebastian Ndaula v. Grace Rwamafa (Legal Representative of Joshua Rwamafa)** (supra), the Court underscored:

"The position of this Court has consistently been to the effect that in an application for extension of time, the applicant has to account for every day of the delay".

According to paragraph 7 of supporting affidavit, the applicant averred that the intended appeal had overwhelming chances of success as there is material error. The issue that the appeal may have overwhelming chances of success is not a notable condition for consideration in granting extension of time because the applicant is required to show good cause. See **Wambele Mtumwa Shahame v. Mohamed Hamis**, Civil Reference No. 8 of 2016 (unreported). In those circumstances, the applicant has failed to show good cause for each day

of delay to enable me to exercise discretion under rule 10 of the Rules to grant extension of time.

In fine, I find this application to be devoid of merit. I accordingly dismiss it with no order as to costs.

DATED at **DAR ES SALAAM** this 09th day of August, 2023.

L. L. MASHAKA
JUSTICE OF APPEAL

The Ruling delivered this 11th day of August, 2023 in the presence of the Mluge Karoli Fabian, learned counsel for the applicant and Ms. Mwamvua Salum Ally, learned counsel for the respondent is hereby certified as a true copy of the original.

S. P. Mwaiseje
DEPUTY REGISTRAR
COURT OF APPEAL

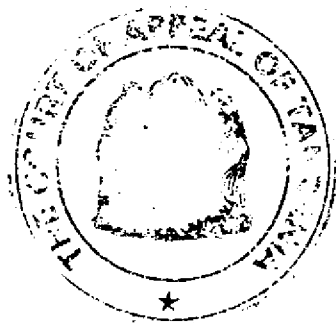
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