

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
(LABOUR DIVISION)**

AT SHINYANGA

MISC. LABOUR APPLICATION NO 3 OF 2020

(Arising from the decision of the Consolidated Judgement of the High court Labour Division in Misc. Appl. No 51 and 56 of 2015 dated on 20th November, 2015)

DANIEL MALAMBO..... 1ST APPLICANT

JOSEPH KAPELA.....2ND APPLICANT

VERSUS

PANGEA MINERALS LIMITED.....RESPONDENT

RULING

Date: 10th March, 2020 - 24th April, 2020

MKWIZU, J:

This application is made by a chamber summons under section 11 (1) of the appellate jurisdiction Act, Cap 141 RE 2002. The application is supported by an affidavit deposed by Frank Samwel, applicant's advocate. The applicants call upon this court to grant extension of time to file notice of appeal appealing to the Court of Appeal of Tanzania against the decision of this court in consolidated Misc.Application Nos 51 and 56 of 2015.

respondent filed a counter affidavit sworn by Lumbu Kambula, Human Resource Section Leader of the respondent.

This matter commenced at the Commission for Mediation and Arbitration (CMA) in Labour Dispute No.CMA/SHY/86/2013. After the CMA award, applicants delayed in filing revision to this Court, they therefore filed application for extension of time to file revision. Mipawa J (as he then was) on 20th November, 2015 dismissed the application for lacking in merit. Following that decision, the applicants on 29th January, 2020 filed the present application.

At the hearing, the applicants were represented by Mr. Frank Samweli advocate while the respondent was being assisted by Ms. Caroline Kivuyo also advocate.

Mr. Frank submitted in support of the application that, after the dismissal of the applications for extension of time in 20/11/2015, applicants through their legal representative Benjamin Dotto, filed Misc. Applications No. 4 and 5 of 2016 in this court but they were not aware of their development until 15th January 2020 when they engaged advocate to make follow ups. It was Mr. Frank's further argument that, on making follow ups, he was informed

by the registry officer that the applications could not be registered as they were the same applications which were decided by this court on 20th November,2015. He asserted that the two applications Misc. Application No. 4 and 5/2016 were substituted without the applicants knowledge. From there on, the applicant's advocate started to prepare the present application which was filed on 29th January,2020. Mr.Frank said,the applicants were misled by their personal representative on the proper procedure to take by advising them to file fresh applications instead of appealing and failed to give them update on the outcome of the said applications after they failed to be registered.

In addition to that, Mr. Frank submitted that the applicants are intending to challenge the High Court's decision on the ground of illegality that the decision had no grounds for the decision. He urged the court to grant the application as the delay was out of the applicant's control.

The application received a strong resistant from the respondent. Ms. Caroline first adopted the respondent's counter affidavit.She then told this court that this application is brought five years after the decision dismissing applicant's application for extension of time to file revision against the CMA

award of the year 2013. She narrated that, for an application for extension of time to be granted there must be good cause shown, the delay should not be inordinate and that there should be an account of each day of delay.

On good cause, Ms. Caroline said, the applicants are throwing blames to their personal representative that he failed to give them update and that he misled them by directing them to file fresh applications instead of appealing. Ms. Caroline went further arguing that, this is wrong, a person engaging a legal or personal representative is bound by his actions. Applicants had a duty to make follow ups of their case in court, stressed Ms. Caroline. She cited the case of **Allison Xeron Sila v Tanzania Harbour Authority**, Civil reference No. 14 of 1998 CAT and **Nyanza Cooperative Union (1984) v. Ms PB Tanzania Ltd And 2 Others**, Civil Application no. 22 of 2008 (All unreported) to support her argument.

Ms. Caroline maintained that the delay to file appeal to the court of appeal was due to the applicant's negligence. The steps the applicant took five years later after the decision intended to be challenged ought to have been taken immediately after the delivery of that decision, she stated.

On the other hand, Ms. Carroline is blaming the applicants for failure to account for each day of delay. The reliance made by the applicants on the fact that they file application No 4 and 5 of 2016 is not sufficient as the court is not told as to when the said applications were filed and when the said application were substituted. Ms Caroline invited the court to find this reason unmerited as no affidavit of the said registry officer attached to the application to substantiate what applicants wants this court to believe. She emphasized that applicants are to shoulder the blames for their inaction. The delay was inordinate and therefore the application should be dismissed.

In a further argument, Ms. Caroline stated that, the time between 15th January 2020 to 29/1/2020 was not accounted for. She cited the case of **Deus Morris Alexander V. Sandvik Mining and construction (T) Ltd**, Civil Revision No. 14 of 2011 High Court labour Division Shinyanga and **Dar es salaam City Council V. Group Security Co Ltd**, Civil application no. 234 of 2015 CAT stating that each day of the delay must be accounted for. She finally prayed the application to be dismissed for lacking in merit.

In his short rejoinder, counsel for the applicant said, applicants were not negligent and have accounted for each day of the delay from when the decision in a consolidated applications was given to the time of filing the present application. He distinguished the **Allison's case and Nyanza' cooperative unions's** case (Supra) cited by the respondent's counsel in that ,the two cases talk of the absence of an advocate who is a person well trained in law while in our case the applicant were dealing with a personal representative. He reiterated his submission on the illegality of the decision of this court dated 20/11/2015 and urged the court to grant the prayers in this application.

It is worth noting here that before the court grant extension of time to do any act prescribed by the law, the following factors should be considered:

1. That, the applicant must account for all the period of delay.
2. The delay must not be inordinate
3. The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.
4. If the Court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as illegality of the decision sought to be challenged.

See **Lyamuya Construction Company Limited v. Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported).

I will first consider the argument that the applicants were misled by their personal representative on the procedure to be taken. As correctly argued by Ms. Caroline, applicants have not shown their efforts from the year 2015 to 2020 on the pursuit of their case. The counsel for the applicant has alleged that the applicant's personal representative advised the applicants to file applications similar to what was dismissed by the court. Mr. Frank, alleged again that, the filed applications were substituted in the court register since 2016 without the applicant's knowledge until 15th January 2020 when he was engaged and discovered the said facts after having made follow ups with the registry. Mr. Frank informed this court that he was informed by the registry officer that the applications could not be registered as the court was functus official. The allegation, is in my view, a bluntly lie. First of all, the name of the registry officer consulted is not disclosed and there is no affidavit of the said Registry Officer to that effect attached in this application to support this point. As if this is not enough, annexure Fs 4 and Fs5, the documents purported to be the applications

No 4 and 5 of 2016 filed by the applicants through their personal representative attached to this application are silent as to whether they were filed at all. I have carefully scrutinized annexures referred to above. None of them bears the Registry officer's signature and the date of lodgment. There is a stamp at the top of the front page of the refereed annexures but they were not lodged.

The question I had to ask myself is, if truly, the applicants were thoughtful of their case, how could they remain silent for good four years from January, 2016 when they attempted to file the alleged applications to 2020 when they decided to engage advocate to pursue their rights. This is, in my view a high degree of negligence. The blames thrown to their personal representative is not worth consideration. In **William Shija vs Fortuntus Masha** (1997) TLR ,213 at page 218 the court discussed about an advocate who was negligent in adopting the correct procedure and the court held that it could not constitute sufficient reason for the exercise of the court's discretion.

Similarly, in the case of **Nyanza cooperative Union** (supra) the court of appeal had this to say in regards to the failure by the advocate to take a proper procedure:-

“Nevertheless, as already stated, this being an application for extension of time, what is required is sufficient reason for the delay, which, I must, with respect to the learned counsel for the applicant, say that the applicant has not been able to do that. Failure by an advocate to pursue a proper procedure or give proper instructions to his/her clients is the fault of the advocate and he/she should be one to blame.”

Again, in the case of **Allison Xerox Sila** (Supra) cited by the counsel for the respondent, Court of appeal had this to say at page 6 of the typed ruling:-

“Rules of limitation are ordained for a purpose. It does not seem just that an applicant who has no valid excuse for failure to utilize the prescribed time, but tardiness, negligence or ineptitude of counsel, should be extended extra time merely out of sympathy for his cause”

I associate myself with the above decisions of the court of appeal. In this case, there was lack of diligence which was one of the factors to be considered before granting the application. It goes without saying that

applicants were not diligent enough in making follow ups of their matter. In other words, they have not accounted for each day of the delay.

Next for consideration is the issue of illegality pointed by the applicant's counsel. Apart from accounting for the delay, there are some exceptional circumstances particularly when illegality is raised as a ground in the application for extension where, time can be extended regardless the extent

and reasons for the delay. In **VIP Engineering and Marketing Limited and Three Others vs. Citi Bank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006 (Unreported), the Court stated:

"It is, therefore, 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."

Paragraph 13 of the affidavit, the applicants are alleging an illegality in the decision of the high court dated 20/11/2015 for having no *ratio desidendi*. However, my perusal of the said decision reveals that the applications were

dismissed for lack of merit. That is clear at page 2 of the judgment in which the judge stated thus:-

"After going through the parties submissions and the records, the two applications for extension of time are dismissed for lack of merit. The applicants have not adduced sufficient grounds to make this court grant such prayers per law."

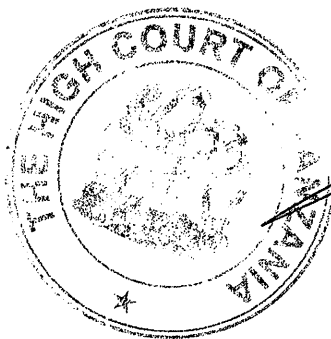
As it is apparent from the above part of the court's decision that the applicant's applications were dismissed after the court had found that they had no merit then the allegation of illegality that the decision lacks the ground for its decision is unfounded. I would agree with the counsel for the respondent that this application is undeserved. It was filed as an after-sought otherwise no assented efforts were made by the applicants showing that indeed they exercised diligence and or that this application was brought on good faith. In the case of **Godwin Ndewasi Karoli Ishengoma v. Tanzania audit Corporation**, (1995) TLR 200 the court held:-

"The rules of Court must be prima-facie be obeyed and in order to justify extending time during which some step in the

procedure requires to be taken there must be some material on which the court can exercise its discretion"

All said, there is no good reason for the delay that has been established by the applicants. This application is without merit. It is hereby dismissed. As the matter originated from a labour dispute, I hereby make no order as to costs.

DATED at Shinyanga this 28th day of April, 2020.



E.Y. Mkwizu
E.Y. MKWIZU
JUDGE
28/4/2020