THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

MISC. LABOUR APPLICATION NO. 10 OF 2019

(Arising from the High Court (Labour Division) in Labour Execution No. 8 of 2017)

VALERIAN CHRISPIN MLAY ---------- APPLICANT

Versus

KAGERA TEA COMPANY LTD ---------- RESPONDENT

RULING

12/10/2020 & 19/10/2020

Mtulya, J.:

This dispute bangs the doors of this court for the fifth time now. A prayer registered this time concerns extension of time to file Reference to contest the Ruling in **Labour Execution No. 8 of 2017** delivered by the Deputy Registrar of this court on 12th December 2018 emanated from the decision of the Commission for Mediation and Arbitration for Kagera at Bukoba (the Commission) in **Labour Complaint No. CMA/BUK/63/2011** (the Complaint).

Initially, the Applicant appeared in this court in **Labour Revision No. 2 of 2012**; **Labour Execution No. 10 of 2013**; **Labour Execution No. 8 of 2019**; and **Misc. Labour Reference No. 1 of 2019**.At one point during the exchange of horns between the parties, the Applicant drafted and registered a complaint letter to the

Registrar of our superior court based in Dar Es Salaam and copied to Hon. Chief Justice, Principal Judge and Chairperson of Advocate Committee of the Bar Association of Tanzania, Tanganyika Law Society, complaining several issues. However, at page 7 of his letter dated 21st January 2019, at page 9 paragraph 6, the Applicant mentioned this institution as in the following words:

> *...**wanavyoitumia mahakama katika kupoteza haki zangu na kunitesa**: na kwa kuwa tayari kuna maamuzi yaliyo wazi ya tuzo kama inavyoonekana hapo awali, **lakini mwajiri amekuwa akitumia makosa ya kiufundi mahakamani ikiwa na pamoja na mapingamizi** ... pingamizi lake namba 16 ili kufanikisha azma yake ya kuhakikisha sipati haki zangu za msingi kwa wakati...*
>
> (Emphasis supplied)

This complaints was lodged immediately after the decision in Labour Execution No. 8 of 2017 of 12th December 2018. The reasons of shifting from legal procedures in favour of administrative apparatus were partly replied by letters of Chief Court Registrar of 14th February 2019 referenced 21/67/01 'F'/13 and of 1st April 2019 referenced DB.21/67/01 'F'/19 and Deputy Registrar's letter of this court of 25th

February 2019 referenced BK/HC/MSJ/MKU/217/21, in the following texts:

> *...tarehe 9 Januari 2019 Bw. Valerian Mlay alifika Masijala ya Madai akiwasilisha nyaraka zake... alizokuwa anaoomba Mapitio ya Maamuzi yaliyotolewa katika Shauri la Labour Execution No. 8/2017. Baada ya kukagua nyaraka hizo tulibaini kichwa cha habari cha Maombi hayo kilikuwa kinasomeka Misc. Civil Application ...of 2019...inavyosomeka katika Chamber Summons... Misc. Civil Reference.*

The letter also contained some advice to the Applicant to amend and file his preferred Reference within thirty (30) days, and failure to that he will be required to apply for an extension of time to file Reference in this court. However, as a lay person unrepresented by any legal services, the Applicant interpreted the bar to his Application and advice is part of the machinery to delay his rights hence opted for administrative procedures, which did not end in his favour. The Applicant was then advised to search for Legal Aid to put his claims straight and per requirement of the laws regulating Reference.

Following that advice, the Applicant searched and found Legal Aid services and drafted Misc. Labour Reference No. 1 of 2019, which

was struck out on 7th July 2019 for want of proper citation of the provision of the law to move this court. On 12th July 2019, the Applicant drafted and filed the present Application. When the Application was scheduled for hearing, the Applicant invited Mrs. Lucy Nambuo, learned counsel to argue the Application whereas Mr. Frank Kalory John, learned counsel appeared for the Respondent.

Mrs. Nambuo briefly submitted that this Application emanated from Misc. Labour Reference No. 1 of 2019 which was struck out on the 9th day of July 2019 and the present Application was promptly filed in this court on 12th July 2019. Mrs. Nambuo decided to invite the test of prompt lodging of application in this court to persuade the court to decide in favour of the Applicant. Finally, Mrs. Nambuo prayed for extension of time to file Reference in this court so that the Applicant can execute the decree against the Respondent.

Although Mrs. Nambuo did not cite any authority of this court or our superior court in support of her argument, but she must be aware of the position of our superior court in the precedents of: **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008; **The Registered Trustee of the Evangelical Assemblies of God (T) (EAGT) v. Reverend Dr. John Mahene**, Civil Application No. 518/4 of 2017; and **NBC Limited and**

Another v. Bruno Vitus Swalo, Civil Application No. 139 of 2019. For instance, in the decision of **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited** (supra), on the subject of extension of time with prompt action, the Court of Appeal stated that:

> *It is trite law that an applicant before the Court must satisfy the Court that since becoming aware of the fact that he is out of time,* ***act very expeditiously*** *and that the* ***application has been brought in good faith***
>
> (Emphasis supplied).

To my opinion, the two highlighted reasons are very important in pegging determination of the present Application. I understand that there is no specific reasons displayed in a flipchart board or in 14 (1) of the **Law of Limitation Act** [Cap. 89 R. E 2019]. However, the text *may* in the section gives courts of law discretionary mandate to interpret the words *any reasonable or sufficient cause* depending on circumstances of each peculiar application. In **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd,** Civil Application No. 13 of 2010, our superior court stated that:

> *What constitutes* ***good cause cannot be laid down by any hard and fast rules****. The term good cause is a*

relative one and is dependent upon party seeking extension of time to provide the ***relevant material*** *in order to move the court to exercise its discretion*

(Emphasis supplied).

However, applicants for extension of time, apart from attaching relevant materials or valid explanations before the court, they must show promptness in bringing their applications or lack of negligence on their part, to persuade this court to exercise its discretionary mandate in their favour (see: **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014; and **Bashiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007).

In the present Application Mrs. Nambuo argued that the Applicant was prompt in filing the present Application as the Application emanated from Misc. Labour Reference No. 1 of 2019 which was struck out on the 9th July 2019 and the present Application was promptly registered in this court on 12th July 2019. This submission was protested by Mr. John arguing that Mrs. Nambuo has not registered sufficient reasons as the Applicant was not prompt in filing the Application. Mr. John cited the authority in Order 7 and 8 of the **Advocates Remunerations Orders**, 2015 contending that the

Reference was supposed to be filed within thirty (30) days, but the Applicant took months.

To substantiate his claim, Mr. John submitted that the Labour Execution No. 8 of 2017 was struck out on 12th December 2018, the Applicant approached this court for Reference on 9th May 2019, almost six (6) months, and must explain where he was. To his opinion, six (6) months is a long period of time and therefore the Applicant was negligent as per decision in **Issack Sebegele v. Tanzania Portland Cement Co. Ltd**, Civil Application No. 25 of 2002.

In her rejoinder, Mrs. Nambuo submitted that the dispute between the parties started eight (8) years ago and it was settled in favour of the Applicant and currently it is the execution which keeps them busy in this court. Mrs. Nambuo argued that initially the Applicant was supposed to be paid 142,000,000/= and later it was illegally amended by a contract of 24th February 2014 to read 65,000,000/=, which again was impossible to execute. To her opinion, the contract was entered after the award of the High Court and therefore cannot stand in law. Finally, Mrs. Nambuo submitted the Applicant was busy since 2012 following up his rights in both

judicial & administrative bodies and may be granted extension of time to register Labour Reference in this court to enforce his rights.

On my part, I think, it must be understood by parties in disputes and/or officers of this court who enter their appearances in praying for determination of disputes in this court or any other court that the era of judicial technicality is long gone. After enactment of section 3A, 3B and amendment of Order VIII in the **Civil Procedure Code** [Cap. 33 R.E 2019] (the Code) to align with article 13 (6) and 107A (2) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E 2002] (the Constitution), no any technicalities are granted space in this court, unless it is necessary to allow so.

It is fortunate that the stated enactment have received judicial interpretation and precedents from our superior court are abundant (see: **Yakobo Magoiga Gichere v. Peninah Yusuph**, Civil Appeal No. 55 of 2017, **Gasper Peter v. Mtwara Urban Water Supply Authority (MTUWASA)**, Civil Appeal No. 35 of 2017, **Mandorosi Village Council & Others v. Tuzama Breweries Limited & others, Civil Appeal No. 66 of 2017** and **Njoka Enterprises Limited v. Blue Rock Limited & Another**, Civil Appeal No. 69 of 2017).

It is also lucky in the Code and Constitution, there pieces of enactment which require court of law and learned counsels in civil proceedings to comply with the provisions in section 3A of the Code (see: section 3B (1) & (2) of the Code and Article 107A (2) (b) of the Constitution).

In the present Application, Mrs. Nambuo is praying before this court for enlargement of time to register Labour Reference in this court. From the record, the dispute between the Applicant and Respondent is on the execution of the decision in **Labour Execution No. 8 of 2017**, which can be settled by filing Labour Reference in this court. However, the Applicant has displayed two faults, *viz*: first, sidestepping legal procedures in favour of the administrative machinery; and second, legal defects in **Misc. Labour Reference No. 1 of 2019**.

Both faults have no protection in law for enlargement of time period to file Reference in this court. With the first fault the law is clear that ignorance of the law is not good excuse for extension of time and that being a lay person not conversant with the legal procedures does not assist applicants for enlargement of time (see: **Allan T. Materu v. Akiba Commercial Bank,** Civil Appeal No 114

of 2002, **Issack Sebegele v. Tanzania Portland Cement Co. Ltd** (supra). Again, in the second fault, it is the requirement of the precedents of this court and Court of Appeal that applicants or their learned counsels must show diligence and not negligence in prosecuting their actions that they intend to take in this court (see: **Transport Equipment Ltd v. D.P. Valambhia [1993] TLR 91** initially determined in **D. P. Valambia v. Transport Equipment Ltd [1992] TLR 246**; **Umoja Garage v. National Bank of Commerce [1997] TLR 109**; **Inspector Sadiki and Others v. Gerald Nkya [1997] TLR 290**).

In the present Application, the Applicant was late for two days. No reasons have been registered for the two days delay. Mrs. Nambuo just stated that the Applicant was prompt in bringing this Application in court. Available precedents are very clear on days. In early days of independence in East African Common Law countries, the position was clearly stated in the precedent of **Daphne Parry v Murray Alexander Carson [1963] EA 546**, where the application for enlargement of time was not granted because of five (5) days delay in applying for extension of time. In our country in late nineties in the precedent of **Theotimo Itanisa & Another v. Godwin**

Rugomora, Civil Appeal No. 46 of 1999, a delay of two days was sufficient to deny the Appellant in filing his appeal before this court.

The current position of our superior court is that: every gap of delay must be accounted for, even if it is a single day. In the decision of **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014, the Court of Appeal stated that:

> *The applicant has suggested in his supporting affidavit that he has all along been pursuing his case both in the High Court, and in this Court. But, on a closer look,* ***there are some gaps which the applicant has not accounted for***
>
> (Emphasis supplied).

The accountability on the gaps of delay is nailed in every day of the delay. The Court of Appeal in the decision of **Bashiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, stated that: *a delay of even a single day has to be accounted for.* The reasoning of such statement is found in the Application in the following words: *there would be no point of having rules prescribing periods within which certain steps have to be taken.* The position was gain reiterated by the same Court in the decision of **Elius Mwakalinga v.**

Domina Kagaruki & Five Others, Civil Application No. 120/17 of 2018 where it was stated that:

> *...in this regard, I am obliged to reiterate this Court's firm entrenched position that an application seeking extension of time...**is required to account for each day of the delay***
>
> (Emphasis supplied).

However, this stand has been adjusted by three circumstances, namely: firstly, by enactment of section 3A & 3B of the Code and precedent in **Yakobo Magoiga Gichele v. Peninah Yusuph** (supra); second, when there is a claim of illegality (see: **Attorney General v. Tanzania Ports Authority & Another**, Civil Application No. 87 of 2016); and third, when the Application has been promptly filed in good faith (see: of **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008).

In illegality, the Court of Appeal, in the precedent of **Attorney General v. Tanzania Ports Authority & Another**, (supra) briefly stated that:

It is a settled law that ***a claim of illegality*** *of the challenged decision constitutes sufficient reason for extension of time* ***regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for the delay***

(Emphasis supplied).

The reasons for such explanations are available in the precedent in **Diamond Trust Bank Tanzania Bank Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017 in the following texts of the decision:

We wish to point out that, the Court cannot normally justifiably close its eyes on glaring illegality in any particular case because it has a duty of ensuring proper application of the laws by the subordinates courts (see: ***Marwa Mahende v. Republic*** *[1998] TLR 249)...we think, the superior courts have the additional duty of ensuring proper application of the laws by the courts below... for the interest of justice, the Court has a duty to address a vivid illegality and that cannot justifiably close its eyes thereof.*

With promptly filing in good faith, our superior court in the case of **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited** (supra), stated that:

> *It is trite law that an applicant before the Court must satisfy the Court that since becoming aware of the fact that he is out of time,* ***act very expeditiously*** *and that the* ***application has been brought in good faith***
>
> (Emphasis supplied).

In the present Application, Mrs. Nambuo opted for the last exception on prompt action with good faith in filing the Application. With prompt action, it is was stated by Mrs. Nambuo that it was just two (2) days after the Applicant had received the copy of the Ruling in Misc. Labour Reference No.1 of 2019 of this court. With good faith, Mrs. Nambuo argued that the contest between the parties was already resolved in the Complaint which was registered and determined by the Commission in 2012, but failure by the Respondent to honor the Decree is what brought back the Applicant for Reference to contest the amount of money in the Decree or else amount of money already paid to him.

