

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION

AT MUSOMA

MICL LABOUR APPLICATION NO. 26 OF 2019
(*Arising from the judgement of the High Court of Tanzania in
Labour Revision No. 31 of 2017*)

JOHN LUCHINA APPLICANT

VERSUS

MUNANKA ENTEPRISES RESPONDENT

RULING

Date of Last Order: 27/04/ 2020

Date of Ruling: 29/05/2020

KISANYA, J.:

On 16th August, 2019, this Court dismissed the applicant's application for revision against the decision of the Commission for Mediation and Arbitration (the CMA) in Labour Dispute No. CMA/MUS/311/2016. The Court informed a party aggrieved by that decision to appeal to the Court of Appeal according to the laws. Following that judgement, the applicant, John Luchina has filed the present application praying for the following orders:

1. *That the applicant be granted leave to file a Notice of Appeal out of time.*
2. *Leave to appeal to the Court of Appeal be granted against the Judgement/ Ruling of the High Court dated 16th August, 2019.*
3. *Costs*

4. Any further order that this Hon. Court deems fit and just to grant.

At the hearing of this application, the applicant appeared in person. On the other hand, the respondent was represented by Mr. Ernest Mhagama, learned advocate.

Submitting in support of the application, the applicant argued at length on the reasons for failing to appeal in time. He stated he has been suffering from blood pressure and urinary sytem since 2013 and that in 2018 he went to Bungando Referral Hospital (Bungando) where he was operated. The applicant contended that after the said operation he had to attend regular clinic at Bungando. With that health condition background, the applicant claimed that he failed to file the Notice of Appeal in time due to blood pressure which affected him after losing the case. He stated further that, he recovered after one month after going to Bugando. Upon being asked by the Court as to whether he had evidence such as, bus tickets and medical reports or discharge form to support this fact, the applicant replied that he had none. However, he requested the Court to consider that he was sick and grant the leave to file notice of appeal out of time and the leave to appeal to the Court of Appeal. The appellant contended that the CMA and this Court failed to consider that he was not paid six months' salary without lawful cause.

In reply, Mr. Mhagama objected the application. He submitted that the appellant returned from Mwanza when the time to file notice of appeal had not lapsed. The learned counsel was of the firm view that the applicant had not proved that he went to Bungano on 20.8.2019 on the ground that he attached letter from the Ward Executive Office dated 12/08/2013 and prescriptions of 2018. Therefore, Counsel Mhagama submitted that the applicant had not advanced sufficient cause. Citing the case of **Durra Abeid vs Honest Swai**, Misc. Civil Application No. 187 of 2017, HCT at Dar es Salaam, the learned counsel argued that the applicant was duty bound to prove the sufficient cause which prevented him from filing the notice of appeal in time.

On the request for leave to appeal to the Court of Appeal, Mr. Mhagama submitted that the leave to appeal is not required in labour matters. Therefore, he urged me to dismiss the application for want of merit.

The applicant rejoined by reiterating that he failed to file the notice of appeal in time because he was sick and that he went to Bungando on 20.08.2019.

Having heard the argument by both parties and after going through the affidavit and the counter affidavit, the issues for consideration are whether the request to file leave of appeal to the Court of Appeal is competent before this Court; and

whether the applicant has advanced the sufficient cause for extension of time to file notice of appeal out of time.

Starting with the request for leave to appeal to the Court of Appeal, I wish to point out that appeal to the Court of Appeal against the decision made by this Court (Labour Court) is governed by section 57 of the Labour Institution Act, 2004 (as amended) which provides that:

"Any party to the proceedings in the Labour Court may appeal against the decision of that Court to the Court of Appeal of Tanzania on a point of law only

In the light of the above provision, it is clear that a person aggrieved by the decision of the Labour Court has a direct right to appeal to the Court of Appeal. He is only required to raise the point of law in his appeal. This position was also stated by the Court of Appeal in the case **Remigious Muganga Versus Barrick Bulyanhulu Gold Mine, Civil Appeal No. 47 of 2017, CAT at Mwanza** (unreported) when the above provision was interpreted as follows:

The section, gives a party to "the proceedings in the Labour Court" unfettered right to appeal to this Court. The provision does not restrict that right to the decisions made under any specified laws. It allows a party to the proceedings conducted in the Labour Court to appeal regardless of the law under which those proceedings were based. The only restriction is that the appeal must be on a

point of law only. The section is couched in a way that it accommodates any proceeding conducted in the Labour Court. [Emphasize supplied].

Having considered that leave to the Court of Appeal is governed by section 5 of the Appellate Jurisdiction Act, Cap. 141, R.E 2002, the Court of Appeal went on to hold as follows:

“On the basis of the considerations made above, it is our view that the section allows a party, who is aggrieved by any appealable decision arising from the proceedings of the Labour Court, to appeal without recourse to the provisions of S. 5 (1) (c) of the AJA, notwithstanding that the proceeding giving rise to that decision was taken under the CPC.” [Emphasize supplied].

This being a labour matter which originates from the decision of the CMA and the judgement of this Court, the applicant has an automatic right of appeal to the Court of Appeal. Therefore, I am of the considered view that that, the request for leave to appeal to the Court of Appeal is incompetent before this Court.

The second issue is based on the provision of rule 10 of the Court of Appeal Rules, 2009 (as amended), hereinafter referred to as the “the Rules” which gives the guiding principle in granting extension of time prescribed by the rules. The established principle is for the Court to be satisfied that good cause has been shown for the delay. As rightly argued by Mr. Mhagama, the applicant is duty

bound to prove that there is good cause for the delay. Further he is required to account for all periods of delay. What amounts to good cause has not been defined in the Rules. It is therefore decided basing on the circumstances of each case. Further, factors to be considered were stated in the case of **Damas Asses and Another Vs Raymond Mgonda Paula**, Civil Application No. 32/17 of 2018, CAT at Dar es Salaam (unreported) when the Court of Appeal held that:

“It is also important to note that, factors constituting sufficient reasons are not categorically explained or itemized, but the same depends on the circumstances of each case. It is however trite law that, in considering whether or not to grant such extension of time, courts take into account the following factors, the length of the delay; the applicant must account for all the period of delay and must show diligence and not apathy, negligence or sloppiness in prosecuting action that he intends to take; and 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 challenged.”

Pursuant to rule 83 of the Court of Appeal Rules, 2009 the time within which to lodge notice of appeal to the Court of Appeal is 30 days from the date of the decision it is desired to appeal. In the instant case, that time lapsed on 16.09.2019. The applicant has advanced sickness as the reason for the delay. He averred that he went to Bugando Referral Hospital from 20. 08. 2019 and

recovered after one month. However, this ground was not proved. This is because, the applicant attached the Prescriptions Forms dated 27.07.2018; Appointment Card showing that the last appointment was 20.09.2018 and the Discharge Summary which show that he was admitted on 15/6/2018 and discharged on 10/7/2018. Another document is letter dated 12.08. 2013 written by the Ward Executive Officer on the health condition of the applicant. There is no buss tickets or any evidence to show that he went to Mwanza and Bugando in particular, from 20.08.2019. As shown above, no evidence to show that the applicant was sick from 20.08.2019. The fact that he attended medical clinic in 2018 is not by itself sufficient to prove the sickness in the application at hand. Further, the appointment card shows that his last appointment to Bugando was 20.9.2018. For the ground of sickness to succeed it must be proved that the applicant was sick during the period of delay. This has not been proved in the case at hand.

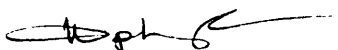
However, I have stated herein that one of the factors which is considered in extending the time limitation is the length of the delay. The applicant delayed for almost 25 days. Further, pursuant to the prescription forms and the discharge form, he was 72 years in 2019. Therefore he is an elderly man. Also, though he did not prove that he went to Bugando in 2019, it on record that he has been

suffering from urinary system and blood pressure and the said fact was not challenged by the respondent.

Therefore, having taken into account the length of delay, the age of the applicant and his previous health condition as per affidavit and the documents attached thereto, I am of the considered opinion that there is good cause for extending the time.

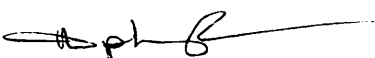
In the result, I grant the extension as prayed. The Notice of Appeal should be lodged within thirty (30) days from the date of this ruling. The request for leave to appeal is incompetent before this Court on the aforesaid reason. It is so ordered.

Dated at MUSOMA this 29th day of May, 2020.


E. S. Kisanya
JUDGE
29/5/2020

Court: Ruling delivered this 29th day of May, 2020 in the presence of the applicant and Mr. Rhobi Mnanka, auditor of the Respondent.




E. S. Kisanya
JUDGE
29/5/2020