

IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

(CORAM: NDIKA, J.A., RUMANYIKA, J.A., And MURUKE, J.A.)

CIVIL APPEAL NO. 220 OF 2021

OCTAVIAN RUGEREZI FRANCIS APPELLANT

VERSUS

TEACHERS SERVICE COMMISSION 1ST RESPONDENT

MBARALI DISTRICT COUNCIL 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

**(Appeal from the decision of the High Court of Tanzania Mbeya District
Registry) at Mbeya**

(Mambi, J.)

dated the 15th day of December, 2020

in

Misc. Civil Application No. 36 of 2020

.....

JUDGMENT OF THE COURT

14th & 22nd February, 2024

MURUKE, J.A.:

In the High Court of Tanzania at Mbeya, Octavian Rugerezi Francis, the appellant, filed an application seeking leave to apply for Prerogative Orders of Mandamus, Prohibition and Certiorari against the respondents on 12th December, 2019. The application was struck out on 16th July, 2020 by Hon Mongella J, for being incompetent.

The appellant filed an application for extension of time within which to apply for leave to file judicial review. On 27th August, 2020 High Court, Hon. Mambi, J dismissed the application upon failure by the appellant to account for 47 days of delay from when his initial application for leave was struck out to the date of filing the application for extension of time.

Being dissatisfied, the appellant has filed the present appeal raising three grounds namely:

- 1. That, the learned trial judge erred in law and fact, to dismiss the appellant's application for extension of time to apply for judicial review without considering that the delay involved was technical.*
- 2. That, the learned trial judge erred in law and fact to deny the appellant's application for extension of time on the ground of insufficient reasons without taking into consideration that there is no hard and fast rule as to what constitutes sufficient reasons and the fact that each case has to be treated under its own circumstances.*
- 3. That, the learned trial judge erred in law and fact to hold that the appellant was duty bound to account for every day of delay*

without reasoning that the appellant was looking for legal assistance from the Tanzania Teachers' Union.

Both parties filed their written submissions in terms of Rule 106(7) of the Tanzania Court of Appeal Rules, 2009. On the date set for hearing, the appellant was in person unrepresented, whereas the respondents were represented by Mr. Ayoub G. Sanga and Joseph Tibaijuka, both learned State Attorneys.

When the appellant was invited to address the Court on his grounds of appeal, he first adopted his submission filed earlier and further submitted on ground one that, his former application was struck out on technicalities resulting in technical delay in filing an application for extension of time before the High Court.

On ground two, the appellant submitted that he was communicating with the Tanzania Teachers Trade Union at Dodoma to be availed with legal assistance. Furthermore, he contended that he was a person of financial difficulties, hence it was not easy to travel from Mbeya to Dodoma to make close follow up with the Tanzania Teachers Union for assistance, he being a member as a teacher.

The appellant contended on ground three that, it was an error by the High Court to rule that, he was bound to account for delay from 16th day of July, 2020 to 27 August, 2020 without considering that, he was looking for legal assistance.

In response, to the appellant's submission Mr. Sanga joined the first and third grounds, and submitted that, the refusal of his initial application there was no doubt that, the appellant was supposed to file a fresh application in the same Court within reasonable time. The appellant did so on 27th August, 2020, which was after 41 days from the date when initial application was struck out by Hon. Judge Mongella. The appellant did not act diligently in prosecuting his case.

Mr Sanga argued further that the appellant has tried to raise the issue of technical delay as one of the reasons which the High Court judge failed to consider and as a result, she dismissed the appellant's application. Also he argued the appellant failed to act diligently after the first application was struck out. Time should be reckoned from the last event when the matter was struck out for the technical mistake he committed. Since the appellant acted after 41 days, he did not act promptly and diligently after his application was struck out by the High Court.

Mr. Sanga went on contending that the appellant has failed to account for 41 days he has delayed. The requirement of accounting for every day of delay has been emphasised by the Court in numerous decisions, one of which is **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 [2011]TZCA 4 (3 October, 2011,TanzLII).

The learned State attorney criticised the appellant for the assertion that, the appellant was seeking for legal aid from the Teachers Trade Union as not being enough without proof of correspondences which were supposed to feature in his affidavit. Thus, he urged us to hold that ground two is lacking in merit. In totality respondent's counsel pressed for dismissal of the appeal.

Having heard and considered the oral and written submission of the learned counsel for the parties and examined the record in general, we think that the issue to be considered is whether the appellant has accounted for the 41 days of the delay. High Court while striking out appellant 1st application, Hon. Mongella J held that:

"A statement is an important document in the application for leave and the application for

judicial review once the leave is granted. It therefore has to contain all the legal requirements set out under the law. For failure to include the name and description of the applicant, the statement becomes incurably defective."