In the circumstances like the present one, the Applicant cannot be denied the right to access this court for Reference. The law in articles 13 (6) (a) & 107A (2) (b) of the Constitution followed by the new enactment section 3A & 3B in the Code require just, expeditious disposal, and affordable costs in resolving civil disputes. The law also prohibit delay of justice with unreasonable grounds. The present Application shows exactly that prohibition of the law. I said before, this is a court of justice, not the court of technicality. Parties or their respective learned counsels have the duty to assist this court in arriving at justice in expeditious manner, especially when the substantive right is at question.

Before enactment of section 3A & 3B our courts had no any legislation or text in avoiding legal technicalities in favour of the substantive rights of the parties, save for Constitution provision in article 107A (2) (e). However, the text in the Constitution was not backed up by any parliamentary enactment. That is why our courts of record were just mentioning avoidance of technicalities by the way. The full court of the Court of Appeal in 1992 in the precedent of **Nimrod Elireheman Mkono v. State Travel Service Ltd. & Masoo Saktay [1992] TLR 24**, is one of the good examples. In this decision at page 29 lamented that:

We would like to mention, if only in passing, that justice should always be done without undue regard to technicalities.

The focus on substantive justice has already received texts since 1968 from the East African Court of Appeal in the decision of **Essaji v. Sollank [1968] EA 201**, where it was stated that:

The administration of justice should normally require that the substance of all disputes should be investigated and decided on their merits and that errors and lapses should not necessary debar a litigant from the pursuit of his rights.

To my opinion, anyone trying to avoid that by way of technicality or objections must have good reasons. This court has changed itself to align with the provisions of the Constitution and Code, as I mentioned above. The texts in the Constitution and Code are spiced up by the vision and mission of the Judiciary in this State on timely justice to all; easy access to court at affordable costs; and disposal of cases effectively and efficiently. If this is done, parties will engage in other economic activities and build confidence in our Judiciary.

In the present Application, the Applicant submitted that he successfully won the Complaint against the Respondent in 2012, but only court technicalities which bar him to have his rights. At one point, as I have displayed at the outset of this Ruling, he opted for administrative machinery of this court and seemed to have lost confidence with our Judiciary. That practice must be prohibited with clear words of this court. This court is not a place where parties in dispute may seek refuge in avoiding their responsibilities.

This court was already warned by His Lordship Justice Barnabas Samatta (as he then was) to avoid grave diggers of our Judiciary in Tanzania. In his precedent of **VIP Engineer and Marketing Ltd. v. Said Salim Bakhresa**, Civil Applicant No. 47 of 1996, he is quoted to have said the following words:

> *While the importance of litigants complying with the rules of procedure cannot be over emphasized,* ***it must not be forgotten that there is a danger of consumers of justice losing confidence in the courts*** *if judicial officers are obsessed more with strict compliance with procedural rules than what the merits*

of the disputes before them are ***to stray into that error is to aid the judicature's grave diggers***

(Emphasis added).

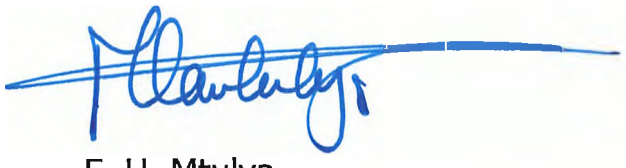
This thinking was recently repeated by our superior court in the decision of **Samwel Kimaro v. Hidaya Didas**, Civil Application No. 20 of 2012, and it was repeated after enactment of article 107A (2) (e) of the Constitution, but before insertion of section 3A & 3B in the Code. The thinking then was that:

...in dispensing justice, the courts are no doubt, rendering or giving valuable service to the society at large and to the consumers of our justice system in particular. If so, ***the society or consumers must continue to have trust and faith in our system****. These will be lost if cases are sometimes struck out on flimsy, cheap or too technical reasons... it is the best of interests of anyone that cases should reach a finality without being hindered [by the processes] which do not ultimately determine the rights of the parties*

(Emphasis supplied).

I think, in my opinion, these are strong words and warning to our inferior courts to the Court of Appeal in judicial hierarchy, including this court. The present resistance registered by Respondent's learned counsel is one of the flimsy protests which was registered without any merit. In the final analysis, I think Mrs. Nambuo has registered good reasons to persuade this court to determine this application in her favour. The Applicant is hereby granted leave to file his Reference out of time before this court within fourteen (14) days from the date of this Ruling, 19th October 2020, without any further delay. Costs awarded to the Applicant.

Ordered accordingly.



F. H. Mtulya

Judge

19/10/2020

This Ruling was delivered in Chambers under the seal of this court in the presence of the Applicant's relative Mr. Delphin Kasangwa and in the presence of the Respondent's Human Resources Manager, Mr. Abel Ndundulu.

F. H. Mtulya

Judge

19/10/2020