It was then followed with the application being struck out. The issue was very simple, it was just the name and description of the appellant, that cannot be said to be a technical issue at all as argued by the appellant.

The appellant took 41 days to correct the name and describe himself. Clearly the appellant did not act diligently. He alleged financial constraints to be able to travel to Dodoma to make a follow up to the office of the Teachers Trade Union, that cannot be accepted. The issue of financial constraints is subjective, and has never been a reason for extending time. The Court was confronted with the similar issue, in the case of **Abdallah Salanga & 63 Others vs Tanzania Harbours' Authority**, Civil Reference No. 8 of 2003 (unreported), where it was held that:

"Financial constraint is not a sufficient reason to warrant the grant of extension of time"

The appellant's allegation that, he was looking for legal aid from the Teachers Trade Union as being the reason for delay that the High Court Judge failed to consider cannot be accepted. With due respect to the appellant, assuming that the reason is true, there is no any series of events averred in paragraph 5 of the affidavit in support of the application. For clarity, the same is hereby reproduced:

"That the delay in filing the application has been a result of hearing of preliminary objection raised in terms of ruling dated 21st July, 2020 was given and thereafter was communicating with my Trade Union Tanzania Teachers Union at the Headquarters in Dodoma for financial and legal support to enable file this application."

The averment in paragraph 5 reproduced above does not show, **one**, the date in which the appellant traveled and came back. **Two**, when exactly he was given legal assistance. **Three**, there is no any correspondence attached to the affidavit to prove if there was any. As the affidavit is silent, therefore this Court cannot accept a blanket statement as averred in paragraph 5 reproduced above. Legally, in an application for extension of time, each day passed beyond the prescribed

time counts and it has to be accounted for. Otherwise, the court will have no material facts to act on it.

In the case of **Bushiri Hassan v. Latifa Lukio Mashao**, Civil Application No. 3 of 2007 (unreported) the Court emphasized the need of accounting for each day of delay within which certain steps could be taken. It stated:

"Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which steps have to be taken."

Refusing extension of time for the applicant who has delayed for 12 days, in the case of **Gabriel Mathius Michael v. Halima Feruzi & 2 Others**, Civil Application No. 204/17 of 2020 [2022] TZCA (24 May, 2022, TanzLII), a single justice of the Court held that;

"... it is my considered view that the applicant has failed to account for lapse of 12 days before filing this application, the omission which shows lack of diligence in pursuing this matter on the part of the applicant. This ground is therefore without merit."

In the same vein, the Court in the case of **Ludger Bernard Nyoni vs National Housing Corporation**, Civil Application No. 372/01 of 2018 [2019] TZCA 658 (8 May, 2019 TanzLII) held that;

" It is settled that in application for enlargement of time, the applicant has to account on each day of the delay involved and that failure to do so would result in the dismissal of the application..."

Insisting on accounting on each day of the delay, Court in the most recent decision in **Bushir Ally v. Anyegile Andendekisye Mwamakula & 2 Others**, Civil Appeal No. 49 of 2021[2024]TZCA 47(16 February, 2024), held that:

"we find without difficulties, as the High Court Judge rightly did, that the appellant miserably failed to account for each day of the delay between 15/03/2018, when he became aware of the judgment upon perusing the records of the DLHT and 26/10/2018, when he lodged the application for extension of time..."

As already alluded to above, the appellant did not give reasonable explanation as to why there was such an inordinate delay of 41 good days from 16th July, 2020 when the first application was struck out to 27th August, 2020 when the application for extension of time was lodged.

Given the prevailing circumstances, we are satisfied that appellant was negligent and failed to account for the delay involved for the Court to exercise its discretionary power.

For the reasons stated above, the appeal is without merits. We therefore dismiss it with no order as to costs because it arose from a labour dispute.

DATED at MBEYA this 21st day of February, 2024.

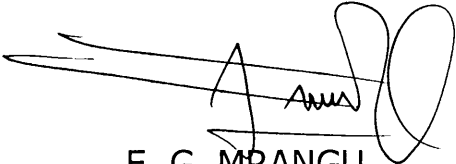
G. A. M. NDIKA
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

Z. G. MURUKE.
JUSTICE OF APPEAL

The Judgment delivered this 22nd day of February, 2024 in the presence of Appellant in person and Mr. Joseph Tibaijuka, learned State Attorney for the 1st, 2nd and 3rd Respondents, is hereby certified as a true copy of the original.




E. G. MRANGU
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL